

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

|   |                                     |
|---|-------------------------------------|
| <u>Parks and Recreation Department</u>  | <u>736</u>                          |
| Agency and Division   | Administrative Rules Chapter Number |
| <u>Vanessa DeMoe</u>  | <u>(503) 986-0719</u>               |
| Rules Coordinator   | Telephone                           |
| <u>Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301</u> |                                     |
| Address   |                                     |

**RULE CAPTION**

Prohibits smoking of tobacco products in State Parks

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

| Hearing Date | Time      | Location   | Hearings Officer |
|--------------|-----------|--|------------------|
| 1-7-14       | 7:00 p.m. | Josephine Community Library, 200 NW C Street Grants Pass, OR 97526 | Staff            |
| 1-9-14       | 7:00 p.m. | Champoeg State Heritage Area, Visitor Center, 8239 Champoeg Road   | Staff            |
| 1-14-14      | 7:00 p.m. | Bend Park and Recreation office, Riverbend Community room, 799 SW  | Staff            |
| 1-16-14      | 7:00 p.m. | Newport Recreation Center, 225 Avery St SE, Newport OR 97365       | Staff            |

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

OAR 736-010-0015; OAR 736-010-0020; OAR 736-010-0022; OAR 736-010-0040; OAR 736-010-0050; OAR 736-010-0055

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 390.124

**Other Authority:**

**Statutes Implemented:**

ORS 390.111; ORS 390.121; ORS 390.124

**RULE SUMMARY**

Smoking is currently banned in public buildings on lands managed by the Oregon Parks and Recreation Department in accordance with the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875. In order to further protect park resources and promote healthy lifestyles this rule revision will extend the smoking ban to park lands, including but not limited to trails, developed day use areas, waysides, park roadways and common areas of campgrounds. Smoking would be allowed in: personal vehicles and camping units; designated campsites in developed overnight camping areas; and where permitted by the park manager for traditional ceremonies in accordance with the American Indian Religious Freedom Act.

\*Those who wish to make public comment must register with the hearing officer by 7:30 p.m. on the scheduled hearing date.

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.

|  |                        |                                  |
|--|------------------------|----------------------------------|
| <u>01-10-2014 5:00 p.m.</u>                        | <u>Vanessa DeMoe</u>   | <u>vanessa.demoe@state.or.us</u> |
| Last Day (m/d/yyyy) and Time<br>for public comment | Rules Coordinator Name | Email Address                    |

|   |
|---|
| <b>FILED</b><br>11-15-13 4:01 PM<br>ARCHIVES DIVISION<br>SECRETARY OF STATE |
|---|

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

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

Parks and Recreation Department  
Agency and Division

736  
Administrative Rules Chapter Number

Prohibits smoking of tobacco products in State Parks

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

In the Matter of:

Amendments to general park area rules under chapter 736, division 10 to prohibit smoking of tobacco products on land managed by the Oregon Parks and Recreation Department.

**Statutory Authority:**

ORS 390.124

**Other Authority:**

**Statutes Implemented:**

ORS 390.111; ORS 390.121; ORS 390.124

**Need for the Rule(s):**

The rule is needed to implement executive order no.12-13, "Tobacco Free Properties" from August 2, 2012, which directed the Oregon Parks and Recreation Commission to adopt "policies that limit or restrict the use of tobacco products at state parks and recreation areas to address wellness issues, and to reduce the risk of forest fires."

**Documents Relied Upon, and where they are available:**

State of Oregon Governor's Executive Order 12-13 "Tobacco Free Properties".

**Fiscal and Economic Impact:**

The proposed rules are expected to have a relatively low fiscal impact overall. The rule only affects individual park visitors who currently consume tobacco products. This group constitutes an estimated 12-18% of park visitors, based on the percentage of Oregon, California and Washington adult residents who smoke, or about 1.3 million visitors annually.

The proposed rule revisions do not prohibit the use of tobacco products on park property. Rather, they designate areas of use to minimize conflict between users and promote a health message. Because tobacco users will be able to consume products in their cars and designated campsites, we anticipate a high level of compliance and expect to issue very few citations. As with all our rules, we aim to educate visitors about park rules and provide an opportunity for them to comply voluntarily. We are generally very successful at gaining voluntary compliance and we anticipate this rule won't increase the need for issuing citations. The department currently issues between 300 and 400 citations annually for all park area rule infractions statewide.

Rule violations are a class D violation and carry a fine, which at the time of filing was \$110. The department may choose to designate a lower fine for this type of infraction as it did for failure to display a valid parking permit or failure of persons younger than 16 years of age to wear protective headgear while riding a bicycle on park property. Both these violations carry a \$60 fine.

It is possible that a small percentage of park visitors who use tobacco may decide to no longer frequent state parks. However, we anticipate the decline in visitation to be small. Therefore, we expect the economic impact on the local communities surrounding state parks to be minimal, if any.

**Statement of Cost of Compliance:**

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

- a. State agencies: There is no apparent impact on state agencies as this rule affects OPRD and the individuals who use its facilities.
- b. Units of local government: There is no apparent impact on local government as this rule affects OPRD and the individuals who use its facilities.
- c. The public: The proposed rules may result in a fine for non-compliance. However, as noted above, tobacco users are able to consume tobacco products in certain areas of park properties. Therefore, we expect the majority of tobacco users to be able to comply with the rules.

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

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

none

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

none

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

none

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

N/A This rule affects OPRD and its users.

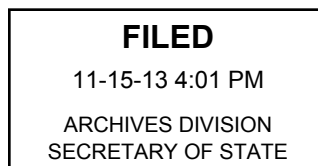
**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

An administrative rules advisory committee was not consulted because the fiscal impact of the rule is minimal. Previous rules already restricted smoking on park property, and the revised rule does not impose additional fines or penalties. Furthermore, the agency rarely has to issue citations, which further decreases the likelihood of the rule having an actual fiscal impact on the public.

The public will be able to comment through a variety of means: an advisory committee to be convened in December, four public hearings to be held in January and a public comment period that will run until January 10, 2014.

|  |               |                           |
|--|---------------|---------------------------|
| 01-10-2014 5:00 p.m.                               | Vanessa DeMoe | vanessa.demoe@state.or.us |
| Last Day (m/d/yyyy) and Time<br>for public comment | Printed Name  | Email Address             |



DIVISION 10

GENERAL STATE PARK RULES

736-010-0040

Visitor Conduct

(1) A person shall cause, build, maintain, or accelerate a fire at a park property only in:

(a) Park camp stoves or fireplaces provided for such purpose;

(b) Portions of beach areas designated as permissible for campfires; or

(c) Portable stoves used at established campsites, picnic areas, or beach areas where fires are designated as permissible.

(2) A person who has caused, built, or maintained an allowed fire shall:

(a) Burn only paper products and untreated natural wood free of attached metal, nails, glass or plastic objects;

(b) Burn wood no longer than 24 inches in length;

(c) Attend the fire at all times, breaking it apart and extinguishing it completely with water before leaving the immediate area;

(d) Use no gasoline, diesel or any other petroleum-based products to start or maintain a fire; and

(e) Ensure that any fire that they set does not cause personal injury or damage to private property or park resources.

(3) The park manager may temporarily restrict or prohibit fires in otherwise allowed situations due to high fire hazard conditions, and all persons shall observe such restrictions.

(4) A person may not injure, mutilate, deface, damage, harass, or remove any park resource, property, structure or facility of any kind at a park property, except as provided in OAR 736-010-0055.

(5) A person shall in no manner cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animals, or other offensive matter or any abandoned property or material to be placed or left at a park property, except for:

(a) Recreational vehicle sewage and gray water holding tank contents that are disposed of in designated dump stations;

(b) Garbage, trash, and recyclables generated while using a park property and disposed of in the designated containers provided.

(6) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(7) A person may not leave personal property or possessions overnight in a day use area without written permission from the park manager or designated park staff.

(8) While many activities are allowed on park property, the following activities are specifically prohibited at park properties, and a person may not engage in:

- (a) Using or operating any noise producing machine, vehicle, device or instrument in a manner that disturbs or may disturb other park visitors except as allowed in section 10 below;
- (b) Using a public address system or similar device without written permission of the park manager;
- (c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other similar materials or substances without the written permission of the park manager or designated park employee;
- (d) Using a metal detector or similar device without written permission of the park manager or designated employee at any park property or portion of a park property not listed on the "Detecting Allowed" list, published on the state park website;
- (e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;
- (f) Entering or occupying any building, facility or portion of a park property that has been closed to public access; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (h) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well-being of any person at the park property;
- (j) Smoking tobacco products except: ~~in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking~~
  - (A) in personal vehicles and camping units;
  - (B) in designated campsites in developed overnight camping areas, unless temporarily suspended by the park manager due to high fire hazard conditions; and
  - (C) where permitted by the park manager for personal use by a member of a federally recognized Oregon tribe as part of their traditional religious, medicinal, or other customary cultural heritage practices;
- (k) Activities or conduct which constitutes a public nuisance or hazard;
- (l) Public indecency as defined in ORS 163.465;
- (m) Base-jumping, hang gliding, paragliding or similar activities without written permission from the park manager except that the use of hang gliders is allowed at Cape Kiwanda State Natural Area;
- (n) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging property, except at those park property locations and for those purposes specified in OAR 736-010-0055(7);
- (o) Placing a sign, marker or inscription of any kind, except in designated areas within a park property, without written permission from the park manager;

Item 8a - Attachment B - Tobacco Use in Parks - draft rule language

(9) A person may only distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park property after they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(10) A person must obtain a special use permit from the department for any activity or use as described in OAR 736-016-0005(1), including but not limited to an activity or use within a park property that:

- (a) Is an organized group activity or event attended by over 50 people;
- (b) Uses a portion of a park property to the exclusion of other persons or the department;
- (c) Modifies or embellishes the park property, or places structures, such as tents, chairs, arches, and similar structures on the park property in a manner outside of normal recreational use, as determined by the park manager or enforcement officer;
- (d) Uses public-address, amplification or lighting systems, other than those designed for personal use;
- (e) Charges money for participation or admission;
- (f) Involves the sale of products or services;
- (g) Could disturb the natural, cultural, scenic and recreational resources in the park property or adjacent areas;
- (h) Could pose a safety or access concern for other park users or for those involved in the event or activity.

(11) A person who obtains a special use permit under OAR chapter 736, division 16 must comply with all the provisions of division 16, special use permit conditions, and with instructions from the department.

(12) All money or goods, having a value of \$100 or more and found by the public at park properties, must be turned over to the park manager or a park employee. All found money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

(13) The director or designee may close rock formations and cliffs within a park property to descending, scaling or technical rock climbing. A person that engages in such activities at such locations commits a Class C misdemeanor as provided in section (8)(f).

(14) The director or designee may close park access to lakes, streams or waterfalls for kayaking, boating, diving, swimming, or other water recreation activities when the park manager has determined the activity to be a danger to participants. Persons accessing through closed areas to engage in such activities commit a Class C misdemeanor as provided in section (8)(f).

(15) A person using a park property shall pay rates and comply with procedures and restrictions as established in OAR chapter 736, division 15 for use of designated facilities or the purchase of services or products.

Stat. Auth.: OAR 390.124

Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006

## Considerations Shaping the Draft Rules on Tobacco Usage in State Parks

Governor Kitzhaber's Executive Order 12 -13, signed in August 2012, encourages the Oregon Parks and Recreation Commission "to adopt policies by December 31, 2014 that limits or restrict the use of tobacco products at state parks and recreation areas to address wellness issues, and to reduce the risk of forest fires."

In reviewing the specific language of the Governors' Order the following considerations were identified;

- While the Governors' Order encourages the OPRD Commission to adopt policies "that limits or restricts the use of tobacco products", the main body of the order, under Section 1.b. only restricts the general public from SMOKING on state property.
- The Governors' Order exempts ODOT Rest Areas, public roads and sidewalks, and public beaches, but in Section 3 also stipulates that the Order "no way limits the authority of state agencies to further limit or restrict the use of tobacco products in state agency buildings or on state agency grounds, to the extent allowed by law."

The Governors' Order allows OPRD to adopt rules that address smoking only rather than all tobacco products. It also allows the department to put that rule into effect in all park areas including OPRD managed rest areas and park roads and sidewalks. It is estimated that 95+% of all tobacco use is in the form of smoking; prohibiting smoking in state parks will address wellness for the vast majority of tobacco users and the rest of the public, as well as concerns for risk of forest fires. Furthermore, a smoking ban is much easier to enforce than a ban on all tobacco products since it is hard to detect the use of smokeless products.

### Other Considerations

The Ocean Shores State Recreation presents a relatively low risk of fire; most beaches have low density use and are almost always windy so second hand smoke exposure is almost non-existent.

Oregon State Forestry Department permits smoking in vehicles even during extreme fire danger periods. Personal vehicles, especially RV's, are widely considered an extension of an individual's personal domain. Allowing tobacco use in personal vehicles provides the "good option" for enforcement officers to generate voluntary compliance.

Campsites are also considered personal domain to some extent. They are an area rented by the public for their exclusive use. Other public are not permitted to enter without the occupant's permission.

Therefore, the recommendation is to **Prohibit Smoking in Oregon State Parks except on the Ocean Shores State Recreation area, in campsites and in personal vehicles.**