



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405
Phone: 503-378-3272, Toll Free: 1-800-922-2689, Fax: 503-947-7461
osha.oregon.gov

September 30, 2021

[Text of Proposed Changes](#)

Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

Due to the COVID-19 pandemic and in-line with public health recommendations, the hearings will be held virtually. Oregon OSHA offices remain closed to the public.

Virtual Public Hearings Scheduled for:

Date

Time

November 2, 2021

5:00 pm

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 2, 2021 5:00 PM PDT at:

<https://attendee.gotowebinar.com/register/5585314977687690512>

November 3, 2021

5:00 pm

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 3, 2021 5:00 PM PDT at:

<https://attendee.gotowebinar.com/register/4935255116150411019>

November 5, 2021

10:00 am

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 5, 2021 10:00 AM PDT at:

<https://attendee.gotowebinar.com/register/8825866015920510732>

November 8, 2021

5:00 pm

*** This hearing will be conducted entirely in Spanish.***

Please register for Spanish-only Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 8, 2021 5:00 PM PST at:

<https://attendee.gotowebinar.com/register/2700128296682792464>

After registering for a webinar, you will receive a confirmation email containing information about joining the webinar. In order to ensure as many people as possible are able to testify, Oregon OSHA reserves the right to restrict testimony to no more than 5 minutes.

Rule Summary:

This rule protects workers throughout the state given the current COVID-19 public health emergency, which has not abated in 2021. The current surge of summer infections from the highly-contagious COVID-19 Delta variant has resulted in a record number of Oregonians hospitalized with COVID-19 in August and September 2021. It is within this public health context that Oregon OSHA is proposing to make permanent amendments to the OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks (COVID-19 rule).

Since it was first adopted as a permanent rule on May 4, 2021 ([AO 2-2021](#)), Oregon OSHA has filed three temporary amendments to the COVID-19 rule. The first of these changes ([AO 5-2021](#)), which occurred June 30, 2021, greatly reduced requirements as well as simplified the appendix given the low case load and high vaccination numbers at the time. Additionally, On July 19, 2021, Oregon OSHA published a [Workplace Advisory Memo](#) reducing requirements related to sanitation and physical distancing, with an additional update on August 13, 2021. After the surge of summer infections, the Governor and Oregon Health Authority (OHA) re-instated masking requirements with the adoption of OHA's OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces and OAR 333-019-1015: Masking Requirements in Schools; Oregon OSHA updated its COVID-19 rule accordingly ([AO 10-2021](#)). The third and most recent change ([AO 12-2021](#)) adopted Medical Relief Benefits for healthcare workers to ensure Oregon OSHA's COVID-19 rule is as effective as [federal OSHA's COVID-19 Healthcare Emergency Temporary Standard](#) (ETS). These temporary amendments are effective through December 26, 2021.

As the temporary changes are set to expire, the public health emergency remains a significant concern in Oregon and it is necessary to update the original COVID-19 rule with the most current multi-agency guidance and the most effective protections – otherwise the rule reverts to its original May 4, 2021 text. The proposed amendments are as follows:

- Employers with employees working in indoor or outdoor workspaces must implement the requirements of [OAR 333-019-1025](#): Masking Requirements for Indoor and Outdoor Spaces, adopted by the Oregon Health Authority.
- The K-12 Educational Institutions (A-8) industry-specific guidance in the appendix is updated. Employers must ensure that the requirements of OHA's [OAR 333-019-1015](#): Masking Requirements in Schools and other employee protections imposed by OHA or the Oregon Department of Education are implemented and enforced in public and private K-12 schools.
- The physical distancing requirements previously found in OAR 437-001-0744(3)(a) are no longer in effect outside healthcare and transit settings.

- Except for healthcare settings, Oregon OSHA no longer requires employers to regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces as defined by this rule that are under its control and that are used by employees or the public. All other sanitation requirements of OAR 437-001-0744(3)(c) remain in effect for all workplaces.
- In the appendix, the industry-specific guidance for Transit Agencies (A-5) and Emergency Medical Services (A-11) remains in place, with some modifications. Physical distancing guidance for Veterinary Clinics (A-10) is removed.
- The following appendix sections are simplified and updated to only include industry-specific masking exemptions: Personal Services Providers (A-3), Employers Operating Child Care and Early Education Programs (A-9); Law Enforcement Activities (A-12); and, Jails, Prisons, and Other Custodial Institutions (A-13).
- Oregon OSHA simplified the appendix, removing the specific requirements related to Restaurants, Bars, Brewpubs, and Public Tasting Rooms at Breweries, Wineries, and Distilleries (A-1); Retail Stores (A-2); Construction Operations (A-4); Professional, Division 1, Pac12, West Coast Conference and Big Sky Conference Sports (A-6); and Employers Operating Fitness-Related Organizations (A-7).
- In alignment with federal OSHA's COVID-19 ETS, Oregon OSHA is proposing to adopt medical relief benefits in the healthcare sector. They provide some financial relief for workers in healthcare; as defined by the federal standard, when the need for the medical removal is met under the provisions listed in the rule. These benefits apply to specified employees in healthcare settings only.

Oregon OSHA has the authority to enforce rules adopted by other state agencies under ORS 654.025(3)(a). As stated previously, it is Oregon OSHA's intent to repeal the entire rule once it is no longer necessary to address the COVID-19 pandemic in Oregon workplaces. Discussions continue with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders to determine when all or additional parts of the rule can be appropriately repealed.

Please visit our website osha.oregon.gov/rules to view our proposed rules, or select other rule activity from this page.

When does this happen: Adoption tentatively will be in December 2021.

To get a copy: Our web site – osha.oregon.gov Rules and laws, then, Proposed rules
Or call 503-947-7449

To comment: Department of Consumer and Business Services/
Oregon OSHA
PO BOX 14480
Salem OR 97309-0405
Email – osha.rulemaking@dcbs.oregon.gov
Fax – 503-947-7461

Comment period closes: November 12, 2021

Oregon OSHA contact: Matthew Kaiser, Salem Central Office @ 503-378-3272, or email at Matthew.C.Kaiser@dcbs.oregon.gov.

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

Lisa Appel
Rules Coordinator

350 Winter Street NE Salem OR 97301-3882
Address

503-947-7449
Telephone

RULE CAPTION

Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

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

Virtual Public Hearings Scheduled for:

Hearing Date	Time	Location	Hearings Officer
November 2, 2021	5:00 pm	Oregon OSHA, Salem	Lisa Appel

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November 3, 2021	5:00 pm	Oregon OSHA, Salem	Lisa Appel
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Amend: OAR 437-001-0744

ORS 654.025(2), 654.035, 656.726(4)
Stat. Auth.

654.025(3)(a)
Other Authority

ORS 654.001 through 654.295
Stats. Implemented

RULEMAKING SUMMARY

INDIVIDUAL RULE SUMMARY (By rule number)

Provide a brief summary of the rule (if new adoption), or a brief summary of changes made to the rule (if amending)

This rule protects workers throughout the state given the current COVID-19 public health emergency, which has not abated in 2021. The current surge of summer infections from the highly-contagious COVID-19 Delta variant has resulted in a record number of Oregonians hospitalized with COVID-19 in August and September 2021. It is within this public health context that Oregon OSHA is proposing to make permanent amendments to the OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks (COVID-19 rule).

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As the temporary changes are set to expire, the public health emergency remains a significant concern in Oregon and it is necessary to update the original COVID-19 rule with the most current multi-agency guidance and the most effective protections – otherwise the rule reverts to its original May 4, 2021 text. The proposed amendments are as follows:

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- The K-12 Educational Institutions (A-8) industry-specific guidance in the appendix is updated. Employers must ensure that the requirements of OHA's [OAR 333-019-1015: Masking Requirements in Schools](#) and other employee protections imposed by OHA or the Oregon Department of Education are implemented and enforced in public and private K-12 schools.
- The physical distancing requirements previously found in OAR 437-001-0744(3)(a) are no longer in effect outside healthcare and transit settings.
- Except for healthcare settings, Oregon OSHA no longer requires employers to regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces as defined by this rule that are under its control and that are used by employees or the public. All other sanitation requirements of OAR 437-001-0744(3)(c) remain in effect for all workplaces.

- In the appendix, the industry-specific guidance for Transit Agencies (A-5) and Emergency Medical Services (A-11) remains in place, with some modifications. Physical distancing guidance for Veterinary Clinics (A-10) is removed.
- The following appendix sections are simplified and updated to only include industry-specific masking exemptions: Personal Services Providers (A-3), Employers Operating Child Care and Early Education Programs (A-9); Law Enforcement Activities (A-12); and, Jails, Prisons, and Other Custodial Institutions (A-13).
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Oregon OSHA has the authority to enforce rules adopted by other state agencies under ORS 654.025(3)(a). As stated previously, it is Oregon OSHA’s intent to repeal the entire rule once it is no longer necessary to address the COVID-19 pandemic in Oregon workplaces. Discussions continue with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders to determine when all or additional parts of the rule can be appropriately repealed.

November 12, 2021
Last Day for Public Comment
 Last day to submit written comments to the Rules Coordinator


 Signature
Michael A Wood 9/30/2021
 Printed name Date

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

In the Matter of:

Adopting:

Amending: OAR 437-001-0744

Repealing:

Rule Caption: Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

Statutory Authority: ORS 654.025(2), 654.025(3)(a), 654.035, 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295

Need for the Rule(s):

Oregon OSHA is proposing rule amendments to OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks (COVID-19 rule) to align with the most current multi-agency guidance and to ensure the most effective protections are put in place. These changes are needed to protect workers throughout the state in the context of the current COVID-19 public health emergency, which has not abated in 2021. The Delta variant is approximately two to three times more infectious than early COVID-19 variants, and it has resulted in a summer surge of hospital bed usage and reduced hospital capacity in Oregon.

Additionally, if Oregon OSHA does not pursue permanent amendments to the COVID-19 rule, changes made to the rule using temporary rulemaking will expire on December 26, 2021 and the rule will not align with the most current public health needs and OHA rules. Failure to update the rule would also result in conflicting policy messages that may confuse businesses and organizations who are seeking efficient compliance.

Proposed changes include provisions that employers with employees who are exposed to other individuals in indoor and outdoor workplaces must implement the requirements of OHA's OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces. This change aligns with Governor Kate Brown announcements on August 11, 2021 and August 24, 2021 for statewide indoor and outdoor (respectively) masking requirements intended to help slow the spread of the highly-contagious Delta variant among the state's population. Sections of the appendix were reviewed and simplified, and in some cases removed completely because they were no longer necessary. The sections of the appendix that remain are those that represent a unique workplace situation where different requirements than those represented in OAR 333-019-1025.

On July 29, 2021, Governor Kate Brown directed OHA and the Oregon Department of Education (ODE) to require masks indoors for K-12 schools statewide for the 2021-22 school year to align with the Centers for Disease Control and Prevention's recently updated guidance related to the spread of the COVID-19 Delta variant. Proposed changes ensure employers must meet the requirements of OHA's temporary rule OAR 333-019-1015 and other employee protections imposed by OHA or ODE are implemented and enforced in public and private K-12 schools in a coordinated effort.

These changes are necessary, as without specific, coordinated agency protections in place, the highly-transmissible variant could spread rapidly in schools, sickening staff and disrupting the educational process. Enforceable masking requirements in indoor and outdoor public settings and schools will protect students under 12 years of age, individuals who are not vaccinated, and those with underlying health conditions.

With more information available on virus transmission and feedback from the Rules Advisory Committee, it is clear the frequency of sanitation could be less burdensome to employers without compromising public health. Additionally, this feedback informed changes to physical distancing measures and simplification of the appendix. Not making these

amendments would result in full sanitation and physical distancing measures (from May 4th permanent rule) being put back in place – creating an unnecessary burden to employers.

Lastly, Oregon OSHA conducted a side-by-side evaluation of federal OSHA's COVID-19 Healthcare Emergency Temporary Standard (ETS) and found that Oregon OSHA's COVID-19 rules to be generally as effective as federal OSHA, with the exception of the Medical Removal Benefit component. If changes are not made these rules will not align with the federal OSHA's ETS 1910.502. Without additional provisions for healthcare workers to be compensated when medical removal is necessary, they could be working when sick and increase the spread of COVID-19 throughout the workplace and community.

Documents Relied Upon, and where they are available:

Occupational Health and Safety Administration, Federal Register – Occupational Exposure to COVID-19; Emergency Temporary Standard:

<https://www.federalregister.gov/documents/2021/06/21/2021-12428/occupational-exposure-to-covid-19-emergency-temporary-standard>

Oregon Health Authority, Secretary of State Rule Filing – OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces, available at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=280702>

State of Oregon News Release August 11, 2021: Governor Kate Brown Announces Statewide Indoor Mask Requirements, available at: <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64250>

State of Oregon News Release August 24, 2021: Governor Kate Brown Announces Statewide Outdoor Mask Requirements, available at: <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64307>

Oregon Health Authority, Secretary of State Rule Filing – OAR 333-019-1015: Masking Requirements in Schools, available at:

https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/COMMUNICABLEDISEASE/REPORTINGCOMMUNICABLEDISEASE/Documents/rules/2021/School%20masking/PH_33-2021-2.pdf

State of Oregon News Release July 29, 2021: Governor Kate Brown Directs State Agencies to Align K-12 Mask Guidance with CDC Recommendations to Prevent Disruptions to Return to In-Person Instruction available at:

<https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64174>

Oregon Department of Education, August 3, 2021, Ready Schools, Safe Learners Resiliency Framework for the 2021-22 School Year, available at: <https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/Ready%20Schools%20Safe%20Learners%20Resiliency%20Framework%20for%20the%202021-22%20School%20Year.pdf>

Centers for Disease Control and Prevention, August 5, 2021: "Guidance for COVID-19 Prevention in K-12 Schools", available at:

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

Centers for Disease Control and Prevention Press Release, September 24, 2021: "Studies Show More COVID-19 Cases in Areas Without School Masking Policies", available at:

<https://www.cdc.gov/media/releases/2021/p0924-school-masking.html>

Oregon Health Authority's data dashboards: Oregon's COVID-19 Update and Oregon COVID-19 Vaccine Daily Update, both can be accessed through: <https://govstatus.egov.com/OR-OHA-COVID-19>.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

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

All state agencies and local government units are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct). The public as a whole will be affected only to the degree that members of the public are employers and employees.

In the proposed amendments, the agency recognizes that the simplification of the appendix and the elimination of certain sanitation and physical distancing measures (except for healthcare and transit agencies) will have a positive fiscal impact on the cost of compliance for businesses and organizations. Other changes related to masking simply restate the fiscal impact of the existing rule and do not represent a change from the status quo. These amendments will not increase costs outside the healthcare industry. There is a cost of compliance creating a fiscal impact as a result of the adoption of Medical Removal Benefits for employees in healthcare settings; as such, see the Medical Removal Protection Benefit Analysis (table below) that estimates the impact of the proposed changes to the healthcare industry. This evaluation was informed in part by the fiscal analysis conducted by federal OSHA for their COVID-19 Healthcare Emergency Temporary Standard.

Medical Removal Protection Benefit Analysis of proposed amendments to OAR 437-001-0744(4)(m):

Occupation Code	Employment Size in Oregon	Median Hourly Wage (\$)	Average Duration of Employee Quarantine (Work Day)	Estimated Average Sick Leave Available	Estimated Average Duration of Employee Quarantine not covered by sick leave (Work Day)	Estimated cost of medical removal under sick leave scenario	Estimated cost of medical removal without available sick leave
29-0000:	100,230	42.89	10	3	10-3=7 days	(7days)(42.89/hr)(8hr/day)= \$2345.84 total or ~\$1,172.92/week	(10 days)(42.89/hr)(8hr/day) = \$3431.20 total or ~\$1,715.60/week
31-0000:	75,750	16.47	10	3	10-3=7 days	(7 days)(16.47/hr)(8hr/day) = \$922.32 total or ~ \$461.16/week	(10 days)(16.47/hr)(8hr/day) = \$922.32 total or ~ \$1,317.60/week

29-0000: Healthcare Practitioners and Technical Occupations comprises the following occupations: Chiropractors; Dentists, General; Oral and Maxillofacial Surgeons; Orthodontists; Prosthodontists; Dentists, All Other Specialists; Dietitians and Nutritionists; Optometrists; Pharmacists; Physician Assistants; Podiatrists; Occupational Therapists; Physical Therapists; Radiation Therapists; Recreational Therapists; Respiratory Therapists; Speech-Language Pathologists; Exercise Physiologists; Therapists, All Other; Veterinarians; Registered Nurses; Nurse Anesthetists; Nurse Midwives; Nurse Practitioners; Audiologists; Anesthesiologists; Family Medicine Physicians; General Internal Medicine Physicians; Obstetricians and Gynecologists; Pediatricians, General; Psychiatrists; Physicians, All Other; and Ophthalmologists, Except Pediatric; Surgeons, Except Ophthalmologists; Dental Hygienists; Acupuncturists and Healthcare Diagnosing or Treating Practitioners, All Other; Clinical Laboratory Technologists and Technicians; Cardiovascular Technologists and Technicians; Diagnostic Medical Sonographers; Nuclear Medicine Technologists; Radiologic Technologists and Technicians; Magnetic Resonance Imaging Technologists; Emergency Medical Technicians and Paramedics; Dietetic Technicians; Pharmacy Technicians; Psychiatric Technicians; Surgical Technologists; Veterinary Technologists and Technicians; Ophthalmic Medical Technicians; Licensed Practical and Licensed Vocational Nurses; Opticians, Dispensing; Orthotists and Prosthetists; Hearing Aid Specialists; Medical Dosimetrists, Medical Records Specialists, and Health Technologists and Technicians, All Other; Athletic Trainers; Genetic Counselors; Health Information Technologists, Medical Registrars, Surgical Assistants, and Healthcare Practitioners and Technical Workers, All Other

31-0000: Healthcare Support Occupations comprises the following occupations: Home Health and Personal Care Aides; Nursing Assistants; Orderlies; Psychiatric Aides; Occupational Therapy Assistants; Occupational Therapy Aides;

Physical Therapist Assistants; Physical Therapist Aides; Massage Therapists; Dental Assistants; Medical Assistants; Medical Equipment Preparers; Medical Transcriptionists; Pharmacy Aides; Veterinary Assistants and Laboratory Animal Caretakers; Phlebotomists; Healthcare Support Workers, All Other

Data Sources and General Estimations:

- Occupation codes, Oregon employment size, and median wage information for included employees were identified using available BLS data (see below).
- This analysis does not seek to identify what portion of Oregon employees in occupation codes 29-0000 or 31-0000 may actually contract COVID-19, nor does it estimate the total number of employees who are eligible for medical removal protection (MRP) benefits as stipulated by the scope and exemptions outlined in the rule. Therefore, the total covered population presented above is likely to be a drastic overestimation of the true number of employees eligible for the provision of MRP benefits as outlined under OAR 437-001-0744(4)(m).
- The average employee quarantine/isolation time for COVID-19 infection is based on current OHA quarantine/isolation guidance: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf>

Reference Links:

- Federal OSHA [Preamble to 29 CFR 1910.502](https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf) – Emergency Temporary Standard for Occupational Exposure to COVID-19: <https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf>
- Page 485 – federal OSHA analysis regarding estimated available average sick leave available per employee (3 work days or 24 work hours) based on Scalia and Beach (September 2020), Tables 31 and 24.
- Bureau of Labor and Statistics, May 2020, [Oregon Employment Data](https://www.bls.gov/oes/2020/may/oes_or.htm#00-0000) (Last Modified March 2021): https://www.bls.gov/oes/2020/may/oes_or.htm#00-0000
- Oregon Health Authority [COVID-19 Isolation and Quarantine Guidance](https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf) (Last Modified June 2021): <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf>
- Oregon Small Business Economic Profile, 2021: U.S. Small Business Administration (SBA): <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143123/Small-Business-Economic-Profile-OR.pdf>

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

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

The 2021 Small Business Profile for Oregon, compiled by the U.S. Small Business Administration (SBA), identified 35,809 small business firms in Oregon that are engaged in Health Care and Social Assistance. These Health Care and Social Assistance small businesses employ approximately 123,526 workers in Oregon. For the purposes of this analysis, "small businesses" are defined by the SBA as firms with fewer than 500 employees. This estimation is based in part on data presented in the 2021 Oregon Small Business Economic Profile as reported by the SBA.

Reference: <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143123/Small-Business-Economic-Profile-OR.pdf>

As outlined in the proposed rule amendments, small business employers with 10 or fewer employees are not required to provide Medical Removal Protection Benefits. Therefore, many typically small healthcare employers such as dentists or optometrists will experience little to no cost under the revision to the rule.

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

The projected reporting, recordkeeping and other administrative activities for the cost of compliance are identified in the above Medical Removal Protection Benefit Analysis.

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

The projected equipment, supplies, labor and increased administration for the cost of compliance are identified in the above Medical Removal Protection Benefit Analysis.

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

Small businesses and others were involved in the development of this rule insofar as their representatives were represented on the Rules Advisory Committee, Oregon OSHA Partnership Committee, the Oregon OSHA Construction Advisory Committee, and other Oregon OSHA stakeholder groups. They would also have had the opportunity to provide public comment during the rulemaking process for the permanent COVID-19 rule adopted May 4, 2021.

Administrative Rule Advisory Committee consulted?

Yes, Oregon OSHA has continued engagement with two Rulemaking Advisory Committees (RAC), for General Risk and Exceptional Risk workplaces. In the COVID-19 rule, Oregon OSHA committed to regular discussions with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders to determine when all or additional parts of the rule can be appropriately repealed. In accordance, RACs have met five times in June, July and August 2021, and Oregon OSHA consulted them for feedback in each temporary rulemaking leading up to this notice of proposed permanent rulemaking. Each RAC had the opportunity to review and provide feedback on temporary rule drafts. Comments were accepted during meetings and through emails throughout the stakeholder engagement process. Oregon OSHA intends to continue meeting with the RAC and others until the rule is repealed, as stated in the rule.

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


Signature

Michael D. Wood 9/30/2021
Printed name Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)
FOR ADMINISTRATIVE RULES

AGENCY NAME: DCBS/Oregon OSHA
2021

PERMANENT: XX **HEARING DATES:** 11/2, 11/3, 11/5, 11/8

ADDRESS: 350 Winter Street NE

CITY/STATE: Salem OR 97301-3882

TEMPORARY: **EFFECTIVE DATE:** December 2021

PHONE: 503-947-7449

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.

IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

See attached Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

Description of the need for, and objectives of the rule:

See attached Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

List of rules adopted or amended:

AMEND: 437-001-0744

Materials and labor costs increase or savings:

None.

Estimated administrative construction or other costs increase or savings:

None.

Land costs increase or savings:

Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:

Oregon OSHA does not foresee any additional costs.

*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Lisa Appel

EMAIL ADDRESS: Lisa.Appel@oregon.gov

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 437
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

FILED
09/30/2021 11:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/12/2021 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: Lisa Appel
503-947-7449
Lisa.APPEL@oregon.gov

350 Winter Street NE
Salem, OR 97301

Filed By:
Lisa Appel
Rules Coordinator

HEARING(S)

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

DATE: 11/02/2021
TIME: 5:00 PM - 7:00 PM
OFFICER: Lisa Appel
ADDRESS: Virtual Hearing
350 Winter Street NE
Salem, OR 97301-3882

DATE: 11/03/2021
TIME: 5:00 PM - 7:00 PM
OFFICER: Lisa Appel
ADDRESS: Virtual Hearing
350 Winter Street NE
Salem, OR 97301-3882

DATE: 11/05/2021
TIME: 10:00 AM - 12:00 PM
OFFICER: Lisa Appel
ADDRESS: Virtual Hearing
350 Winter Street NE
Salem, OR 97301-3882

SPECIAL INSTRUCTIONS:
Please find registration information
under Need for the Rule.

SPECIAL INSTRUCTIONS:
Please find registration information
under Need for the Rule.

SPECIAL INSTRUCTIONS:
Please find registration information
under Need for the Rule.

DATE: 11/08/2021
TIME: 5:00 PM - 7:00 PM
OFFICER: Lisa Appel
ADDRESS: Virtual Hearing
350 Winter Street NE
Salem, OR 97301-3882

SPECIAL INSTRUCTIONS:
This hearing will be conducted in
Spanish. Please find registration
information under Need for the Rule.

NEED FOR THE RULE(S):

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on
Nov 2, 2021 5:00 PM PDT at:
<https://attendee.gotowebinar.com/register/5585314977687690512>

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 3, 2021 5:00 PM PDT at:

<https://attendee.gotowebinar.com/register/4935255116150411019>

Please register for Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 5, 2021 10:00 AM PDT at:

<https://attendee.gotowebinar.com/register/8825866015920510732>

*** This hearing will be conducted entirely in Spanish.***

Please register for Spanish-only Amending Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces on Nov 8, 2021 5:00 PM PST at: <https://attendee.gotowebinar.com/register/2700128296682792464>

Oregon OSHA is proposing rule amendments to OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks (COVID-19 rule) to align with the most current multi-agency guidance and to ensure the most effective protections are put in place. These changes are needed to protect workers throughout the state in the context of the current COVID-19 public health emergency, which has not abated in 2021. The Delta variant is approximately two to three times more infectious than early COVID-19 variants, and it has resulted in a summer surge of hospital bed usage and reduced hospital capacity in Oregon.

Additionally, if Oregon OSHA does not pursue permanent amendments to the COVID-19 rule, changes made to the rule using temporary rulemaking will expire on December 26, 2021 and the rule will not align with the most current public health needs and OHA rules. Failure to update the rule would also result in conflicting policy messages that may confuse businesses and organizations who are seeking efficient compliance.

Proposed changes include provisions that employers with employees who are exposed to other individuals in indoor and outdoor workplaces must implement the requirements of OHA's OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces. This change aligns with Governor Kate Brown announcements on August 11, 2021 and August 24, 2021 for statewide indoor and outdoor (respectively) masking requirements intended to help slow the spread of the highly-contagious Delta variant among the state's population. Sections of the appendix were reviewed and simplified, and in some cases removed completely because they were no longer necessary. The sections of the appendix that remain are those that represent a unique workplace situation where different requirements than those represented in OAR 333-019-1025.

On July 29, 2021, Governor Kate Brown directed OHA and the Oregon Department of Education (ODE) to require masks indoors for K-12 schools statewide for the 2021-22 school year to align with the Centers for Disease Control and Prevention's recently updated guidance related to the spread of the COVID-19 Delta variant. Proposed changes ensure employers must meet the requirements of OHA's temporary rule OAR 333-019-1015 and other employee protections imposed by OHA or ODE are implemented and enforced in public and private K-12 schools in a coordinated effort.

These changes are necessary, as without specific, coordinated agency protections in place, the highly-transmissible variant could spread rapidly in schools, sickening staff and disrupting the educational process. Enforceable masking requirements in indoor and outdoor public settings and schools will protect students under 12 years of age, individuals who are not vaccinated, and those with underlying health conditions.

With more information available on virus transmission and feedback from the Rules Advisory Committee, it is clear the frequency of sanitation could be less burdensome to employers without compromising public health. Additionally, this feedback informed changes to physical distancing measures and simplification of the appendix. Not making these amendments would result in full sanitation and physical distancing measures (from May 4th permanent rule) being put back in place – creating an unnecessary burden to employers.

Lastly, Oregon OSHA conducted a side-by-side evaluation of federal OSHA's COVID-19 Healthcare Emergency Temporary Standard (ETS) and found that Oregon OSHA's COVID-19 rules to be generally as effective as federal OSHA, with the exception of the Medical Removal Benefit component. If changes are not made these rules will not align with the federal OSHA's ETS 1910.502. Without additional provisions for healthcare workers to be compensated when medical removal is necessary, they could be working when sick and increase the spread of COVID-19 throughout the workplace and community.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Occupational Health and Safety Administration, Federal Register – Occupational Exposure to COVID-19; Emergency Temporary Standard
<https://www.federalregister.gov/documents/2021/06/21/2021-12428/occupational-exposure-to-covid-19-emergency-temporary-standard>

Oregon Health Authority, Secretary of State Rule Filing – OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Settings
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=280702>

State of Oregon News Release August 11, 2021: Governor Kate Brown Announces Statewide Indoor Mask Requirements, available at:
<https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64250>

State of Oregon News Release August 24, 2021: Governor Kate Brown Announces Statewide Outdoor Mask Requirements, available at:
<https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64307>

Oregon Health Authority, Secretary of State Rule Filing – OAR 333-019-1015: Masking Requirements in Schools, available at:
<https://www.oregon.gov/oha/PH/DISEASESCONDITIONS/COMMUNICABLEDISEASE/REPORTINGCOMMUNICABLEDISEASES/2021-2.pdf>

State of Oregon News Release July 29, 2021: Governor Kate Brown Directs State Agencies to Align K-12 Mask Guidance with CDC
Return to In-Person Instruction
available at:

<https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64174>

Oregon Department of Education, August 3, 2021, Ready Schools, Safe Learners Resiliency Framework for the 2021-22 School Year
<https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/Ready%20Schools%20Safe%20Learners%20Resiliency%20Framework%20for%20the%202021-22%20School%20Year.pdf>

Centers for Disease Control and Prevention, August 5, 2021: "Guidance for COVID-19 Prevention in K-12 Schools", available at:
<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

Centers for Disease Control and Prevention Press Release, September 24, 2021: "Studies Show More COVID-19 Cases in Areas with School Masking"
<https://www.cdc.gov/media/releases/2021/p0924-school-masking.html>

Oregon Health Authority's data dashboards: Oregon's COVID-19 Update and Oregon COVID-19 Vaccine Daily Update, both can be found at <https://www.oha.gov/COVID-19>.

FISCAL AND ECONOMIC IMPACT:

See the impacts to the general public under the Cost of Compliance.

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

All state agencies and local government units are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct). The public as a whole will be affected only to the degree that members of the public are employers and employees.

In the proposed amendments, the agency recognizes that the simplification of the appendix and the elimination of certain sanitation and physical distancing measures (except for healthcare and transit agencies) will have a positive fiscal impact on the cost of compliance for businesses and organizations. Other changes related to masking simply restate the fiscal impact of the existing rule and do not represent a change from the status quo. These amendments will not increase costs outside the healthcare industry. There is a cost of compliance creating a fiscal impact as a result of the adoption of Medical Removal Benefits for employees in healthcare settings; as such, see the Medical Removal Protection Benefit Analysis (attached document) that estimates the impact of the proposed changes to the healthcare industry. This evaluation was informed in part by the fiscal analysis conducted by federal OSHA for their COVID-19 Healthcare Emergency Temporary Standard.

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

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

The 2021 Small Business Profile for Oregon, compiled by the U.S. Small Business Administration (SBA), identified 35,809 small business firms in Oregon that are engaged in Health Care and Social Assistance. These Health Care and Social Assistance small businesses employ approximately 123,526 workers in Oregon. For the purposes of this analysis, "small businesses" are defined by the SBA as firms with fewer than 500 employees. This estimation is based in part on data presented in the 2021 Oregon Small Business Economic Profile as reported by the SBA.

Reference: <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143123/Small-Business-Economic-Profile-OR.pdf>

As outlined in the proposed rule amendments, small business employers with 10 or fewer employees are not required to provide Medical Removal Protection Benefits. Therefore, many typically small healthcare employers such as dentists or optometrists will experience little to no cost under the revision to the rule.

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

The projected reporting, recordkeeping and other administrative activities for the cost of compliance are identified in the attached Medical Removal Protection Benefit Analysis.

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

The projected equipment, supplies, labor and increased administration for the cost of compliance are identified in the attached Medical Removal Protection Benefit Analysis.

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

Small businesses and others were involved in the development of this rule insofar as their representatives were represented on the Rules Advisory Committee, Oregon OSHA Partnership Committee, the Oregon OSHA Construction Advisory Committee, and other Oregon OSHA stakeholder groups. They would also have had the opportunity to provide public comment during the rulemaking process for the permanent COVID-19 rule adopted May 4, 2021.

Administrative Rule Advisory Committee consulted?

Yes, Oregon OSHA has continued engagement with two Rulemaking Advisory Committees (RAC), for General Risk and Exceptional Risk workplaces. In the COVID-19 rule, Oregon OSHA committed to regular discussions with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders to determine when all or additional parts of the rule can be appropriately repealed. In accordance, RACs have met five times in June, July and August 2021, and Oregon OSHA consulted them for feedback in each temporary rulemaking leading up to this notice of proposed permanent rulemaking. Each RAC had the

opportunity to review and provide feedback on temporary rule drafts. Comments were accepted during meetings and through emails throughout the stakeholder engagement process. Oregon OSHA intends to continue meeting with the RAC and others until the rule is repealed, as stated in the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND. (ORS 183.534) FOR ADMINISTRATIVE RULES

Description of proposed change:

See attached Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

Description of the need for, and objectives of the rule:

See attached Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

List of rules adopted or amended:

AMEND: 437-001-0744

Materials and labor costs increase or savings:

None.

Estimated administrative construction or other costs increase or savings:

None.

Land costs increase or savings:

Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:

Oregon OSHA does not foresee any additional costs.

*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

Oregon OSHA Fiscal Impact – Medical Removal Protection Benefit Analysis of proposed amendments to OAR 437-001-0744(4)(m):

Occupation Code	Employment Size in Oregon	Median Hourly Wage (\$)	Average Duration of Employee Quarantine (Work Day)	Estimated Average Sick Leave Available	Estimated Average Duration of Employee Quarantine not covered by sick leave (Work Day)	Estimated cost of medical removal under sick leave scenario	Estimated cost of medical removal without available sick leave
29-0000:	100,230	42.89	10	3	10-3=7 days	(7 days)(42.89/hr)(8hrs/day) = \$2345.84 total or ~\$1,172.92/week	(10 days)(42.89/hr)(8hrs/day) = \$3431.20 total or ~\$1,715.60/week
31-0000:	75,750	16.47	10	3	10-3=7 days	(7 days)(16.47/hr)(8/hr/day) = \$922.32 total or ~\$461.16/week	(10 days)(16.47/hr)(8/hr/day) = \$922.32 total or ~ \$1,317.60/week

29-0000: Healthcare Practitioners and Technical Occupations comprises the following occupations: Chiropractors; Dentists, General; Oral and Maxillofacial Surgeons; Orthodontists; Prosthodontists; Dentists, All Other Specialists; Dietitians and Nutritionists; Optometrists; Pharmacists; Physician Assistants; Podiatrists; Occupational Therapists; Physical Therapists; Radiation Therapists; Recreational Therapists; Respiratory Therapists; Speech-Language Pathologists; Exercise Physiologists; Therapists, All Other; Veterinarians; Registered Nurses; Nurse Anesthetists; Nurse Midwives; Nurse Practitioners; Audiologists; Anesthesiologists; Family Medicine Physicians; General Internal Medicine Physicians; Obstetricians and Gynecologists; Pediatricians, General; Psychiatrists; Physicians, All Other; and Ophthalmologists, Except Pediatric; Surgeons, Except Ophthalmologists; Dental Hygienists; Acupuncturists and Healthcare Diagnosing or Treating Practitioners, All Other; Clinical Laboratory Technologists and Technicians; Cardiovascular Technologists and Technicians; Diagnostic Medical Sonographers; Nuclear Medicine Technologists; Radiologic Technologists and Technicians; Magnetic Resonance Imaging Technologists; Emergency Medical Technicians and Paramedics; Dietetic Technicians; Pharmacy Technicians; Psychiatric Technicians; Surgical Technologists; Veterinary Technologists and Technicians; Ophthalmic Medical Technicians; Licensed Practical and Licensed Vocational Nurses; Opticians, Dispensing; Orthotists and Prosthetists; Hearing Aid Specialists; Medical Dosimetrists, Medical Records Specialists, and Health Technologists and Technicians, All Other; Athletic Trainers; Genetic Counselors; Health Information Technologists, Medical Registrars, Surgical Assistants, and Healthcare Practitioners and Technical Workers, All Other

31-0000: Healthcare Support Occupations comprises the following occupations: Home Health and Personal Care Aides; Nursing Assistants; Orderlies; Psychiatric Aides; Occupational Therapy Assistants; Occupational Therapy Aides; Physical Therapist Assistants; Physical Therapist Aides; Massage Therapists; Dental Assistants; Medical Assistants; Medical Equipment Preparers; Medical Transcriptionists; Pharmacy Aides; Veterinary Assistants and Laboratory Animal Caretakers; Phlebotomists; Healthcare Support Workers, All Other

Data Sources and General Estimations

- Occupation codes, Oregon employment size, and median wage information for included employees were identified using available BLS data (see below).
- This analysis does not seek to identify what portion of Oregon employees in occupation codes 29-0000 or 31-0000 may actually contract COVID-19, nor does it estimate the total number of employees who are eligible for medical removal protection (MRP) benefits as stipulated by the scope and exemptions outlined in the rule. Therefore, the total covered population presented above is likely to be a drastic overestimation of the true number of employees eligible for the provision of MRP benefits as outlined under OAR 437-001-0744(4)(m).
- The average employee quarantine/isolation time for COVID-19 infection is based on current OHA quarantine/isolation guidance: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf>

Reference Links

- Federal OSHA [Preamble to 29 CFR 1910.502](https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf) – Emergency Temporary Standard for Occupational Exposure to COVID-19: <https://www.osha.gov/sites/default/files/covid-19-healthcare-ets-preamble.pdf>
- Page 485 – federal OSHA analysis regarding estimated available average sick leave available per employee (3 work days or 24 work hours) based on Scalia and Beach (September 2020), Tables 31 and 24.
- Bureau of Labor and Statistics, May 2020, [Oregon Employment Data](https://www.bls.gov/oes/2020/may/oes_or.htm#00-0000) (Last Modified March 2021): https://www.bls.gov/oes/2020/may/oes_or.htm#00-0000
- Oregon Health Authority [COVID-19 Isolation and Quarantine Guidance](https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf) (Last Modified June 2021): <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351t.pdf>
- Oregon Small Business Economic Profile, 2021: U.S. Small Business Administration (SBA): <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143123/Small-Business-Economic-Profile-OR.pdf>

AMEND: 437-001-0744

RULE SUMMARY: This rule protects workers throughout the state given the current COVID-19 public health emergency, which has not abated in 2021. The current surge of summer infections from the highly-contagious COVID-19 Delta variant has resulted in a record number of Oregonians hospitalized with COVID-19 in August and September 2021. It is within this public health context that Oregon OSHA is proposing to make permanent amendments to the OAR 437-001-0744: Rule Addressing COVID-19 Workplace Risks (COVID-19 rule).

Since it was first adopted as a permanent rule on May 4, 2021 (AO 2-2021), Oregon OSHA has filed three temporary amendments to the COVID-19 rule. The first of these changes (AO 5-2021), which occurred June 30, 2021, greatly reduced requirements as well as simplified the appendix given the low case load and high vaccination numbers at the time. Additionally, On July 19, 2021, Oregon OSHA published a Workplace Advisory Memo reducing requirements related to sanitation and physical distancing, with an additional update on August 13, 2021. After the surge of summer infections, the Governor and Oregon Health Authority (OHA) re-instated masking requirements with the adoption of OHA's OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces and OAR 333-019-1015: Masking Requirements in Schools; Oregon OSHA updated its COVID-19 rule accordingly (AO 10-2021). The third and most recent change (AO 12-2021) adopted Medical Relief Benefits for healthcare workers to ensure Oregon OSHA's COVID-19 rule is as effective as federal OSHA's COVID-19 Healthcare Emergency Temporary Standard (ETS). These temporary amendments are effective through December 26, 2021.

As the temporary changes are set to expire, the public health emergency remains a significant concern in Oregon and it is necessary to update the original COVID-19 rule with the most current multi-agency guidance and the most effective protections – otherwise the rule reverts to its original May 4, 2021 text. The proposed amendments are as follows:

- Employers with employees working in indoor or outdoor workspaces must implement the requirements of OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces, adopted by the Oregon Health Authority.
- The K-12 Educational Institutions (A-8) industry-specific guidance in the appendix is updated. Employers must ensure that the requirements of OHA's OAR 333-019-1015: Masking Requirements in Schools and other employee protections imposed by OHA or the Oregon Department of Education are implemented and enforced in public and private K-12 schools.
- The physical distancing requirements previously found in OAR 437-001-0744(3)(a) are no longer in effect outside healthcare and transit settings.
- Except for healthcare settings, Oregon OSHA no longer requires employers to regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces as defined by this rule that are under its control and that are used by employees or the public. All other sanitation requirements of OAR 437-001-0744(3)(c) remain in effect for all workplaces.
- In the appendix, the industry-specific guidance for Transit Agencies (A-5) and Emergency Medical Services (A-11)

remains in place, with some modifications. Physical distancing guidance for Veterinary Clinics (A-10) is removed.

- The following appendix sections are simplified and updated to only include industry-specific masking exemptions: Personal Services Providers (A-3), Employers Operating Child Care and Early Education Programs (A-9); Law Enforcement Activities (A-12); and, Jails, Prisons, and Other Custodial Institutions (A-13).
- Oregon OSHA simplified the appendix, removing the specific requirements related to Restaurants, Bars, Brewpubs, and Public Tasting Rooms at Breweries, Wineries, and Distilleries (A-1); Retail Stores (A-2); Construction Operations (A-4); Professional, Division 1, Pac12, West Coast Conference and Big Sky Conference Sports (A-6); and Employers Operating Fitness-Related Organizations (A-7).
- In alignment with federal OSHA's COVID-19 ETS, Oregon OSHA is proposing to adopt medical relief benefits in the healthcare sector. They provide some financial relief for workers in healthcare; as defined by the federal standard, when the need for the medical removal is met under the provisions listed in the rule. These benefits apply to specified employees in healthcare settings only.

Oregon OSHA has the authority to enforce rules adopted by other state agencies under ORS 654.025(3)(a). As stated previously, it is Oregon OSHA's intent to repeal the entire rule once it is no longer necessary to address the COVID-19 pandemic in Oregon workplaces. Discussions continue with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders to determine when all or additional parts of the rule can be appropriately repealed.

CHANGES TO RULE:

437-001-0744

Rule Addressing COVID-19 Workplace Risks

~~Unless otherwise indicated, the rule's provisions take effect May 4, 2021, and remain in effect until revised or repealed.~~

Note: Oregon OSHA's temporary rule addressing COVID-19 in the workplace expires May 4, 2021, 180 days after its adoption. Under the Oregon Administrative Procedures Act, a temporary rule cannot be renewed or extended beyond 180 days. Therefore, in order to extend protections for workers against COVID-19, which remains a significant concern, Oregon OSHA adopted this rule following the normal process for permanent rulemaking. However, the purpose of this rule is to address the COVID-19 pandemic in Oregon workplaces. Oregon OSHA will repeal the rule when it is no longer necessary to address that pandemic. Because it is not possible to assign a specific time for that decision, Oregon OSHA will consult with the Oregon OSHA Partnership Committee, the Oregon Health Authority, the two Infectious Disease Rulemaking Advisory Committees, and other stakeholders as circumstances change to determine when all or part of the rule can be appropriately repealed. The first of these discussions ~~will take place no later than~~ took place in July 2021, and they will continue every ~~two~~ months until the rule has been repealed. In making determinations about when to repeal all or part of the rule, Oregon OSHA and its stakeholders will consider indicators and other information such as (but not limited to) Executive Orders issued by the Governor, guidance issued by the Oregon Health Authority and the Centers for Disease Control, infection rates (including the rate of spread of COVID-19 variants), test positivity rates, and vaccination rates, as well as indicators of severity such as hospitalizations and fatalities.

(1) Scope and Application

(a) This rule applies to all employees working in places of employment subject to Oregon OSHA's jurisdiction and exposed to one or more other individuals outside their household. For clarity and ease of reference, this rule refers to "COVID-19" when describing exposures or potential exposures to SARS-CoV-2, the virus that causes Coronavirus Disease 2019.¶

(b) The requirements of section (3) of this rule are applicable to all workplaces.¶

(c) In addition to the requirements of section (3), the requirements of section (4) of this rule are applicable to all exceptional risk workplaces. For purposes of this rule, "workplaces at exceptional risk," include any setting (whether a healthcare setting or not) where an employee (including temporary and part-time employees) performs one or any combination of the following job duties: ¶

(A) Direct patient care; ¶

(B) Environmental decontamination services in a healthcare setting; ¶

(C) Aerosol-generating healthcare or postmortem procedures;¶

(D) Direct client service in residential care or assisted living facilities;¶

(E) Emergency first responder activities; ¶

(F) Personal care activities that involve very close contact with an individual, such as toileting or bathing; or¶

(G) Handling, packaging, cleaning, processing, or transporting human remains or human tissue specimens or laboratory cultures collected from an individual known or suspected to be infected with COVID-19.¶

Note: "Exceptional risk" does not include workers of other departments or job duties outside the scope and underlying definitions of (1)(c) of this rule. For example, employees in the accounting department at a hospital would be covered by the requirements applicable to all workplaces, while other workers at the same hospital who actually perform any of those job operations listed under (1)(c), such as direct patient care, would be subject to the supplementary requirements for workplaces at exceptional risk in addition to the requirements for all workplaces. ¶

(2) Definitions ¶

(a) Aerosol-generating healthcare or postmortem procedure - means a medical, dental, or postmortem procedure on human patients or remains that is likely to result in exposure to small droplet nuclei in high concentration, presenting a risk for airborne transmission of COVID-19. ¶

(b) Common areas - means building lobbies, reception areas, waiting rooms, restrooms, break rooms, eating areas, smoking areas, locker rooms, bathing areas, transit lounges, conference rooms, or other locations indoors or outdoors that multiple individuals may use or congregate that employers operate or control.¶

(c) Decontamination of filtering facepiece respirators (FFR) - means a process approved by the U.S. Food and Drug Administration (FDA) that reduces the number of pathogens, does not negatively affect the fit or filtration performance of the FFR, and presents no residual chemical hazard. ¶

(d) Direct patient care - means any employee job duties that include direct physical contact with a patient during the delivery of healthcare services. A worker performs direct patient care under the authority granted by a license or certification issued by federal, state, or local entities to provide healthcare services within the scope of practice. Workers may be providing direct patient care under their own licensure or certification, or may be providing care under the supervision of a licensed or certified worker. Workers involved in direct patient care include, but are not limited to, physicians, physician assistants, nurses, nurse practitioners, certified nursing aide, medical technologists, phlebotomists, respiratory therapists, dentists, dental hygienists, physical or occupational therapists, chiropractors, and other workers who otherwise provide in-person healthcare services. Direct patient care does not include customer service activities provided in retail settings that have embedded healthcare offices, such as retail pharmacies. ¶

(e) Emergency first responder activities - means those job duties that require an employee to be able to arrive first and provide assistance at the scene of an emergency, such as an accident, fire, or natural disaster. First responders include but are not limited to law enforcement officers, firefighters, emergency medical technicians, and paramedics. Emergency first responder activities under this rule do not include tasks where only first aid is provided in accordance with OAR 437-002-0161.¶

(f) Employee - means any individual, including a minor whether lawfully or unlawfully employed, who engages to

furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer; any salaried, elected and appointed official of the state, state agencies, counties, cities, school districts and other public corporations; and any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS chapter 656, whether by operation of law or election.¶¶

(g) Employer - means any person who has one or more employees, any sole proprietor or member of a partnership who elects workers' compensation coverage, or any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation, or any successor or assignee of an employer as described in OAR 437-001-0015. ¶¶

(h) Employment, Place of - has the meaning provided in OAR 437-001-0015 and excludes any place where the only employment involves workers not covered by workers' compensation and employed in or around a private home, as well as any corporate farm where the only employment involves the farm's family members.¶¶

Note: The employment of home care and home health-care workers by a resident of the home in which they work is not subject to workers' compensation (even though the employees receive such coverage through the Home Care Commission) and therefore their employment is not covered by Oregon OSHA. Such workers who are employed by private home health or in-home care agencies are subject to workers' compensation and therefore their employment is covered by Oregon OSHA. Private homes, such as adult foster care homes, where the only employment is for the care and comfort of the residents are also not required to obtain workers' compensation and are therefore not subject to Oregon OSHA unless the employer has opted to provide workers' compensation coverage under ORS 656.039.¶¶

(i) Environmental decontamination services - means the work performed by janitorial, custodial, maintenance, or similar employees who are responsible for cleaning equipment, surfaces, or other items in direct patient care healthcare settings. This includes routine and non-routine cleaning or disinfecting of high-touch surfaces as defined by this rule, equipment, or procedural tools that are used in patient care areas in healthcare settings, including those settings in which aerosol-generating procedures are performed.¶¶

(j) Face covering - means a cloth, polypropylene, paper or other covering that covers the nose and the mouth and that rests snugly above the nose, below the mouth, and on the sides of the face. Coverings that incorporate a valve that is designed to facilitate easy exhalation or mesh masks or other covers with openings, holes, visible gaps in the design or material, or vents are not appropriate face coverings because they allow droplets to be released from the covering.¶¶

(k) Face shield - means a transparent plastic shield that covers the wearer's forehead, extends below the chin, and wraps around the sides of the face. Devices that place a shield in front of only the user's nose and mouth do not meet the definition of a mask, face covering, or face shield. Face shields are normally used as protection for the face and eyes and their use as a means of "source control" should be discouraged when more suitable alternatives are available, but they remain a compliant (although not preferred) means of "source control" in relation to COVID-19.¶¶

~~Note: Oregon OSHA remains in ongoing discussions with the Oregon Health Authority about the suitability of face shields as a minimally compliant means of source control. If the agencies determine that the balance between practical considerations and the hazards presented by aerosol transmission (as well as any other factors) require a change in this approach, the Oregon Health Authority may choose to revise its current mandatory guidance. If so, Oregon OSHA will enforce that more restrictive option, notwithstanding the language of this rule.¶¶~~

(l) Feasibility - refers to the ability of an employer to implement any requirement in a rule. Oregon OSHA rules never prohibit work. Whether feasibility is mentioned in a provision of the rule or not, if the employer can demonstrate that it is functionally impossible to comply or if doing so would prevent completion of the work, the employer need not comply, but must take any available reasonable alternative steps to protect the employees involved.¶¶

(m) Filtering facepiece respirator - means a tight-fitting, negative pressure, particulate respirator, where the particulate filter is the facepiece itself. Such respirators are often referred to as "dust masks," but dust masks that are not certified by the National Institute for Occupational Safety and Health are not respirators. The most

common filtering facepiece respirators for general use are known as N-95 respirators.¶

(n) Hand hygiene - means the cleaning, sanitizing, or disinfecting of one's hands by using standard handwashing methods with soap and running water, antiseptic hand wash, antiseptic hand rub (alcohol-based hand sanitizer including foam or gel), or surgical hand antiseptics.¶

(o) Healthcare setting - means any space at the workplace where a worker routinely provides direct patient care as defined by this rule or performs aerosol-generating healthcare or postmortem procedures. A healthcare setting does not include any establishment where only personal support services are provided or places where direct patient care is provided to a patient outside the healthcare setting itself. ¶

(p) High-touch surface - means equipment or surfaces that are handled frequently throughout the day by multiple individuals. High-touch surfaces can include, but are not limited to, countertops, tabletops, credit card terminals, doorknobs, door handles, digital kiosks, touch-screen enabled devices, light switches, handrails, elevator control panels, and steering wheels in work vehicles.¶

(q) Individual - means any person who is present in the place of employment, whether an employee or not.¶

(r) Mask - means a U.S. Food and Drug Administration (FDA) cleared surgical, medical procedure, dental, or isolation mask (commonly referred to as a "surgical mask"). Masks are medical grade masks that function as a physical barrier to protect workers from hazards such as splashes of large droplets of blood or bodily fluids; they do not provide reliable protection to the wearer against aerosols or airborne pathogens.¶

(s) Personal protective equipment (PPE) - means specialized clothing or equipment worn by a worker for protection against a hazard. General work clothing (for example, uniforms, pants, shirts or blouses) not intended to function as protection against a hazard for the user is not considered to be PPE.¶

(t) Personal support services - means the work performed by a caretaker or similar employee who is responsible for assisting individuals with day-to-day living issues that are not direct patient care activities. Personal support services include, but are not limited to housekeeping, assisting with medication, personal transportation (such as taking a client to an appointment), and other day-to-day living activities that may occur in an individual's private residence are not otherwise considered to be direct patient care under this rule.¶

(u) Respirator - means a type of personal protective equipment that protects against respiratory hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Respirators that remove contaminants from the ambient air are called air-purifying respirators. Respirators that supply air from a safe source other than the ambient air are called atmosphere-supplying respirators. Masks, face coverings, and face shields are not respirators.¶

(v) SARS-CoV-2 - refers to a specific betacoronavirus (MERS-CoV and SARS-CoV are other betacoronaviruses) that causes what has been designated as Coronavirus Disease 2019 (COVID-19).¶

(w) Shared equipment - means devices or tools that are used by multiple employees or other individuals including, but not limited to, elevators, computers, phones, gym or personal fitness devices, escalators, and work vehicles.¶

(x) Source control - means the use of protective equipment or other measures such as face coverings to prevent the spread of illness from a potentially infectious person to others. A typical example of source control for COVID-19 is to use a mask or face covering to limit the spread of respiratory droplets and aerosols from the wearer to others. Respirators can be used as source control in addition to providing protection for the wearer.¶

(y) Suspected to be infected with COVID-19 - means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2 infection and no alternative diagnosis has been made consistent with Oregon Health Authority definitions.¶

(3) COVID-19 Requirements for All Workplaces. ¶

Except as otherwise provided by this rule, the following requirements apply to all workplaces.¶

(a) Physical distancing. ~~All employers must ensure that both work activities and workflow are designed to eliminate the need for any employee to be within six feet of another individual in order to fulfill their job duties unless the employer determines and can demonstrate that such physical distancing is not feasible for certain activities.~~¶

(b) Mask, face covering, or face shield requirements. ~~Each employer must ensure that all individuals (including employees, part-time workers, temporary laborers, customers, vendors, patrons, contractors, etc.) at the~~

workplace or other premises subject to the employer's control wear a mask, face covering, or face shield as source control. Consistent with that guidance, it is strongly recommended but not required, that individuals wear a mask or face cover. Oregon OSHA only requires employers to implement physical distancing in healthcare settings and transit settings ing as source control rather than relying upon a face shield alone.

Note: Oregon OSHA expects Oregon Health Authority mask, face covering, and face shield requirements to evolve as circumstances of the pandemic change (for example, as more Oregonians are vaccinated). Oregon OSHA will issue interpretive guidance or make changes to these rules as appropriate to provide employers with accurate and complete information about what is required.

(A) In the absence of applicable Oregon Health Authority requirements (for example, in a correctional facility) employers must ensure that all individuals in the workplace wear a mask, face covering, or face shield:

(i) When working outside where the work requires employees to be within six feet of other individuals,

(ii) When working inside where six feet of distance between employees and other individuals cannot be consistently maintained, or

(iii) When an employee shares a room with one or more other individuals and the total enclosed area of the room does not provide at least 100 square feet per person. ccordance with subsection (4)(k) and the appendix.

Employers who wish to evaluate their workplaces to determine how they can keep their employees safe and healthy are encouraged to contact Oregon OSHA Consultation Services.

(B) Masks, face coverings, or face shields are not required if the individual:

(i) Is under 5 years of age (or is under 2 years of age and using public transportation or in transportation hubs),

(ii) Is eating or drinking,

(iii) Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when taking a shower,

(iv) Is sleeping,

(v) Is in a room or vehicle shared only with members of the same household, or

(vi) Is required to briefly remove their mask, face covering, or face shield because their identity needs to be confirmed by visual comparison, such as at the bank or if interacting with law enforcement. During such instances, individuals should limit speaking while the mask, face covering, or face shield is removed or displaced.

Note: While reasonable accommodation for those unable to wear a mask, face covering, or face shield due to a disability must be provided under applicable state law (ORS 659A.103 to 659A.145) and federal law (42 U.S.C. Chapter 126), such an accommodation does not include simply exempting individuals from the requirement to wear masks, face coverings, or face shields in public spaces or places of employment. Employers with employees working in indoor or outdoor workspaces must implement the requirements of OAR 333-019-1025: Masking Requirements for Indoor and Outdoor Spaces, adopted by the Oregon Health Authority.

(C) The employer must provide masks, face coverings, or face shields for employees at no cost to the worker. If an employee chooses to wear their own mask, face shield, or face covering instead of those provided by the employer, the employer may allow it but is not required to do so.

(D) When an employee chooses to wear a filtering facepiece respirator instead of a mask, face covering, or face shield to protect against COVID-19, the employer must allow that use and follow the "voluntary use" provisions of the Respiratory Protection Standard (29 CFR 1910.134).

Note: An employer is not obligated to provide filtering facepiece respirators to employees under this section, nor are employers required to provide or allow any other type of respirator, unless required by another part of this rule.

(E) If an employee chooses to wear a mask, face shield, or face covering even when it is not required, the employer must allow them to do so.

(F) Effective June 3, 2021, when employees are transported in a vehicle for work purposes, regardless of the travel distance or duration involved, employers must use the hierarchy of hazard controls to minimize employee exposures by either:

(i) Considering, to the degree practical, eliminating the need for employees to share work vehicles and arranging for alternative means for employees to travel to work sites; or

~~(ii) When employees share work vehicles, employers must ensure the following measures are taken: ¶~~

~~(I) When more than one person is in a vehicle, all occupants in the vehicle must wear a mask, face covering, or face shield unless all employees are wearing respirators in accordance with the Respiratory Protection Standard (29 CFR 1910.134); ¶~~

~~(II) Outside air must be increased (for example, by opening windows when weather conditions permit, by not recirculating cabin air, etc.); and ¶~~

~~(III) The separation of individuals in the vehicle must be maximized to the degree possible (for example, by the use of occupancy limits, by seating occupants in alternate seats, etc.). ¶~~

~~Note: The requirements of (3)(b)(F) do not apply when all occupants within the vehicle are members of the same family or household. ¶~~

~~(c) Cleaning and sanitation. The (c) Cleaning and sanitation. Except for healthcare settings, which are covered under subsection (4)(d) of this rule, Oregon OSHA no longer requires employer musts to regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces as defined by this rule that are under its control and that are used by employees or the public. In the absence of other cleaning requirements applicable to the location, such cleaning must occur at least once every 24 hours when the area, equipment, or surface in question is in use. ¶~~

~~Exception: In locations with only "drop-in" availability or minimal staffing, the employer is permitted to rely upon a regular schedule of cleaning and sanitation and directing employees to sanitize their own work surfaces before use. All other sanitation requirements of OAR 437-001-0744(3)(c) remain in effect for all workplaces. ¶~~

~~(A) Employers must provide employees with the supplies (such as soap and water) and the reasonable time necessary to clean or sanitize more frequently than would otherwise be required if the worker chooses to do so. ¶~~

~~(B) Employers must provide employees with the supplies (such as soap and water) and reasonable time necessary to perform hand hygiene before using shared equipment. ¶~~

~~(C) Except in healthcare settings where patients known or suspected to be infected with COVID-19 are being treated, employers must clean and disinfect any common areas, high-touch-surfaces, and any shared equipment under the employer's control that an individual known to be infected with COVID-19 used or had direct physical contact with. If the employer learns of the exposure between 24 and 72 hours after the individual was last present in the space, only cleaning is required, not sanitation. If the employer learns of the exposure more than 72 hours after the individual was last present in the space, no exceptional cleaning or sanitation is required. ¶~~

~~Note: It is recommended that the area be closed off and a waiting period of at least several hours (or as long as is feasible) be followed prior to cleaning and disinfecting. ¶~~

~~Note: Additional sanitation requirements for exceptional risk workplaces are included in subsection (4)(d) of this rule. ¶~~

~~(d) Posting requirements. The "~~COVID-19 Hazards P~~ In addition to posting the "It's the Law" poster," provided by Oregon OSHA ~~must be posted~~ in a conspicuous manner in a central location where workers can be expected to see it (for example, a location where employees report each day or at a location from which employees operate to carry out their activities). ~~Employees working remotely must be provided with a copy of the COVID-19 Hazards Poster, as required by OAR 437-001-0275(2)(a), employers must provide employees working remotely with a copy~~ through electronic or equally effective means. ¶~~

~~(e) Building operators. Those employers who operate or otherwise control buildings where the employees of other employers work must take the following steps in common areas to the extent that they have control over such areas: ¶~~

~~(A) Ensure that the sanitation requirements under (3)(c) are met; and ¶~~

~~(B) Post signs in areas where masks, face coverings, or face shields are required. To meet this provision, the building operator may post a copy of the "Masks Required," sign developed by the Oregon Health Authority. ¶~~

~~(f) Routine ventilation maintenance and evaluation. ¶~~

The employer must optimize the amount of outside air circulated through its existing heating, ventilation, and air conditioning (HVAC) system(s), to the extent the system(s) can do so when operating as designed and maintaining healthy indoor temperatures, whenever there are employees in the workplace and the outdoor air quality index remains at either "good" or "moderate" levels. ¶

Note: This does not require installation of new ventilation equipment. ¶

Note: While not required, ventilation systems that are installed and maintained in accordance with the provisions of the American National Standards (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b) meet this requirement. ¶

(A) ~~By June 3, 2021, a~~All employers with more than 10 employees statewide and an existing HVAC system must certify in writing that they are operating that system in accordance with the rule, to the best of their knowledge. Although not required, such certifications can be made using the sample format provided by Oregon OSHA. ¶

(i) The certification must be dated and must include the name of the individual making the certification; and ¶
(ii) Such certification records must be maintained as long as this rule is in effect. ¶

(B) On a quarterly basis ~~beginning no later than June 3, 2021,~~ all employers must ensure the following: ¶

(i) All air filters are maintained and replaced as necessary to ensure the proper function of the ventilation system; and ¶

(ii) All intake ports that provide outside air to the HVAC system are cleaned, maintained, and cleared of any debris that may affect the function and performance of the ventilation system. ¶

(g) Exposure risk assessment. All employers must conduct a COVID-19 exposure risk assessment, without regard to the use of personal protective equipment, masks, face coverings, or face shields. A risk assessment conducted in compliance with the Oregon OSHA temporary COVID-19 rule adopted November 6, 2020, satisfies this requirement and need not be repeated. If an employer has multiple facilities that are substantially similar, the assessment may be developed by facility type rather than site-by-site so long as any site-specific information that affects employee exposure risk to COVID-19 is included in the assessment. ¶

(A) The exposure risk assessment must involve participation and feedback from employees. This feedback may be achieved via a safety meeting, safety committee, supervisor, process negotiated with the exclusive bargaining agent (if any), or any other similarly interactive process. ¶

(B) Each employer with more than ten employees statewide (including temporary and part-time workers) or that is covered by (1)(c) of this rule (workplaces at exceptional risk) must record their COVID-19 exposure risk assessment in writing by documenting the following information: ¶

(i) The name(s), job title(s), and contact information of the person(s) who performed the exposure risk assessment; ¶

(ii) The date the exposure risk assessment was completed; ¶

(iii) The employee job classifications that were evaluated; and ¶

(iv) A summary of the employer's answers to each of the applicable exposure risk assessment questions in this subsection. ¶

(C) The risk assessment must address the following questions related to potential employee exposure to COVID-19 in the workplace: ¶

(i) Can employees telework or otherwise work remotely? How are employees encouraged or empowered to use those distance work options to reduce COVID-19 transmission at the workplace? ¶

(ii) What are the anticipated working distances between employees? How might those physical working distances change during non-routine work activities? ¶

(iii) What is the anticipated working distance between employees and other individuals? How might those working distances change during non-routine work activities? ¶

(iv) How have the workplace or employee job duties, or both, been modified to provide at least 6-feet of physical distancing between all individuals? ¶

(v) How are employees and other individuals at the workplace notified where and when masks, face coverings, or face shields are required? How is this policy enforced and clearly communicated to employees and other individuals? ¶

(vi) How have employees been informed about the workplace policy and procedures related to reporting COVID-19 symptoms? How might employees who are identified for quarantine or isolation as a result of medical removal under this rule be provided with an opportunity to work at home, if such work is available and they are well enough to do so? ¶

- (vii) How have engineering controls such as ventilation (whether portable air filtration units equipped with HEPA filters, airborne infection isolation rooms, local exhaust ventilation, or general building HVAC systems) and physical barriers been used to minimize employee exposure to COVID-19?¶¶
- (viii) How have administrative controls (such as foot-traffic control) been used to minimize employee exposure to COVID-19?¶¶
- (ix) What is the procedure or policy for employees to report workplace hazards related to COVID-19? How are these hazard reporting procedures or policies communicated to employees?¶¶
- (x) How are sanitation measures related to COVID-19 implemented in the workplace? How have these sanitation practices been explained to employees and other individuals at the workplace? ¶¶
- (xi) How have the industry-specific or activity-specific COVID-19 requirements in Appendix A of this rule and applicable guidance from the Oregon Health Authority been implemented for workers? How will periodic updates to such Oregon Health Authority guidance documents be incorporated into the workplace on an on-going basis? ¶¶
- (xii) In settings where the workers of multiple employers work in the same space or share equipment or common areas, how are the physical distancing; mask, face covering, or face shield requirements; and sanitation measures required under this rule communicated to and coordinated between all employers and their affected employees?¶¶
- (xiii) How can the employer implement appropriate controls that provide layered protection from COVID-19 hazards and that minimize, to the degree possible, reliance on individual employee training and behavior for their efficacy?¶¶

Note: Oregon OSHA has made a Risk Assessment template and sample Risk Assessments available to assist employers in completing this task. ¶¶

(h) Infection control plan. All employers must establish and implement an infection control plan based on the risks identified in subsection (3)(g) that implements the controls identified in (3)(g)(C)(xiii) including, but not limited to, ventilation, staggered shifts, redesigning the workplace to accommodate physical distancing, reducing use of shared surfaces and tools, limiting the number of employees and other individuals in work areas, personal protective equipment, etc. An infection control plan developed in compliance with the Oregon OSHA temporary COVID-19 rule adopted November 6, 2020, satisfies this requirement and need not be repeated. If an employer has multiple facilities that are substantially similar, its infection control plan may be developed by facility type rather than site-by-site so long as any site-specific information that affects employee exposure risk to COVID-19 is included in the plan. Employers may also rely upon materials developed by associations, licensing agencies, and franchisors to assist with compliance and provided that mechanisms for appropriate employee feedback and involvement are provided.¶¶

(A) Each employer with more than ten employees statewide (including temporary and part-time workers) and every employer, regardless of size, that is covered by subsection (1)(c) of this rule (workplaces at exceptional risk) must document their infection control plan in writing and must ensure that a copy is accessible to employees at their workplace.¶¶

Note: Additional requirements related to the infection control plan, which are applicable only to those employers covered by subsection (1)(c) of this rule (workplaces at exceptional risk), are contained in subsection (4)(c) of this rule. ¶¶

(B) The infection control plan must contain, at a minimum, the following elements:¶¶

- (i) A list of all job assignments or worker tasks requiring the use of personal protective equipment (including respirators) necessary to minimize employee exposure to COVID-19; ¶¶
- (ii) The procedures the employer will use to ensure that there is an adequate supply of masks, face coverings, or face shields and personal protective equipment (including respirators) necessary to minimize employee exposure to COVID-19;¶¶
- (iii) A list and description of the specific hazard control measures that the employer installed, implemented, or developed to minimize employee exposure to COVID-19;¶¶
- (iv) A description of the employer's COVID-19 mask, face covering, and face shield requirements at the workplace, and the method of informing individuals entering the workplace where such source control is required;¶¶
- (v) The procedures the employer will use to communicate with its employees and other employers in multi-

employer worksites regarding an employee's exposure to an individual known or suspected to be infected with COVID-19 to whom other workers may have been exposed. This includes the communication to individuals identified through COVID-19 contact tracing and general communication to the workplace at large; and¶¶ (vi) The procedures the employer will use to provide its workers with the initial employee information and training required by this rule.¶¶

Note: Oregon OSHA has made sample Infection Control Plans available to assist employers in completing this task. ¶¶

(i) Employee information and training. All employers must provide workers with information and training regarding COVID-19. Infection control training conducted in compliance with the Oregon OSHA temporary COVID-19 rule adopted November 6, 2020, satisfies this requirement and need not be repeated. This information and training can be provided remotely or using computer-based models but must be provided in a manner and language understood by the affected workers. Employers must ensure that the training provides an opportunity for feedback from employees about the topics covered in the training, which must include at least the following elements:¶¶

(A) Physical distancing requirements as they apply to the employee's workplace and job function(s);¶¶

(B) Mask, face covering, or face shield requirements as they apply to the employee's workplace and job function(s);¶¶

(C) COVID-19 sanitation requirements as they apply to the employee's workplace and job function(s);¶¶

(D) COVID-19 signs and symptom reporting procedures that apply to the employee's workplace; ¶¶

(E) COVID-19 infection notification process as required by this rule; ¶¶

(F) Medical removal as required by this rule;¶¶

(G) The characteristics and methods of transmission of the SARS-CoV-2 virus;¶¶

Note: Oregon OSHA has provided training materials that can be used to complete this portion of the training.¶¶

(H) The symptoms of the COVID-19 disease;¶¶

Note: Oregon OSHA has provided training materials that can be used to complete this portion of the training.¶¶

(I) The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus; and¶¶

Note: Oregon OSHA has provided training materials that can be used to complete this portion of the training.¶¶

(J) Safe and healthy work practices and control measures, including but not limited to, physical distancing, sanitation and disinfection practices.¶¶

Note: Oregon OSHA has provided training materials that can be used to complete this portion of the training.¶¶

(j) COVID-19 infection notification process. The employer must establish and implement a process to notify exposed employees (those who were within six feet of a confirmed COVID-19 individual for a cumulative total of 15 minutes or more, regardless of whether one or both of them were wearing source control) that they had a work-related contact with an individual who has tested positive for COVID-19, as well as to notify affected employees (those who worked in the same facility or in the same well-defined portion of the facility such as a particular floor) that an individual who was present in the facility has confirmed COVID-19. This notification process must include the following elements: ¶¶

(A) A mechanism for notifying both exposed and affected employees within 24 hours of the employer being made aware that an individual with COVID-19 was present in the workplace while infectious or otherwise may have had work-related contact with its employee(s) while infectious; and¶¶

(B) This notification process must be established and implemented in accordance with all applicable federal and Oregon laws and regulations.¶¶

Note: Employers can satisfy this requirement by adopting the model procedure published by Oregon OSHA.¶¶

Note: The reporting of COVID-19 cases is required under existing Oregon Health Authority rules regarding reporting of disease cases. OAR 333-018-0016 requires such cases to be reported by healthcare providers and laboratories within 24 hours of identification. ¶¶

Note: Whenever an exposure notification as described by this rule is provided in writing, the notification may be subject to the existing requirements of Oregon OSHA's Access to Employee Exposure and Medical Records standard (29 CFR 1910. 1020).¶¶

(k) COVID-19 testing for workers. The employer must cooperate by making its employees and appropriate space available at no cost to the workers whenever a local public health agency or Oregon Health Authority indicate that COVID-19 diagnostic testing within the workplace is necessary. If such testing is conducted at the employer's own direction, the employer is responsible for covering the costs of testing including but not limited to the COVID-19 test itself, employee time, and employee travel. However, if the employer is not requesting the test, the employer is not expected to cover the direct cost of such testing or of any involved employee travel.¶

(l) Medical removal. Whenever the Oregon Health Authority, local public health agency, or medical provider recommends an employee be restricted from work due to quarantine or isolation for COVID-19, such as through identification during contact tracing activities, the affected worker(s) must be directed to isolate at home and away from other non-quarantined individuals.¶

Note: Other than the obligation to provide such direction and to remove such employees from the workplace, the employer has no obligation to enforce the employee's quarantine or isolation.¶

(A) Whenever an employee participates in quarantine or isolation for COVID-19, the employer must allow the affected employee(s) to work at home if suitable work is available and the employee's condition does not prevent it. ¶

(B) Whenever an employee participates in quarantine or isolation, whether as a result of the requirements of this rule or because the employer chooses to take additional precautions, the affected worker(s) must be notified that they are entitled to return to their previous job duties if still available without any adverse action as a result of participation in COVID-19 quarantine or isolation activities. ~~Effective June 3, 2021, t~~The employee must be advised in writing of the right to return as described and should be provided any relevant information about the employer's paid time off, sick leave, or any other available benefits in accordance with local, state, or federal law.¶

Note: The prohibition on "adverse action" does not require the employer to keep a job available that would not otherwise have been available had the employee not been quarantined or isolated, but it does mean that the employer cannot fill the job with another employee and thereby make it unavailable. ¶

(C) Decisions regarding testing and return to work after an employee participates in COVID-19 quarantine or isolation activities must be made in accordance with applicable public health guidance and must be otherwise consistent with guidance from the employee's medical provider.¶

Note: This provision does not require a negative COVID-19 test or a separate contact with the medical provider.¶

Note: Employees are protected from discrimination or retaliation under ORS 654.062(5). This includes protections for actions against employees for opposing any practice forbidden under the Oregon Safe Employment Act and related statutes and rules (including this rule for COVID-19), making a complaint or causing any proceeding to be instituted under the Oregon Safe Employment Act, or exercising any rights under the law, including those conferred by this Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744).¶

Note: Notwithstanding the language of OAR 437-001-0700(10), employers do not need to record such "medical removal" cases on their OSHA 300 log(s) simply because the medical removal required by this rule occurred. Cases must be recorded only if the infection of a worker is determined to be "work-related" in accordance with OAR 437-001-0700.¶

(m) Mandatory appendices. Employers covered by one or more of the mandatory industry-specific and activity-specific appendices that make up Appendix A of this rule must comply with those appendices. To the degree an appendix provides specific guidance regarding an issue addressed by this rule, it supersedes the general requirements of this rule. To the degree a situation is not addressed by the specific language of an appendix, the requirements of this rule apply as written. ¶

Appendix A contains the following:¶

A-1: No Longer Required - Restaurants, Bars, Brewpubs and Public Tasting Rooms at Breweries, Wineries and Distilleries ¶

A-2: No Longer Required - Retail Stores¶

A-3: Personal Services Providers¶

A-4: No Longer Required - Construction Operations¶

A-5: Transit Agencies¶

A-6: No Longer Required - Professional, Division 1, Pac-12, West Coast Conference and Big Sky Conference Sports ¶¶

A-7: No Longer Required - Employers Operating Fitness-Related Organizations ¶¶

A-8: K-12 Educational Institutions (Public or Private) ¶¶

A-9: Employers Operating Child Care and Early Education Programs ¶¶

A-10: Veterinary Clinics ¶¶

A-11: Emergency Medical Services: First Responders, Firefighters, Emergency Medical Services and Non-Emergency Medical Transport ¶¶

A-12: Law Enforcement Activities ¶¶

A-13: Jails, Prisons, and Other Custodial Institutions ¶¶

(4) COVID-19 Requirements for Workplaces at Exceptional Risk. ¶¶

Workplaces identified by subsection (1)(c) of this rule must adhere to the following specific provisions and additional requirements. ¶¶

(a) Infection control training. In addition to the employee information and training requirements for all workplaces under subsection (3)(i) of this rule, employers of workplaces at exceptional risk must provide infection control training that includes the following provisions: ¶¶

(A) The training is overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the employee's job duties; ¶¶

(B) The training material is appropriate in content and vocabulary to the education, literacy, and language of the affected workers; and ¶¶

(C) The training provides an opportunity for interactive questions and answers (must be "live" in order to allow immediate response and further clarification but need not be in person) with a person knowledgeable in the training program's subject matter and basic epidemiology as it relates to the workplace and employee job duties. ¶¶

(b) Infection control training for employees required under this rule must include the following elements: ¶¶

(A) An explanation of this rule and its applicable appendices and provisions; ¶¶

(B) An explanation of contact, droplet, and airborne modes of transmission of COVID-19, including how workers can recognize hazardous work activities that may involve exposure to COVID-19 and how employees can take precautionary measures to minimize their exposure; ¶¶

(C) An explanation of the basic risk factors associated with COVID-19 transmission including, but not limited to, behavioral risk factors (this may include non-work activities that are higher-risk activities such as attending large social gatherings); physiological risk factors; demographic risk factors; and environmental risk factors; ¶¶

(D) An explanation of the employer's COVID-19 exposure risk assessment required by this rule and which employee job classifications, tasks, or job duties were considered as part of that risk assessment; ¶¶

(E) An explanation of the employer's physical distancing; mask, face covering, and face shield requirements; and COVID-19 sanitation requirements at the workplace. Where applicable, this information must include any multi-employer worksite agreements related to the use of common areas and shared equipment that affect employees at the workplace; ¶¶

(F) Information on the types, use, storage, removal, handling, and maintenance of masks, face coverings, face shields and personal protective equipment (including respirators) provided to employees by the employer; and ¶¶

(G) An explanation of the use and limitation of COVID-19 hazard control measures implemented or installed by the employer. Hazard control measures include engineering, administrative, or work practice controls that eliminate or otherwise minimize employee exposure to COVID-19. ¶¶

(c) Additional infection control plan requirements. In addition to the infection control plan requirements for all workplaces, each employer covered by section (4) of this rule must provide the following in its infection control plan: ¶¶

(A) The name(s) of the person responsible for administering the plan. This person must be knowledgeable in infection control principles and practices as they apply to the workplace and employee job operations; and ¶¶

(B) The plan must be reevaluated as frequently as necessary to reflect changes in the facility, employee job duties, new technologies, or workplace policies established by the employer that affect worker exposure to COVID-19 or

in response to updated guidance published by the Oregon Health Authority (including increases in COVID-19 community spread) that is applicable to the employer's workplace. This reevaluation and update of the infection plan must include feedback from non-managerial, front-line employees who perform activities that reflect the employer's exceptional risk under this rule. This feedback is not required from all employees and may be achieved via a safety meeting, safety committee, supervisor, process negotiated with the exclusive bargaining agent (if any), or any other similarly interactive process. ¶

(C) ~~Effective June 3, 2021, h~~Health-care employers must develop and implement a written personal protective equipment (PPE) supply and crisis management plan in accordance with Oregon Health Authority and Oregon OSHA Interim Guidance: Use of Personal Protective Equipment by Healthcare Personnel in Resource Constrained Settings. ¶

(d) Additional sanitation requirements. Use appropriate sanitation measures in addition to the requirements of (3)(c) of this rule to reduce the risk of COVID-19 transmission. Each employer must: ¶

(A) Develop and implement procedures for routine cleaning and disinfection that are appropriate for SARS-CoV-2 in healthcare settings, including those patient-care areas in which aerosol-generating procedures are performed (for example, using cleaners and EPA-registered, hospital-grade disinfectants for frequently touched surfaces or objects in accordance with manufacturer instructions and contact time specifications). Refer to List N on the EPA website for EPA-registered disinfectants that have qualified under EPA's emerging viral pathogens program for use against SARS-CoV-2; and ¶

(B) Follow standard practices for disinfection and sterilization of medical devices contaminated with COVID-19, as described in the CDC Guideline for Disinfection and Sterilization in Healthcare Facilities, 2008. ¶

(e) Healthcare personal protective equipment. Depending on the requirements of the procedure (for example, aerosol generating procedures) in question and the disease status of the involved patient(s), employers must use a combination of standard precautions, contact precautions, droplet precautions, airborne precautions, and eye protection (for examples, goggles, face shields) to protect healthcare workers with exposure or potential exposure to COVID-19. ¶

(A) When an employee performs an aerosol-generating healthcare or post-mortem procedure for a patient without evidence of COVID-19 infection, the employer must provide PPE in accordance with CDC's Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic. Oregon OSHA recognizes that risk of infection in asymptomatic patients can vary based on clinical presentation, level of COVID-19 transmission in the community, recent COVID-19 testing results, and other factors. These factors must be considered in clinical judgment by healthcare personnel involved in direct patient care and medical examiners in making decisions about use of transmission-based precautions. ¶

(B) ~~Effective May 17, 2021, w~~Whenever an employee provides direct patient care for a patient known or suspected to be infected with COVID-19, the employer must provide the affected worker with gloves, a gown, eye protection (goggles or face shield), and either a NIOSH-approved respirator or a respirator with a current emergency use authorization by the United States Food and Drug Administration (FDA). If the employer can demonstrate that the availability of respirators is genuinely limited, the employer must ensure that a medical-grade mask is used in place of the respirator. ¶

Note: If PPE availability is genuinely limited, a procedure cannot be deferred, and appropriate, good-faith efforts are made by the employer to ensure the safety and protection of the healthcare workers, Oregon OSHA will evaluate the situation based on PPE availability and the employer's adherence to guidance outlined in the Oregon Health Authority and Oregon OSHA Interim Guidance: Use of Personal Protective Equipment by Healthcare Personnel in Resource Constrained Settings. ¶

(C) In lieu of (A) and (B) above, and if PPE availability is limited, such employers may follow Oregon Health Authority-Oregon OSHA Interim Guidance: Use of Personal Protective Equipment by Healthcare Personnel in Resource Constrained Settings. ¶

Note: The CDC does not have a comprehensive list of AGPs in a healthcare setting. Employers should refer to Clinical Care, and Healthcare Infection Prevention and Control Guidance for COVID-19. ¶

(f) Heightened risk ventilation requirements. In addition to the ventilation provisions of subsection (3)(f) above

(including any applicable certification provisions), certain heightened risk facilities must meet the following requirements to the degree that they are under the employer's control:¶¶

(A) Existing ventilation systems in hospitals, ambulatory surgical centers, and long-term care facilities that provide skilled or intermediate level nursing care must be operated, when possible, in accordance with local building codes and applicable provisions of the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. ¶¶

Note: This does not require installation of new ventilation equipment.¶¶

(B) Existing ventilation systems in other healthcare facilities must be upgraded to a minimum MERV 13 rating, provided that such an upgrade will result in no significant performance reduction of the system.¶¶

Note: This does not require installation of new ventilation equipment.¶¶

(g) Barriers, partitions, and airborne infection isolation rooms in healthcare settings. The employer must employ the following measures to protect healthcare employees, support workers, patients, and visitors from individuals known or suspected to be infected with COVID-19: ¶¶

(A) When available, use airborne infection isolation rooms (AIIRs) with proper ventilation to house patients known or suspected to be infected with COVID-19;¶¶

(B) Patients known or suspected of being infected with COVID-19 must don a face covering and be isolated in an examination room with the door closed. If an examination room is not immediately available, such patients must not be allowed to wait within 6 feet of other patients seeking care and should be encouraged to wait in a personal vehicle or outside the healthcare setting where they can be contacted by mobile device when it is their turn to be evaluated. During a medical emergency, all measures may not be feasible, but must be implemented in whole or in part as the patient's condition and necessary medical care allow. If a patient cannot tolerate any form of face covering due to a medical condition, strict physical distancing and appropriate PPE must be used to protect patients and workers, respectively; ¶¶

(C) Use physical barriers or partitions in triage areas to guide patients when appropriate; and¶¶

(D) Use curtains to separate patients in semi-private areas. ¶¶

(h) Screening in healthcare settings. The employer must screen and triage all individuals entering its healthcare setting for symptoms of COVID-19. Although screening for symptoms may not identify asymptomatic or pre-symptomatic individuals with SARS-CoV-2 infection, symptom screening remains an important strategy to identify those who may have COVID-19 so appropriate precautions can be implemented. At a minimum, each employer must:¶¶

(A) Limit and monitor points of entry to the healthcare setting where direct patient care, or aerosol-generating healthcare or postmortem procedures are performed by workers. Consideration must be given to establishing stations at the healthcare setting entrance to screen individuals before they enter; ¶¶

(B) Screen all individuals and employees (other than emergency responders entering with a patient) entering the healthcare setting for symptoms consistent with COVID-19. This can be achieved by asking the affected individual about symptoms of COVID-19 and asking if they have been advised to self-quarantine because of exposure to someone with COVID-19 or if they have been told to isolate after testing positive for COVID-19; and¶¶

(C) Develop a triage and screening protocol that isolates patients known or suspected to be infected with COVID-19 from other non-COVID-19 patients; procedures for transporting patients known or suspected to be infected with COVID-19 within the facility and between facilities as applicable; implementation of temporary air infection isolation rooms (AIIRs) as available.¶¶

(i) Exposure notification process in certain healthcare settings. The only exceptions to the notification requirements of subsection (3)(j) are in healthcare settings where patients are hospitalized on the basis that they are known or suspected to be infected with COVID-19 and in healthcare settings where contact tracing has become infeasible, based upon guidance from the Oregon Health Authority and the Centers for Disease Control regarding such scenarios and the implementation of universal PPE recommendations addressing both identified

and unidentified risks. ¶

Note: The term "settings where patients are hospitalized on the basis that they are known or suspected to be infected," is intended to be narrowly construed and applies only to those situations where patients are receiving health services primarily related to COVID-19 and where all workers are aware of that potential exposure. For example, patient care related to labor and delivery in a hospital that is also caring for COVID-19 patients is not subject to this exclusion. ¶

(j) Medical removal provisions in healthcare settings. The only exception to the quarantine and isolation provisions of subsection (3)(l) exists when a healthcare provider, emergency responder, or other worker who would otherwise be quarantined or isolated remains on the job under Oregon Health Authority guidelines. ¶

(k) Physical distancing. All healthcare employers must ensure that both work activities and workflow are designed to eliminate the need for any employee to be within six feet of another individual in order to fulfill their job duties unless the employer determines and can demonstrate that such physical distancing is not feasible for certain activities. ¶

(l) Mask, face covering, or face shield requirements. ¶

(A) Healthcare employers must ensure that all individuals in the workplace wear a mask, face covering, or face shield: ¶

(i) When working inside where six feet of distance between employees and other individuals cannot be consistently maintained, or ¶

(ii) When an employee shares a room with one or more other individuals and the total enclosed area of the room does not provide at least 100 square feet per person. ¶

(B) Masks, face coverings, or face shields are not required if the individual: ¶

(i) Is under 5 years of age (or is under 2 years of age and using public transportation or in transportation hubs), ¶

(ii) Is eating or drinking, ¶

(iii) Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when taking a shower, ¶

(iv) Is sleeping, ¶

(v) Is in a room or vehicle shared only with members of the same household, or ¶

(vi) Is required to briefly remove their mask, face covering, or face shield because their identity needs to be confirmed by visual comparison, such as at the bank or if interacting with law enforcement. During such instances, individuals should limit speaking while the mask, face covering, or face shield is removed or displaced. ¶

Note: While reasonable accommodation for those unable to wear a mask, face covering, or face shield due to a disability must be provided under applicable state law (ORS 659A.103 to 659A.145) and federal law (42 U.S.C. Chapter 126), such an accommodation does not include simply exempting individuals from the requirement to wear masks, face coverings, or face shields in public spaces or places of employment. ¶

(C) The employer must provide masks, face coverings, or face shields for employees at no cost to the worker. If an employee chooses to wear their own mask, face shield, or face covering instead of those provided by the employer, the employer may allow it but is not required to do so. ¶

(D) When an employee chooses to wear a filtering facepiece respirator instead of a mask, face covering, or face shield, the employer must allow that use and follow the "voluntary use" provisions of the Respiratory Protection Standard (29 CFR 1910.134). ¶

Note: An employer is not obligated to provide filtering facepiece respirators to employees under this section, nor are employers required to provide or allow any other type of respirator, unless required by another part of this rule. ¶

(E) If an employee chooses to wear a mask, face shield, or face covering even when it is not required, the employer must allow them to do so. ¶

(m) Medical removal protection benefits. Effective September 16, 2021, medical removal benefits as described by this subsection must be provided whenever employees covered by this subsection are unable to work due to the medical removal provisions outlined under subsections (3)(l) and (4)(j) of this rule. ¶

(A) Except as otherwise provided by subsection (4)(m)(B), medical removal protection benefits as outlined under

subsection (4)(m)(C) apply to all employees engaged in direct patient care or in direct support of such care, including patient intake or admission, patient food services, equipment and facility maintenance, housekeeping services, healthcare laundry services, medical waste handling services, and medical equipment cleaning or reprocessing services. The rule does not apply to office or administrative functions that do not involve contact with patients or patient care spaces, such as bookkeeping, payroll, or accounting services.

(B) The medical removal protection benefits of this subsection do not apply to the following:

(i) Employers with 10 or fewer employees,

(ii) Employees whose COVID-19 illness or quarantine cannot reasonably have resulted from a workplace exposure,

(iii) Individuals who are not in compliance with Oregon Health Authority COVID-19 vaccination requirements, without regard to the effective date of those requirements,

(iv) The provision of first aid by an employee who is not otherwise a healthcare provider,

(v) The dispensing of prescriptions by pharmacists in retail settings,

(vi) Non-hospital ambulatory care settings where all non-employees are screened prior to entry and individuals with suspected or confirmed COVID-19 are not permitted to enter those settings,

(vii) Well-defined ambulatory care settings within hospitals where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings,

(viii) Home healthcare settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present,

(ix) Healthcare support services not performed in a healthcare setting (for example, off-site laundry, off-site food preparation), or

(x) Telehealth services performed outside of a setting where direct patient care occurs.

(C) When an employee subject to this subsection is subject to medical removal as required by the rule and the required isolation or quarantine prevents the employee from working, the following medical removal benefits must be provided:

(i) The employer must continue to provide the benefits to which the employee would normally be entitled when working;

(ii) For employers with 500 or more employees, the employer must pay the employee the same regular (non-overtime) pay the employee would have received had the employee not been absent from work, up to a maximum of \$1,400 per week, until the employee is able to return to work as described in OAR 437-001-0744(3)(I);

(iii) For employers with fewer than 500 employees, the employer must pay the employee benefit described in (4)(m)(C)(ii) of this rule, but beginning in the third week of an employee's removal, the employer is permitted to reduce the amount to only two-thirds of the same regular pay the employee would have received had the employee not been absent from work, up to \$200 per day (\$1,000 per week in most cases).

(D) The employer's obligation under paragraph (4)(m)(C) is reduced by the amount of compensation for lost earnings that the employee receives from any other source, such as a publicly or employer-funded compensation program (for example, workers compensation, paid sick leave, administrative leave, or other employer-provided leave that does not carry a cash value). The employer cannot take such benefits into account until they have actually been received by the employee.

Statutory/Other Authority: ORS 654.025(2), 654.035, 656.726(4), 654.025(3)(a)

Statutes/Other Implemented: ORS 654.001 through 654.295

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

OAR 437-001-0744
Rule Addressing COVID-19 Workplace Risks
Appendix A - Mandatory Workplace Guidance For Industry-
Specific And Activity-Specific Situations

A-1: No Longer Required – Restaurants, Bars, Brewpubs, and Public Tasting Rooms at Breweries, Wineries, and Distilleries

A-2: No Longer Required – Retail Stores

A-3: Personal Services Providers

A-4: No Longer Required – Construction Operations

A-5: Transit Agencies

A-6: No Longer Required – Professional, Division 1, Pac-12, West Coast Conference and Big Sky Conference Sports

A-7: No Longer Required – Employers Operating Fitness-Related Organizations

A-8: K-12 Educational Institutions (Public or Private)

A-9: Employers Operating Child Care and Early Education Programs

A-10: Veterinary Clinics

A-11: Emergency Medical Services: First Responders, Firefighters, Emergency Medical Services and Non-Emergency Medical Transport

A-12: Law Enforcement Activities

A-13: Jails, Prisons, and Other Custodial Institutions

A-1: No Longer Required – Restaurants, Bars, Brewpubs, and Public Tasting Rooms at Breweries, Wineries, and Distilleries

This guidance is no longer required.

A-2: No Longer Required – Retail Stores

This guidance is no longer required.

A-3: Personal Services Providers

Application: This appendix applies to employers operating barber shops, hair salons, esthetician practices, medical spas, facial spas and day spas, non-medical massage therapy services, nail salons, tanning salons, and tattoo/piercing parlors. To the degree this appendix provides specific guidance, it supersedes the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744); to the degree a situation is not addressed by the specific language of this appendix, the requirements of the rule apply.

A. Masks, Face Coverings, and Face Shields. To reduce the risk of transmission from potentially infected individuals, employers of personal services providers must implement the requirements of OAR 437-001-0744 subsection (3)(b), except as otherwise provided by this appendix.

1. Allow clients to remove the face covering when appropriate to or necessary for certain services; for example, a client does not need to wear a face covering when face-down on a massage table. And some services, such as mustache or beard trims, may require the cloth, paper or disposable face covering to be temporarily removed; and
2. Allow employees to wear medical grade masks if they choose to do so when providing services.

A-4: No Longer Required – Construction Operations

This guidance is no longer required.

A-5: Transit Agencies

Application: This appendix applies to public transit agencies and providers statewide. To the degree this appendix provides specific guidance, it supplements, but does not replace, the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744).

Note: This appendix is consistent with existing Oregon Health Authority statewide guidance as it relates to the protection of workers in such establishments. However, Oregon Health Authority guidance may also contain public health provisions that are not reflected by this document. Employers engaged in such activity need to be aware of and comply with those public health requirements as well as with this appendix.

A. Physical Distancing Measures. Transit agencies must take the following specific steps:

1. Require at least six feet of physical distance between the driver and passengers (except during boarding and when assisting those with mobility devices), cordoning off seats as necessary to reinforce this requirement;
2. Use physical partitions or visual cues (for example, floor decals, colored tape, or signs) to discourage passengers from standing or sitting within six feet of drivers and other transit employees on the bus or train;
3. Determine and post maximum occupancy for each bus; and
4. For rail systems, make verbal announcements about maximum occupancy before and after each stop.

B. Masks, Face Coverings, and Face Shields. To reduce the risk of transmission from potentially infected individuals, transit employers must ensure that any employees exposed to individuals without facial coverings are provided appropriate NIOSH-approved respiratory protection (including N95 respirators or better) in accordance with the rule.

C. Signage. To reinforce the need to minimize COVID-19 risks, transit agencies must do the following:

1. Post clear signs listing COVID-19 symptoms, asking employees and visitors with symptoms to stay home and telling them whom to contact if they need assistance;
2. Use clear signs to encourage physical distancing; and
3. Post clear signs about the mask, face covering, or face shield requirements; and
4. For rail systems, post maximum occupancy for each train car using clear, prominently placed signs.

Note: Transit agencies are encouraged, but not required, to use signs at high-traffic stops to encourage physical distancing while riders are waiting for a bus or train.

A-6: No Longer Required – Professional, Division 1, Pac-12, West Coast Conference and Big Sky Conference Sports

This guidance is no longer required.

A-7: No Longer Required – Employers Operating Fitness-Related Organizations

This guidance is no longer required.

A-8: K-12 Educational Institutions (Public or Private)

Application: This appendix applies to employers who operate schools or other educational institutions for children from kindergarten through the 12th grade (K-12 schools) or any portion thereof. To the degree this appendix provides specific guidance, it supersedes the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744); to the degree a situation is not addressed by the specific language of this appendix, the requirements of the rule apply.

- A. Masks, Face Coverings, and Face Shields.** Employers must ensure that the requirements of Oregon Health Authority's OAR 333-019-1015: Masking Requirements in Schools and other employee protections imposed by the Oregon Health Authority or the Oregon Department of Education are implemented and enforced in public and private K-12 schools.

A-9: Employers Operating Child Care and Early Education Programs

Application: This appendix applies to employers who operate any of the following types of child care and early education programs:

- ✓ All licensed programs, including Certified Center (CC), Certified Family (CF), and Registered Family (RF).
- ✓ All child care and preschool provided in public school settings.
- ✓ All Recorded Programs, including school-age.
- ✓ Oregon Pre-Kindergarten (Prenatal to Kindergarten), Preschool Promise, and Baby Promise.
- ✓ Oregon Relief Nurseries.
- ✓ Early Intervention and Early Childhood Special Education (EI/ECSE) provided in a child care or early education setting.

A. Exception for Masks, Face Coverings, and Face Shields, and Personal Protective Equipment for Children and Adults.

1. All children who are in the child care facility or in the designated child care section of the child care provider's home must wear a face covering indoors unless:
 - ✓ The child is under five years of age or not yet in kindergarten;
 - ✓ They have a verified medical condition or disability that prevents them from safely wearing a face covering;
 - ✓ They are unable to remove the face covering independently;
 - ✓ They are sleeping, eating, or drinking.

A-10: Veterinary Clinics

Application: This appendix applies to veterinarians licensed under ORS 686, and to their assistants and other employees. To the degree this appendix provides specific guidance, it supplements, but does not replace, the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744).

A. Personal Protective Equipment. To reduce the risk of transmission, veterinary employers must provide and ensure the use of personal protective equipment in accordance with the following table:

[“Interim Infection Prevention and Control Guidance for Veterinary Clinics Treating Companion Animals During the COVID-19 Response,”](#) published by the United States Centers for Disease Control and Prevention (last updated August 12, 2020)

Animal History	Mask	Eye Protection (face shield or goggles)	Gloves	Gown or Coveralls	N95 respirator or suitable alternative
Healthy companion animal without exposure to a person with COVID-19 compatible symptoms	No	No	No	No	No
Companion animal with an illness that is not suspicious of SARS-CoV-2 infection AND without exposure to a person with COVID-19 compatible symptoms	No	No	No	No	No
Companion animal that is not suspicious for SARS-CoV-2 infection BUT has exposure to a person with COVID-19 compatible symptoms	Yes	No	Yes	No	No
Companion animal with an illness that is suspicious for SARS-CoV-2 infection	Yes	Yes	Yes	Yes	No
Aerosol-generating procedure for any animal without an exposure to a person with COVID-19 compatible symptoms	Yes	Yes	Yes	Yes	No
Aerosol-generating procedure for any animal with an exposure to a person with COVID-19 compatible symptoms	No	Yes	Yes	Yes	Yes
Any procedure on an animal that is known to be currently infected with SARS-CoV-2 through detection by a validated RT-PCR assay	No	Yes	Yes	Yes	Yes
Any procedure where a person with known or suspected of being infected with COVID-19 will be present	No	Yes	Yes	Yes	Yes

A-11: Emergency Medical Services: First Responders, Firefighters, Emergency Medical Services and Non-Emergency Medical Transport

Application: This appendix applies to first responders, firefighters, emergency medical services, and non-emergency medical transport employers. It also provides direction specific to Emergency Communication Centers. To the degree this appendix provides specific guidance, it supersedes the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744); to the degree a situation is not addressed by the specific language of this appendix, the requirements of the rule apply.

Note: Although this appendix is based upon the workplace health portions of [Quarantine Guidance for Fire and EMS Responders](#) and [Information Bulletin 2020-02 on Personal Protective Equipment Advisory](#), published by the Office of the Oregon State Fire Marshal, it does not address many other issues included in that document. Employers of first responders, firefighters, EMS, and non-emergency medical transport should therefore be familiar with that guidance as well.

Definitions. For purposes of this appendix, the following definitions apply:

Emergency Communication Centers means 911 Public Safety Answering Points/Emergency Communication Centers (PSAP/ECCs)

Emergency Medical Services Provider (EMS Provider) means a person who has received formal training in prehospital and emergency care, and is licensed to attend to any person who is ill or injured or who has a disability. Police officers, fire fighters, funeral home employees and other persons serving in a dual capacity, one of which meets the definition of "emergency medical services provider" are "emergency medical services providers" within the meaning of ORS chapter 682.

Fire Department means public and private employers who engage in structural fire service activities, including emergency first response, who are covered under OAR 437-002-0182.

A. General Operations Screening, Isolation and Quarantine. In order to reduce the risks of outbreaks within the workplace and the broader community, EMS employers must take the following steps:

1. Instruct employees to self-monitor for symptoms consistent with COVID-19;
2. Screen employees for fever and symptoms prior to each shift, excluding them from the workplace as appropriate based on guidance from the Oregon Health Authority; and
3. Exclude any employees from the workplace if they test positive via a COVID-19 diagnostic test.

Note: [Quarantine Guidance for Fire and EMS Responders](#) provides detailed information on monitoring, quarantine, isolation, and subsequent return to work.

B. General Operations – Emergency Communication Centers. Emergency Communication Centers (ECC) must comply with the provisions of the rule, with the following specific provisions and exceptions:

1. Whether shields or barriers have been installed, ECC communications personnel are not required to wear face coverings while handling emergency calls, but must be allowed to do so at their discretion;
2. ECC should implement an EIDS or screen for fever, cough, difficulty breathing, and diarrhea for all calls, when feasible, if local triggers determined by the PSAP director have been met. Additionally, PSAPs should ask:
 - ✓ Is anyone in the call location a known or suspected COVID-positive individual undergoing either quarantine or isolation?
 - ✓ Is the call location a long-term care facility known to have COVID-19 cases?
3. The query process should never supersede the provision of pre-arrival instructions to the caller when immediate lifesaving interventions (for example, CPR) are indicated.
4. If the patient meets the above criteria, then PSAPs should:
 - a. Provide medical care per protocol.
 - b. Alert responding agencies of the possibility of a respiratory pathogen as soon as possible.
 - c. Follow LPHA policies for reporting and follow up of healthcare workers with contact to suspected cases.
 - d. For ill travelers at US international airports or other ports of entry to the United States (maritime ports or border crossings) should be in contact with the CDC quarantine station of jurisdiction for the port of entry CDC Quarantine Station Contact List for planning guidance.
5. If the patient does not meet criteria, discontinue questioning and follow appropriate case entry.
6. If call volumes increase to the point that screening is interfering with the timely processing of calls, consider suspending EIDS screening.

C. General Operations – Fire Departments and Ambulance Agencies. Fire Departments and Ambulance Agencies must comply with the provisions of the rule, with the following specific provisions and exceptions:

1. Spacing requirements do not need to be followed on any Agency apparatus when responding to or returning from a call, although respiratory protection must be worn as necessary.
2. The personnel residing in common living areas in a fire station or ambulance agency facility are not required to wear masks, face coverings or face shields (this exception applies only to shared living areas; it does not apply to break rooms, shared toilet facilities, or other common areas used by other employees or individuals other than those residing in the living areas).
3. The driver of an emergency response vehicle may adjust or remove a mask or face covering that impedes their vision or distracts from the safe operation of the vehicle.

D. Personal Protective Equipment. Masks or respirators must be worn by EMS providers while they are engaged in emergency medical services or other patient care. Face coverings must not be used as a substitute for a mask or respirator when respiratory protection (droplet precautions for a mask, airborne precautions for a respirator) is required. EMS providers must apply the following guidance:

1. During direct patient care in the EMS setting, use of respirators without exhalation valves is preferred but not required; and
2. When dealing with an individual known or suspected of being infected with COVID-19, EMS providers must wear a NIOSH-approved N95 or equivalent or a higher-level respirator, a gown, gloves, and eye protection (face shield or goggles).

Note: The use of respirators must comply with the Respiratory Protection standard (29 CFR 1910.134).

E. Special Provisions for the Transport of Patients (Emergency and Non-Emergency) with Suspected or Confirmed COVID-19. For any patient meeting any of following criteria:

- Symptoms of lower respiratory infection, such as fever, cough, or shortness of breath;
- Recent contact with someone with known COVID-19; or
- Call location is a long-term care facility known to have COVID-19 cases.

EMS providers must apply the following procedures when engaging in transporting, whether emergency or non-emergency:

1. Involve the fewest EMS personnel required to minimize possible exposures; others riding in the ambulance must be limited to those essential for the patient's physical or emotional well-being or care (for example, care partner or parent);

2. Ensure that the patient is masked. The patient mask must not have an exhalation valve, as it would allow unfiltered, exhaled breath to escape;
3. Provide medical care per protocol;
4. Ensure that personnel use contact, droplet, and airborne precautions, as follows:
 - a. Wear a single pair of disposable patient examination gloves.
 - b. Wear disposable isolation gown. If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, and care activities where splashes and sprays are anticipated.
 - c. Use respiratory protection (an N-95 or higher-level respirator). If respirator supplies have been depleted, facemasks are an acceptable alternative. Respirators should be prioritized for procedures that are likely to generate respiratory aerosols.
 - d. Wear eye protection (goggles or a disposable face shield that fully covers the front and sides of the face).
5. Use caution with aerosol-generating procedures and ventilate ambulance if possible;
6. Notify the receiving hospital (according to local protocols) of potential infection as soon as possible;
7. Disinfect using EPA registered Disinfectants for Use Against SARS-CoV-2; and
- 8.- Drivers, if they provide direct patient care (for example, moving patients onto stretchers), must wear the PPE listed above.
 - a. After completing patient care and before entering an isolated driver's compartment, the driver must remove and dispose of PPE and perform hand hygiene to avoid soiling the compartment.
 - b. If the transport vehicle does not have an isolated driver's compartment, the driver must remove the face shield or goggles, gown, and gloves and perform hand hygiene, but continue to wear a respirator, mask, or face covering during transport.

Patients who do not meet the criteria listed above can be cared for using standard precautions, with use of transmission-based precautions determined by clinical presentation.

A-12: Law Enforcement Activities

Application: This appendix applies to the activities of law enforcement officers in the performance of their duties. To the degree this appendix provides specific guidance, it supersedes the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744); to the degree a situation is not addressed by the specific language of this appendix, the requirements of the rule apply.

Definitions. For purposes of this appendix, the following definitions apply:

Law enforcement agency means the Oregon State Police, a county sheriff's office, a municipal police department, a police department established by a university under ORS 352.121 or 353.125, or an agency that employs one or more parole and probation officers as defined in ORS 181A.355.

Law enforcement officer means a member of the Oregon State Police, a sheriff or deputy sheriff, a municipal police officer, an authorized police officer of a police department established by a university under ORS 352.121 or 353.125, or a parole or probation officer as defined in ORS 181A.355.

A. Masks, Face Coverings, and Face Shields. To reduce the risk of transmission from potentially infected individuals, law enforcement agencies must require masks, face coverings, or face shields in spaces under their control and when employees interact with other individuals, as required by OAR 437-001-0744(3)(b). However, the following specific modifications apply to certain law enforcement activities:

1. Law enforcement agencies must ensure that all employees, visitors, and persons in custody wear a mask, face covering, or face shield as required in this rule unless enforcing this requirement would require the use of physical force or place an employee or member of the public at greater risk of COVID-19 exposure;
2. Law enforcement agencies must provide masks and face shield to law enforcement officers to wear in combination in situations when a person in custody refuses to wear a face covering;
3. Law enforcement officers are permitted adjust or remove the face mask, face covering, or face shield while interviewing a member of the public when necessary to establish sufficient rapport with the interviewee;
4. Law enforcement officers driving during an emergency response or pursuit may adjust or remove a mask, face covering, or face shield that impedes their vision or distracts from the safe operation of the vehicle;
5. Law enforcement officers are permitted to remove their mask, face covering, or face shield when the officer's ability to clearly communicate is impaired by the mask, face covering, or face shield; and

6. Law enforcement employees transporting a person in custody or a member of the public must ensure that that person wears a mask, face covering, or face shield unless compliance would require the use of force or place law enforcement employees or a member of the public at greater risk for COVID-19 exposure or physical jeopardy.

A-13: Jails, Prisons, and Other Custodial Institutions

Application: This appendix applies to jails, prisons, and other custodial institutions. To the degree this appendix provides specific guidance, it supersedes the requirements of the Rule Addressing COVID-19 Workplace Risks (OAR 437-001-0744); to the degree a situation is not addressed by the specific language of this appendix, the requirements of the rule apply.

A. Masks, Face Coverings, and Face Shields. To reduce the risk of transmission from potentially infected individuals, jails, prisons, and other custodial institutions must require masks, face coverings or face shields within the premises. However, the following specific modifications to the requirements to OAR 437-001-0744(3)(b) apply within the secure perimeter of the jail, prison, or other custodial institution:

1. Jails, prisons, and other custodial institutions must require all person entering the secure perimeter of the jail to wear a mask, face shield, or face covering when within six feet of other individuals, if there are no physical barriers between them, with the following exceptions:
 - ✓ During scheduled mealtimes when eating or drinking;
 - ✓ If a physical or mental condition or disability limits the ability to wear a mask, face covering, or face shield;
 - ✓ When an order from the Oregon Judicial Department, presiding judge, or local health authority provides an exception to the wearing of masks, face coverings or face shields;
 - ✓ In a housing unit where all adults in custody have been in quarantine for a minimum period of time established by the local health authority after considering CDC and OHA guidelines, provided that all staff members wear a mask or face covering at all times while in the unit;
 - ✓ In youth correctional facility common areas when all youth in custody have been in quarantine for a minimum period of time established by the Oregon Health Authority, provided that all non-youth-in-custody individuals wear a face covering and the Oregon Health Authority has authorized such practice; or
 - ✓ During an emergency, such as when responding to a spontaneous use of force event, a medical emergency, or a suicide attempt in a housing unit.
2. The jail, prison, or other custodial institution must not charge individuals in custody for masks, face coverings or face shields, except in the case of knowing damage or destruction to the mask, face covering, or face shield in violation of institution rules.

3. The jail, prison, or other custodial institution must not charge employees for masks, face coverings or face shields.
4. Custodial institution employees transporting a person in custody or a member of the public must ensure that that person wears a mask, face covering, or face shield unless compliance would require the use of force or place law enforcement employees or a member of the public at greater risk for COVID-19 exposure or physical jeopardy.