

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

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 41-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED
08/27/2021 1:28 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adoption of rule requiring masks to be worn in indoor and outdoor spaces in Oregon

EFFECTIVE DATE: 08/27/2021 THROUGH 02/08/2022

AGENCY APPROVED DATE: 08/27/2021

CONTACT: COVID Response and Recovery Unit
503-945-5488
COVID.19@dhsosha.state.or.us
800 NE Oregon St.
Portland, OR 97232

Filed By:
Brittany Hall
Rules Coordinator

NEED FOR THE RULE(S):

The temporary rule is in response to the significant increase in COVID-19 cases and the significant decrease in hospital bed capacity in the state as a result of spread of the Delta variant.

COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease, or have other features of public health concern such as decreased vaccination effectiveness. At the time of this rule adoption, the Delta made up the vast majority of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

This filing replaces Temporary Administrative Order PH 35-2021 filed on August 11, 2021 and effective August 13, 2021.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest and the Authority. This rule needs to be adopted promptly to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- OHSU updated statement on COVID-19 forecast (08.26.2021): <https://news.ohsu.edu/2021/08/26/updated-projection-continues-to-show-unabated-surge-of-covid-19-in-oregon>
- OHSU COVID Forecast (08.10.2021): https://www.ohsu.edu/sites/default/files/2021-08/Oregon-Trends_20210826.pdf
- Oregon's HOSCAP report (updated 08.26.2021): <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19HospitalCapacity/BedAvailabilitybyRegion>
- STATUS UPDATE: COVID-19 EPIDEMIC TRENDS AND SCENARIO PROJECTIONS IN OREGON (08.19.2021): <https://www.oregon.gov/oha/covid19/Documents/DataReports/Epidemic-Trends-and-Projections.pdf>
- The Science of Masking to Control COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/science-of-masking-full.pdf>
- Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>
- Guidance for Wearing Masks Help Slow the Spread of COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>
- Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1059-1062. DOI: <http://dx.doi.org/10.15585/mmwr.mm7031e2>
- Christie A, Brooks JT, Hicks LA, Sauber-Schatz EK, Yoder JS, Honein MA. Guidance for implementing COVID-19 prevention strategies in the context of varying community transmission levels and vaccination coverage. *MMWR Morb Mortal Wkly Rep* 2021;70:1044–7. <https://doi.org/10.15585/mmwr.mm7030e2>

ADOPT: 333-019-1025

SUSPEND: Temporary 333-019-1025 from PH 35-2021

RULE TITLE: Masking Requirements for Indoor and Outdoor Spaces

RULE SUMMARY: ADOPT 333-019-1025

The Oregon Health Authority is temporarily adopting OAR 333-019-1025 pertaining to wearing masks in indoor and outdoor spaces. The rule is in response to the significant increase in COVID-19 cases and the significant decrease in hospital bed capacity in the state as a result of spread of the Delta variant.

COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease, or have other features of public health concern such as decreased vaccination effectiveness. At the time of this rule adoption, the Delta made up the vast majority of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can also reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors and when people are closer together for longer periods of time indoors and outdoors. Individuals infected with the Delta variant have more viral particles in their respiratory passages and can transmit the virus more easily to those around them. There are increasing examples where transmission occurred in crowded outdoor settings, even though the risk for transmission in these locations is likely lower than indoors.

“Organizer of an event or gathering” is defined a person or governmental entity that arranges, facilitates, or is responsible for an event or gathering.

“Indoor spaces” is defined broadly as anywhere indoors, including but not limited to public and private workplaces, businesses, indoor areas open to the public, building lobbies, common or shared spaces, classrooms, elevators, bathrooms, transportation services and other indoor space where people may gather for any purpose. An indoor space does not include a private residence or a private automobile that is not used for ride sharing.

“Outdoor spaces” are broadly defined as anywhere outdoors where people from separate households may gather for any purpose, including but not limited to public and private workplaces, shared or common spaces, outdoor sports fields, venues, parks, and rooftop terraces. An outdoor space does not include outdoor areas that are part of a private residence or houseless encampments.

There are exceptions to mask wearing in indoor and outdoor spaces. Masks are not required if an individual:

- Is under five (5) years of age or not yet in kindergarten; or is under two (2) years of age and using public transportation or in transportation hubs.
- Is sleeping.
- Is actively eating or drinking.
- Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when actively swimming.
- Is in a private individual workspace.
- Must remove the mask, face coverings or face shield briefly because the individual's identity needs to be confirmed by visual comparison, such as at a bank or if interacting with law enforcement.
- Is practicing or playing a competitive sport at any level.
- Is officiating a competitive sport that requires a high level of physical exertion by the official.
- Is performing, including but not limited to playing music, delivering a speech to an audience, and theater.

A person responsible for an indoor space must:

- Ensure that employees, contractors, and volunteers comply with this rule within the indoor space.
- Make reasonable efforts to ensure customers, guests, visitors and other individuals comply with this rule within the indoor space.
- Post signs at every entrance to the indoor space that face coverings are required as described in this rule.

Wearing of a mask, face covering or face shield in an outdoor space does not apply in the following circumstances, though schools and child care providers are expected to make reasonable and best efforts to encourage physical distancing in outdoor spaces:

- At school during regular school hours.
- At school when individuals are engaged in educational or child care activities outside of regular school hours.
- At a registered or certified child care as those are defined in ORS 329A.250, or at an exempt family child care provider as that is defined in ORS 329A.430, during the hours the child care is operating.
- At school-age and preschool recorded programs as those are defined in ORS 329A.250.

A person responsible for an outdoor space must post signs at every entrance to the outdoor space that masks, face coverings or face shields are required as described in this rule.

An organizer of an event or gathering in an outdoor space must:

- Ensure that employees, contractors, and volunteers comply with this rule during the event or gathering.
- Post signs at every entrance to the event or gathering that masks, face coverings or face shields are required as described in the rule, if they are not already posted.

Employers and places of public accommodation must still make reasonable accommodations in order to comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, ORS 659.850 or applicable provisions of ORS 659A.

Any person who violates any provision of this rule is subject to civil penalties of up to \$500 per day per violation.

RULE TEXT:

(1)(a) It is vital to this state that individuals wear a mask or face covering when in public indoor and outdoor spaces with people from other households. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease, or have other features of public health concern such as decreased vaccination effectiveness. As of the time this rule was adopted, Delta was the variant making up more than 98 percent of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

(b) COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can also reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors and when people are closer together for longer periods of time indoors and outdoors. Individuals infected with the Delta variant have more viral particles in their respiratory passages and can transmit the virus more easily to those around them. There are increasing examples where transmission occurred in crowded outdoor settings, even though the risk for transmission in these locations is likely lower than indoors.

(c) This rule is necessary to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

(2) Nothing in this rule is intended to:

- (a) Prohibit an individual or person from complying with a more restrictive mask requirement.
- (b) Prohibit a person, including a business or governmental entity from applying more restrictive requirements.

(3) For the purposes of this rule, the following definitions apply:

- (a) "Business" includes an individual, organization or entity engaged in commercial, industrial, non-profit or professional activities.

- (b) "Common or shared space" means an area where individuals may interact such as a restroom, breakroom, hallway, elevator, lobby, classroom, large room with cubicles, meeting rooms, conference rooms and any area open to the public.
- (c) "Face covering" means a cloth, polypropylene, paper or other face 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.
- (d) "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.
- (e) "Household" means individuals who live together in a single residence.
- (f) "Indoor spaces" means anywhere indoors, including but not limited to public and private workplaces, businesses, indoor areas open to the public, building lobbies, common or shared spaces, classrooms, elevators, bathrooms, transportation services and other indoor space where people may gather for any purpose. An indoor space does not include a private residence or a private automobile being used for personal use and that is not used for ride sharing services.
- (g) "Mask" means a medical grade mask.
- (h) "Organizer of an event or gathering" is a person or governmental entity that arranges, facilitates, or is responsible for an event or gathering.
- (i) "Outdoor space" means anywhere outdoors where people from separate households may gather for any purpose, including but not limited to public and private workplaces, shared or common spaces, outdoor sports fields, venues, parks, and rooftop terraces. An outdoor space does not include outdoor areas that are part of a private residence or houseless encampments.
- (j) "Person responsible for an indoor space" means any person or governmental entity responsible for the activities within an indoor space.
- (k) "Person responsible for an outdoor space" means any person or governmental entity responsible for activities within an outdoor space.
- (l) "Private individual workspace" means an indoor space within a public or private workplace used for work by one individual at a time that is enclosed on all sides with walls from floor to ceiling and with a closed door.
- (m) "Public and private workplaces" means indoor or outdoor places where people work, including but not limited to businesses, banks, food processing plants, manufacturing facilities, construction sites, warehouses and farms.
- (n) "Public transportation" means any form of transportation open to the public including but not limited to trains, buses, trolleys, street cars, vans, school buses, airplanes, boats, ride sharing services. Public transportation does not include private vehicles unless the private vehicle is being used for public transportation such as ride sharing services.
- (o) "Ride sharing services" means transportation services, whether public or private, where a driver transports an individual or a group of people in a vehicle and charges a fare or bills for services. Ride sharing services include, but are not limited to, taxicabs, Uber, and Lyft.
- (p) "Transportation hub" means any airport, bus terminal, marina, seaport or other port, subway station terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.
- (4) Individuals, regardless of vaccination status, are required to wear a mask, face covering or face shield except as exempted in section (5) or (6) of this rule when:
- (a) In an indoor space; and
- (b) In an outdoor space if the individuals cannot or do not consistently maintain at least six feet of distance from individuals not in their household.
- (5) A mask, face covering, or face shield is not required when an individual:
- (a) Is under five years of age or not yet in kindergarten; unless an individual is using public transportation or in transportation hubs in which case an individual under two years of age is not required to wear a mask, face covering or face shield.
- (b) Is sleeping.
- (c) Is actively eating or drinking.

- (d) Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when actively swimming.
 - (e) Is in a private individual workspace.
 - (f) Must remove the mask, face covering or face shield briefly because the individual's identity needs to be confirmed by visual comparison, such as at a bank or if interacting with law enforcement.
 - (g) Is practicing or playing a competitive sport at any level.
 - (h) Is officiating a competitive sport that requires a high level of physical exertion by the official.
 - (i) Is performing, including but not limited to playing music, delivering a speech to an audience, and theater.
- (6) The requirement to wear a mask, face covering or face shield in an outdoor space does not apply in the following circumstances, though schools and child care providers are expected to make reasonable and best efforts to encourage physical distancing in outdoor spaces:
- (a) At school during regular school hours.
 - (b) At school when individuals are engaged in educational or child care activities outside of regular school hours.
 - (c) At a registered or certified child care as those are defined in ORS 329A.250, or at an exempt family child care provider as that is defined in ORS 329A.430, during the hours the child care is operating.
 - (d) At school-age and preschool recorded programs as those are defined in ORS 329A.250.
- (7) A person responsible for an indoor space must:
- (a) Ensure that employees, contractors, and volunteers comply with this rule within the indoor space.
 - (b) Make reasonable efforts to ensure customers, guests, visitors and other individuals comply with this rule within the indoor space.
 - (c) Post signs at every entrance to the indoor space that masks, face coverings or face shields are required as described in this rule.
- (8) A person responsible for an outdoor space must post signs at every entrance to the outdoor space that masks, face coverings or face shields are required as described in this rule.
- (9) An organizer of an event or gathering in an outdoor space must:
- (a) Ensure that employees, contractors, and volunteers comply with this rule during the event or gathering.
 - (b) Post signs at every entrance to the event or gathering that masks, face coverings or face shields are required as described in the rule, if they are not already posted.
- (10) Nothing in this rule is intended to prohibit an employer or place of public accommodation from making reasonable accommodations in order to comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, ORS 659.850 or applicable provisions of ORS chapter 659A
- (11) Penalties: Any person who violates any provision of this rule is subject to civil penalties of up to \$500 per day per violation.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004

STATUTES/OTHER IMPLEMENTED: ORS 431A.010, ORS 431.110, ORS 433.004