OREGON BULLETIN

Supplements the 2011 *Oregon Administrative Rules Compilation*

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For November 16, 2010–December 15, 2010

Published by
KATE BROWN
Secretary of State

INFORMATION AND PUBLICATION SCHEDULE

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the on-line *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing the complete text of Oregon Administrative Rules (OARs) filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. The *Oregon Bulletin* is a monthly on-line supplement that contains rule text amended after publication of the print *Compilation*, as well as proposed rulemaking and rulemaking hearing notices. The *Bulletin* also publishes certain non-OAR items such as Executive Orders of the Governor, Opinions of the Attorney General, and Department of Environmental Quality cleanup notices.

Background on Oregon Administrative Rules

ORS 183.310(9) defines "rule" as "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency." Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit assists agencies with the notification, filing and publication requirements of the administrative rulemaking process.

How to Cite

Every administrative rule uses the same numbering sequence of a three-digit chapter number followed by a three-digit division number and a four-digit rule number (000-000-0000). Example: Oregon Administrative Rules, chapter 166, division 500, rule 0020 (short form: OAR 166-500-0020).

Understanding an Administrative Rule's "History"

State agencies operate in a dynamic environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track changes to individual rules and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed for each rule a "history" which is located at the end of the rule text. An administrative rule "history" outlines the statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify in abbreviated form the agency, filing number, year, filing date and effective date. For example: "OSA 4-1993, f. & cert. ef. 11-10-93" documents a rule change made by the Oregon State Archives (OSA). The history notes this was the 4th filing from the Archives in 1993, it was filed on November 10, 1993 and the rule changes became effective on the same date. The most recent change to each rule is listed at the end of the "history."

Locating the Most Recent Version of an Administrative Rule

The on-line *OAR Compilation* is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit, Secretary of State's office by the 15th of the previous month, or by the last workday before the 15th if that date falls on a weekend or holiday. The annual printed *OAR Compilation* contains the full text of all rules filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. Subsequent changes to individual administrative rules are listed by rule number in the OAR Revision Cumulative Index which is published monthly in the on-line *Oregon Bulletin*. These listings include the effective date, the specific rulemaking action, and the issue of the *Bulletin* that contains the full text of the amended rule. The *Bulletin* contains the full text of permanent and temporary rules filed for publication.

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available on-line through the Oregon State Archives web site at <http://arcweb.sos.state.or.us>. Printed volumes of the *Compilation* are deposited in Oregon's Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the *Compilation* may be ordered by contacting: Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, Julie.A.Yamaka@state.or.us

2010–2011 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts proposed rulemaking notices and administrative rule filings Monday through Friday, 8:00 am to 5:00 pm, at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following deadlines:

Submission Deadline — Publishing Date

December 15, 2010	January 1, 2011
January 14, 2011	February 1, 2011
February 15, 2011	March 1, 2011
March 15, 2011	April 1, 2011
April 15, 2011	May 1, 2011
May 13, 2011	June 1, 2011
June 15, 2011	July 1, 2011
July 15, 2011	August 1, 2011
August 15, 2011	September 1, 2011
September 15, 2011	October 1, 2011
October 14, 2011	November 1, 2011
November 15, 2011	December 1, 2011

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an "Appointment of Agency Rules Coordinator" form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a "Delegation of Rulemaking Authority" form, ARC 915-2005. It is the agency's responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms are available from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701, or are downloadable at <http://arcweb.sos.state.or.us/banners/rules.htm>

Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701. The Archives Division charges for such copies.

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EXECUTIVE ORDER NO. 10 - 10

IMPLEMENTING THE KLAMATH BASIN RESTORATION AGREEMENT AND KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT

On February 18, 2010, the State of Oregon, together with California, the federal government, tribal leaders and other stakeholders signed two historic agreements that will lead to restoration of the Klamath River Basin. The two agreements, the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement with PacifiCorp, together work to resolve decades-long water quantity, water quality, and fish and wildlife resource issues in the Klamath Basin, and represent the largest river and salmon restoration effort in U.S. history

The Restoration Agreement outlines next steps to: (1) restore and sustain fish and wildlife habitat, water quality, and natural fish production and provide for full participation in ocean and river harvest opportunities of fish species throughout the Klamath Basin; (2) establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and (3) contribute to the general welfare and economic viability of all Klamath Basin communities.

The Hydroelectric Settlement outlines the process for additional studies, including an environmental review, which will inform a decision by the Secretary of the Department of the Interior regarding whether the removal of the four dams owned by PacifiCorp will: (1) advance restoration of salmonid fisheries in the Klamath Basin; and (2) is in the public's interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. The Secretary will make a determination by March 31, 2012. The earliest that dam removal would occur, if determined necessary, is in 2020.

Although signing these agreements was a landmark event, there is still much work to be done. This Order directs state agencies to collaborate on the myriad steps we must take to support the ultimate goals of dam removal and basin stability and sustainability.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. I hereby designate the Oregon Water Resources Department (WRD), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish & Wildlife (ODFW) as the lead state agencies tasked with implementing Oregon's responsibilities as outlined in the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA).

2. All state agencies shall communicate and coordinate with WRD, DEQ, and ODFW about all matters pertaining to the implementation of the KBRA and KHSA.

3. Within ninety (90) days of the issuance of this Order, WRD, DEQ and ODFW shall enter into a Memorandum of Understanding (MOU) outlining agency action required to implement the KBRA and KHSA. Prior to signature, the MOU shall be presented to the Governor and the Governor's natural resources senior policy adviser for review and approval.

4. At a minimum, the MOU shall outline how WRD, DEQ, and ODFW will coordinate action required to implement the KHSA, including but not limited to:

a. The participation in and review of federal studies pertaining to dam removal;

b. The review and comment on National Environmental Policy Act (NEPA) documents, including any Draft Environmental Impact Statement;

c. The preparation of a proposed final order for water right reauthorization;

d. The estimation of project-specific fees for inclusion in water right reauthorization;

e. The development of state concurrence regarding the Secretary's determination;

f. The issuance of Section 401 Clean Water Act certification and state permits.

5. The MOU shall also provide how WRD, DEQ and ODFW will coordinate agency action related to the implementation of the KBRA, including but not limited to:

a. The development of a fish reintroduction plan;

b. The development of an anadromous fish conservation plan;

c. The development of a Klamath Basin drought plan;

d. The participation in the Technical Advisory Team;

e. The participation in the Klamath Basin Coordinating Council and the Klamath Basin Advisory Council; and

f. The participation in the Water Use Retirement Program.

6. WRD, DEQ, and ODFW shall form an interagency team of staff to assist the Oregon Department of Justice with any litigation that arises related to the KBRA or KHSA.

7. If at any point WRD, DEQ, and ODFW are unable to reach consensus on the appropriate state agency action required to implement the KBRA or KHSA, their agency heads shall contact the Governor and the Governor's natural resource senior policy advisor for further direction.

8. The Governor shall designate a member from his staff or the staff of WRD, DEQ, or ODFW to serve as the representative of the State of Oregon on voting matters within the Klamath Basin Coordinating Council (established by the KBRA) and the Klamath Basin Advisory Council (established by the KBRA).

9. This Order shall expire on December 31, 2020.

Done at Salem, Oregon this 23rd of November, 2010.

/s/ Theodore R. Kulongoski
Theodore R. Kulongoski
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 10 - 11

GOVERNOR'S EXECUTIVE ORDER ON LONG-RANGE CAPITAL PLANNING

Oregon state government owns and cares for a diverse portfolio of facilities worth more than $6 billion. In many state-owned facilities, the growing deferred maintenance has placed both employees and visitors at significant risk because of the potential failure of

facilities or systems. The Oregon Legislature and the Secretary of State Audits Division have expressed concern over the fact that the longer that facility maintenance receives insufficient funding, the greater the potential risk to the state. Despite this, no standard method exists to measure the level of need or the accumulated cost of unfunded maintenance in all state-owned facilities.

Long-Range Capital Planning links all the critical elements of facility management into a cohesive program that includes financing, ownership, operations and maintenance. This comprehensive approach ensures that the state receives maximum value; the greatest operational use with the least cost for every dollar spent on state-owned facilities. This "cradle to grave," "life-cycle cost" thinking will keep state-owned facilities operating safely, effectively, and at the lowest possible cost to Oregonians.

To address the existing deferred maintenance issue, Department of Administrative Services (DAS) continues to work closely with the Capital Projects Advisory Board, which, since 1997, has been responsible for review of major construction projects and building maintenance needs for state agencies and with the Central Facilities Planning Committee comprised of state agency staff responsible for facilities management. DAS is seeking legislative approval in the 2011 Legislative Session for an Asset Protection and Deferred Maintenance Fund to assist with funding selected critical deferred maintenance projects that are approved by the Legislature.

Effective Long-Range Capital Planning requires the coordination of many decision points including construction planning, facility maintenance, facility operation, deferred maintenance, maintenance planning, and planning for replacement reserves. DAS is in the process of building a database system to capture the data it needs to effectively manage its facility maintenance, deferred maintenance, and long range capital planning responsibilities. This Order directs DAS to establish standards and guidelines, an assessment process, and a comprehensive plan for addressing operational and deferred maintenance needs. It also directs DAS to participate in a pilot project utilizing the standards and guidelines and comprehensive plan.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. DAS shall develop standards and guidelines that can be used by all state agencies to assess, measure, and report on operating and deferred maintenance. The standards and guidelines shall encompass factors including:

a. Code Compliance;

b. Operating Effectiveness and Efficiency;

c. Major Component Reliability;

d. Environmental Impacts;

e. Functionality; and

f. Timeline of Need (Immediate\Short Term\Long Term).

2. DAS shall develop an assessment process, based on its standards and guidelines, which can be used by all state agencies. The assessment process shall be designed to consistently identify, measure, track, and report on existing deferred maintenance, operating maintenance, and long range capital construction requirements.

3. DAS shall develop a comprehensive plan for implementing its standards and guidelines and the assessment process. The comprehensive plan shall include recommendations for implementing the suggested assessment process, meeting data system requirements, conducting agency training, gathering data, and evaluating and reporting on statewide operating and deferred maintenance needs.

4. DAS shall carry out a deferred maintenance pilot program, based on its comprehensive plan, which follows the established standards and guidelines and uses the assessment and data gathering processes. DAS shall recruit two or more volunteer agencies to participate in the pilot program.

5. DAS shall collaborate with the Capital Projects Advisory Board and the Central Facilities Planning Committee in carrying out this Order.

6. Before establishing its standards and guidelines, assessment process and comprehensive plan, DAS shall seek the input of state agencies that own or operate state-owned facilities.

7. If DAS requires assistance of any other State agency in carrying out this Order, then such agency shall provide assistance to DAS upon request as resources permit.

8. This Order shall expire on July 31, 2012.

Done at Salem, Oregon, this 6th day of December, 2010.

/s/ Theodore R. Kulongoski
Theodore R. Kulongoski
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 10 - 12

GOVERNOR'S COMMISSION ON PUBLIC SAFETY (CPS)

In Executive Order 09-13, I created the Governor's Reset Cabinet and charged it with studying the core functions of state government and recommending strategies to increase its efficiencies and improve outcomes in order to better serve the interests and needs of Oregonians. In June, the Reset Cabinet issued its findings on the fiscal crisis facing Oregon, and provided a set of strategies to ensure that state government can continue to meet Oregonians' critical public safety, human services, and education needs. With respect to public safety, the Reset Cabinet identified the need to comprehensively restructure Oregon's current sentencing system.

This Order convenes the leaders of the three branches of state government as the Commission on Public Safety. The Commission shall collect, review and evaluate arrest, conviction, sentencing and recidivism data in order to develop recommendations for comprehensive sentencing reform for consideration by the state legislature and people of Oregon. The Commission is an opportunity for the heads of the three branches of government as well as the citizens of Oregon to take stock of our current public safety system with its successes and challenges and to chart a path for the future.

In addressing public safety policy, the Commission must focus on four core outcomes: the safety of our citizens in their homes and communities, accountability for criminal offenses, an efficient system that controls costs, and a system that is also smart and fair. Any concepts developed must put the safety of our citizens as the top priority and also ensure that individuals who commit crimes are held accountable for their conduct. At the same time, we must focus on building a smart and efficient system that maximizes our public safety dollars in light of the current economic environment.

In the 2011-13 biennium, Oregon will face a multi-billion dollar deficit and substantial general fund cuts. In the midst of this economic crisis, we must take a strategic look at our sentencing policies. With limited dollars, we must ensure the public's safety by making smart investments across our adult and juvenile justice system, including law enforcement, courts, local jails, state prisons, community corrections and other critical public safety partners.

Since the last comprehensive review of sentencing policy in 1989, our current sentencing structure has been developed by separate legislative actions and ballot measures. These two processes have created policies that are independent, and in some cases, inconsistent with each other and with little uniformity between the two.

Further, as a result of the incarceration costs of our current sentencing policies, Oregon faces the untenable choice of having to fund its prisons or educate our children. With hard economic realities, we must be more strategic and take a broad look at our current public safety system. The Commission will design specific concepts to implement the best use of our limited public safety dollars that will most effectively keep our citizens' safe and further justice in an efficient manner.

NOW THEREFORE, IT IS HERE BY DIRECTED AND ORDERED:

1. The Governor's Commission on Public Safety (Commission) is hereby established.

2. The Commission shall consist of no more than six (6) members, who shall be appointed as follows:

a. The Chief Justice of the Oregon Supreme Court or his designee, appointed by the Chief Justice;

b. The Governor of Oregon or his designee, appointed by the Governor;

c. The Speaker of the Oregon House of Representatives, or the Speaker's designee, appointed by the Speaker;

d. The President of the Oregon Senate, or the President's designee, appointed by the Senate President;

e. A member of the Oregon House of Representatives who is also not a member of the same political party as the Speaker, appointed by the Speaker;

f. A member of the Oregon Senate who is also not a member of the same political party as the President, appointed by the President;

g. In the event that there are Co-Speakers of the Oregon House of Representatives, subparagraphs c. and e. will become inoperative and in their place each Co-Speaker of the Oregon House of Representatives or their respective designees as appointed by each Co-Speaker shall be appointed to serve on the commission.

3. The Chair of the Oregon Criminal Justice Commission shall be a non-voting member and the Director and Executive Secretary of the Commission.

4. All members shall serve at the pleasure of their appointing authorities. The chair of the Commission will be appointed by the Governor and will serve at the pleasure of the Governor. The chair shall develop a work plan, set the agenda and provide leadership and direction for the Commission.

5. A quorum for Commission meetings shall consist of a majority of the appointed members. The Commission shall approve measures on an affirmative vote of a majority of voting members appointed to the Commission.

6. The Commission shall lead and coordinate a process to collect, review and evaluate criminal justice data to determine a public safety policy that both protects the public's safety and is cost-effective. This is to be a long-term effort to both develop public safety policy as well as evaluate its effectiveness. Before developing the specific policy concepts called for in the next paragraph, the Commission shall develop a consistent set of definitions for terms for which there have been competing meanings. In this manner, the Commission's definition of terms will serve as a common baseline from which policy makers and the public can make informed decisions on sentencing policy. Additionally, the Commission shall also develop an outreach strategy to educate Oregonians about the public safety system and impacts of our current policies. The Commission, at a minimum, shall work with state and local governments, Oregon universities, the Criminal Justice Commission, the State Department of Justice, and businesses to implement the data collection, review, evaluation and outreach strategy.

7. The Commission shall develop specific concepts on comprehensive public safety policy for consideration of the public and policy makers that are informed by the recommendations of the Reset Cabinet.

8. In developing its proposals for the three branches of government and the public, the Commission may form workgroups as deemed necessary by the Chair. Workgroups may include members of the public, interested parties, and public safety stakeholders who are not members of the Commission. Any workgroup created will be given a specific charge by the Chair. The Commission will consider proposals and opinions of any workgroups it establishes but it is the Commission that shall be ultimately responsible for making final recommendations consistent with its charge and scope.

9. The Commission shall produce a written report no later than December 15, 2011. The report will include conceptual proposals for the consideration of the public and policy-makers.

10. The Oregon Criminal Justice Commission and the Oregon Department of Corrections shall provide staff support for the Commission. If the Commission requires assistance of any other State agency, then such agency shall provide assistance to the Commission upon request.

11. The members of the Commission shall not receive per diem for their activities as members of the Commission, but may be reimbursed for expenses incurred in attending Commission business pursuant to ORS 292.495(2), subject to availability of funds.

12. This Order expires on December 31, 2011.

Done at Salem, Oregon, this 9th day of December, 2010.

/s/ Theodore R. Kulongoski
Theodore R. Kulongoski
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 10 - 13

RECOVERY PLANNING ASSISTANCE FOR THE CITY OF AUMSVILLE AND MARION COUNTY DUE TO A TORNADO

This week, severe weather, including the occurrence of a tornado, extremely high winds and heavy rain created a threat to life, safety and property in the City of Aumsville and surrounding area of

Marion County. On December 14, 2010, a short-lived yet unusually severe storm caused high winds that resulted in power outages, significant property and infrastructure damage, and debris in the area surrounding the City of Aumsville. Because of these circumstances and property and infrastructure damage to areas of Marion County, there is a need for a coordinated recovery effort.

IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Military Department's Office of Emergency Management (OEM) shall continue to implement the State's Emergency Operations Plan, and coordinate with the appropriate state and local agencies impacted by this severe weather event.

2. The Oregon National Guard shall provide the necessary manpower and equipment required to respond to requests from Marion County received by the OEM to facilitate response and recovery efforts to and from this severe weather event.

3. The Oregon State Police shall provide the necessary manpower and equipment required to respond to requests from Marion County received by the OEM, or otherwise by mutual aid agreement, to facilitate response and recovery efforts to and from this severe weather event.

4. The Oregon Department of Transportation shall provide the necessary manpower and equipment required to respond to requests from Marion County received by the OEM, or otherwise in place by mutual aid agreement, to facilitate response and recovery efforts to and from this severe weather event.

5. Oregon Public Utility Commission shall provide the necessary manpower and equipment required to respond to requests from Marion County received by the OEM, or otherwise in place by mutual aid agreement, to facilitate response and recovery efforts to and from this severe weather event.

6. The Oregon Military Department, after consultation with appropriate Marion County and City of Aumsville officials, shall assess the overall property damages resulting from this severe weather event, as well as the ability of Marion County and the City of Aumsville to implement a recovery plan in response to the situation.

7. The Oregon Military Department shall report its findings and make a recommendation to me by December 30, 2010 as to whether to activate the Recovery Planning Cell pursuant to Executive Order No. 08-20.

Done at Salem, Oregon, this 16th day of December, 2010.

/s/ Theodore R. Kulongoski
Theodore R. Kulongoski
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

NOTICE OF SELECTED SOURCE CONTROL ACTION, SELECTED STORMWATER SOURCE CONTROL MEASURES FOR EVRAZ OREGON STEEL MILLS

PROJECT LOCATION: 14400 N Rivergate Blvd., Portland, OR
DECISION: The Department of Environmental Quality selected stormwater source control measures for the Evraz Oregon Steel Mills site to significantly reduce potential sources of contamination to the Willamette River. These measures include end-of-pipe stormwater treatment and best management practices to prevent contaminated stormwater from entering the Willamette River. The measures also include contaminated soil removal and capping some areas of contaminated soils. DEQ has concluded that this combination of actions will control site contaminant sources that would otherwise be discharged to the Willamette River via Evraz's stormwater system.
HIGHLIGHTS: The Evraz facility is located on approximately145 acres at River Mile 2 on the east shore of the Willamette River. The property is part of the Portland Harbor Superfund Site study area. The property was vacant prior to 1942. Between 1942 and 1967, the Port of Portland owned the site and used it for ship bilge water disposal. Evraz (formerly Gilmore Steel Mills) purchased the site in 1967 and built a steel mill on the site that continues to operate today.

Environmental investigations of the site conducted since 2001 revealed a variety of contaminants in the surface soil and groundwater. These investigations identified contamination in three primary areas pertinent to the stormwater pathway: contaminated surface soil that may be carried in stormwater runoff, storm system sediments, and groundwater that may infiltrate the stormwater system piping.

In addition to the stormwater controls described above, DEQ is developing proposals to address erosion of contaminated bank soils, contaminated groundwater migration, and risks to site workers from contaminated soil on the property.

The company has already performed the following environmental cleanup measures to reduce stormwater runoff contamination from discharging to the river:

- removed the most contaminated soil from several areas
- capped large areas of the facility with new construction to eliminate contact between contaminated soils and stormwater runoff
- installed in-ground treatment systems that remove solids from stormwater
- installed bioswales, which increase infiltration of stormwater
- implemented best management practices including covering site activities that might generate pollution, regulating the sweeping of paved areas, and employee education on maintaining proper stormwater management
- routed the majority of the site's stormwater to a clarification basin before discharging runoff into the Willamette

DEQ has concluded that these measures will control contaminant discharge to the Willamette River consistent with Oregon rule and statute and when properly implemented, are protective of public health and the environment.

A DEQ staff report outlining the proposed source control action was made available for public review from November 1 to 30, 2010. Comments were received from the City of Portland supporting the proposed measures and identifying clarifications to wording and a figure in the report. DEQ has addressed those clarifications in the Record of Decision.
THE NEXT STEP: DEQ and Evraz Oregon Steel are conducting design stage evaluations to assess any impacts associated with the coagulant used in the end-of-pipe treatment system and to evaluate post treatment contaminant loading to the river via stormwater. These studies are expected to be completed in 2011 and will provide the basis for finalizing treatment system implementation. Evraz will also develop a long-term monitoring and maintenance plan for the stormwater management system.
FOR MORE INFORMATION: http://www.deq.state.or.us/webdocs/forms/output/fpcontroller.ashx?sourceid=141&sourceIDTYPe=11

Project documents are available at DEQ's Northwest Region office. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach 503-229-5696 or toll free in Oregon at 1-800-452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call DEQ's 711.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTON FOR FORMER SCHLESSER COMPANY FACILITY

COMMENTS DUE: February 2, 2011
PROJECT LOCATION: 2501 and 2503 South Columbia Blvd., Portland, OR
PROPOSAL: The Department of Environmental Quality (DEQ) invites public comment on a remedial action completed at the Former Schlesser Site and DEQ's proposal to issue a No Further Action determination for the site.
HIGHLIGHTS: The Site is located in an industrialized portion of north Portland, approximately 1,100 feet south of Columbia Slough. Historical Site use included the following: 1897 to 1905, undeveloped; 1928 to 1974, residential use; and 1974 to 2008, use by the Schlesser Company. The Schlesser Company had operated a wood products manufacturing facility. The site was sold to DSM Holding in 2009 and Specialty Metal Fabricators currently operates a sheet metal fabrication business on the subject property.

Site investigations from 2008 to 2010 resulted in the excavation and disposal of 34.5 tons of soils that exceeded risk based concentrations. With one exception, all surficial soils remaining are below relevant risk criteria for occupational and construction/excavation worker exposures. DEQ approves leaving the remaining subsurface soil contamination in place, assuming the controls described below are in place. Shallow ground water is not currently used and future use is unlikely due to existing zoning and city water availability. Ground water does not exceed current risk criteria.

Based on the review of site information, DEQ proposes that no further action is required to address environmental contamination at the Site provided the Underground Injection Control registration and institutional controls described below are maintained:

- Completion of Underground Injection Control registration for Dry Well #2,
- Prohibition of the use of groundwater,
- Prohibition of the soil excavation without DEQ approval.

HOW TO COMMENT: To review project records, contact Dawn Weinberger at (503) 229-6729. The DEQ project manager is Jim Orr (503-229-5039). Send written comments to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by February 2, 2010. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more. The DEQ staff report for this site may be reviewed at:

http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=5281&SourceIdType=11
THE NEXT STEP: DEQ will consider all comments received and make a final decision after consideration of these comments.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

REQUEST FOR COMMENTS
RECOMMENDED REMEDIAL ACTION
MERIT OIL USA/FUEL PROCESSORS, SITE

COMMENTS DUE: February 3, 2011
PROJECT LOCATION: 4150 N. Suttle Road, Portland, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) issues this notice of a recommended remedial action for soil and sediment at the Merit Oil Use/Fuel Processors Inc. site. DEQ will consider public comment in finalizing its selection of a final remedy.
HIGHLIGHTS: The Merit Oil USA/Fuel Processors Inc. site is comprised of five tax lots covering 6.7 acres at 4150 N. Suttle Road in Portland. The southern portion of the site is constructed of approximately 10 feet of fill emplaced in a wetland in the 1980s, referred to as the panhandle area. The adjacent wetland is a separate tax parcel totaling 1.7 acres.

Since 1976 used-oil processing and recycling has been conducted at the site. Solvent recovery, foundry sand recycling, and tire gasification operations also were conducted. A number of petroleum-based releases from a wastewater pond occurred at the site in the mid-1980s and impacted the adjacent wetlands. Cleanups were conducted following the releases and appear to have removed the majority of petroleum-related contamination based on subsequent site investigation results.

Fill placed at the site contains aluminum dross, a waste product produced when refining aluminum, and foundry sands. Elevated levels of metals such as lead and zinc are associated with the fill material. Erosion and overland stormwater runoff deposited fill material into wetland habitat adjacent to the property, including property owned by the Burlington Northern-Sante Fe Railroad. The elevated metal concentrations in wetland sediment pose a significant risk to wildlife that uses the wetlands.

The selected remedial action addresses potential unacceptable risk to human health and ecological receptors and includes partial removal and capping of impacted wetland sediment, off-site disposal of site media exceeding hotspot concentrations, and consolidation of other lesser contaminated sediment/soil on top of the panhandle where it will be capped with clean soil. Natural vegetation will be restored in both the wetlands and upland areas and storm water controls will be installed to prevent future erosional runoff.

The operations area of the site is currently covered with buildings, process equipment or pavement that precludes worker direct contact with soil contamination in this area of the site. Remediation and/or further investigation of the operational area will be deferred until the site is re-developed and/or site use changes. Engineering and institutional controls will be implemented to maintain the cap placed in the panhandle and wetland areas, and preserve current protective conditions in the upland through restricting site development that could result in unacceptable risk to future site workers.
HOW TO COMMENT: To access additional detail on the site, please view the DEQ Staff Report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet at http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp. Enter 673 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 673 in the Site ID/Info column. Next, click on the staff report under Site Documents. You can review the administrative record for the proposed conditional no further action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 S.W. Fourth Ave., Suite 400, Portland, Oregon, 97201 or via email at: pugh.mark@deq.state.or.us. **DEQ must receive written comments by 5 p.m. on February 3, 2011.**

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more, requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.
THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a conditional No Further Action for the site.

PUBLIC NOTICE
DEQ APPROVES CLEANUP AT
MACADAM LANDING SITE

PROJECT LOCATION: 6633-6639 SW Macadam Avenue, Portland, Oregon

The Department of Environmental Quality has approved an environmental cleanup conducted at 6633-6639 SW Macadam Avenue in Portland. The site has been used as a commercial property since 1954. The property is zoned storefront commercial, and future use is likely to remain commercial. The current zoning also allows for residential use.

Petroleum impacted soils were observed during redevelopment activities in 2008. Following soil sampling, approximately 863 tons of contaminated soil was removed from the property. Sampling conducted following the soil removal showed remaining levels of petroleum contamination below levels that would pose a risk to human health and the environment based on commercial use of the property. However, remaining contamination exceeds protective levels for residential use of the property. Therefore, DEQ required an easement and equitable servitude to be filed with the Multnomah County Recorder of Deeds that restricts residential use of the property. The property use restriction was filed with the County on November 19, 2010.

DEQ has determined that, given the current and reasonably likely future land use, the environmental conditions are protective of human health and the environment, provided the restrictions presented in the easement and equitable servitude are not violated. Therefore no further action is required.

A public comment period was held from September 1, 2010 to September 30, 2010. No comments were received.

REQUEST FOR COMMENTS
PROPOSED APPROVAL OF CLEANUP AT
THE FORMER CARCO (NOW VANCOUVER IRON
AND STEEL) FACILITY, PORTLAND, OREGON

COMMENTS DUE: 5pm, January 31, 2011
PROJECT LOCATION: 866 and 900 N. Columbia Blvd., Portland, Oregon
PROPOSAL: The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" (CNFA) determination based on results of site investigation and remedial activities performed at the former CARCO facility located on N. Columbia Blvd. in Portland, Oregon. DEQ has determined that current Best Management Practices appear to be adequate to control stormwater contaminant releases at the facility and remaining areas of soil with hazardous substance contamination are adequately controlled by capping, or cover and do not pose risks to human health and the environment exceeding the acceptable risk level defined in ORS 465.315. DEQ is therefore proposing issuance of a Conditional No Further Action determination for the facility. This decision excludes contamination that may have left the site in the past via stormwater and traveled to the Columbia Slough.
HIGHLIGHTS: The facility has been in industrial use since the 1920s. Past activities at the facility include tire manufacturing, pipe fitting, iron and steel casting. In November 1989 a 15,000-gallon coal

tar UST, located on the south side of the plant building, was removed along with 111 tons of contaminated soil. In 1998 an additional 486 tons of soil was removed from the coal-tar tank excavation area. In 2006 a groundwater investigation was performed and only low concentrations of polynuclear aromatic hydrocarbon and volatile organic compounds were found. Much of this contamination was likely related to a former dry well that was removed in 1991. In 2007 DEQ concluded that groundwater contamination was below risk levels and no more investigation was necessary.

Stormwater at the site has recently been investigated. Metals and PCBs were found in stormwater solids and stormwater leaving the site. Metals are related to casting sand used throughout the site and PCBs are apparently related to the large transformers located at the facility. Thorough site surface cleaning was undertaken and PCB-contaminated soil in a transformer enclosure was removed. If stormwater best management practices are maintained then future stormwater runoff should meet permit benchmarks. Areas of remaining contaminated soil are covered by buildings or asphalt and a deed restriction would require that these areas remain covered.

DEQ concludes that environmental conditions at the site do not pose an unacceptable risk to human health and the environment, and therefore, meet the requirements of the Oregon Environmental Cleanup Laws.

HOW TO COMMENT: DEQ's Staff Report for the CARCO site and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Summary information and a copy of the Staff Report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet; go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter 3389 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 3389 in the Site ID/Info column. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at williams.robert.k@deq.state.or.us. To be considered, DEQ must receive written comments by 5 pm on January 31, 2011. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the "Conditional No Further Action" determination. In the absence of comments, DEQ will issue the No Further Action determination for the CARCO site.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-6488 or toll free in Oregon at (800) 452-4011; fax to 503-229-6945; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call the Oregon Telecommunications Relay Service 1-800-735-2900 number.

PROPOSED NO FURTHER ACTION AT OREMET SUBSTATION — ALBANY, OREGON

COMMENTS DUE: January 31, 2011

PROJECT LOCATION: Oremet Substation, at approximate address of 243 34th Avenue SW, Albany, Oregon. The site is south of Southwest 34th Avenue and east of the Albany Lebanon Canal on tax lot number 501 in Township 11 south, Range 3 west in Section 18 in Linn County, Oregon.

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for PCBs and petroleum-contaminated soil at the Oremet Substation in Albany.

BACKGROUND: For detailed project information please see a copy of PacificCorp's November 2010 report on DEQ's website at: http://www.deq.state.or.us/wdr/?p=30300

The site is an active PacificCorp electrical substation that serves the community of Albany, Oregon. On April 10, 2008 a release of approximately five gallons of polychlorinated biphenyl (PCB)-containing mineral oil was observed next to a transformer during routine maintenance at the Oremet Substation. After reporting the release to the National Response Center, PacificCorp's contractor removed the stained soil around the transformer and disposed it at the Riverbend Landfill in McMinnville. Final confirmation soil samples had no detections of PCBs, and a detection of Total Petroleum Hydrocarbons was found in one soil sample at a maximum level of 624 ppm. Groundwater sampling from boreholes advanced next to the transformer ruled out shallow groundwater impacts from either PCBs or petroleum. Oregon DEQ guidance addresses generic remedies for PCB releases at electrical substations. The generic remedy includes excavation to a PCB cleanup level of 7.5 ppm and offsite disposal at an approved landfill. PacificCorp's 2008 removal action at the site met these criteria. The remaining maximum petroleum hydrocarbon level is well below DEQ's most stringent risk-based cleanup level of 9,800 ppm. Therefore, DEQ has determined that PCB and petroleum contamination from the 2008 release does not pose a threat to human health or the environment.

DEQ proposes that no further action is necessary at this site to investigate or cleanup PCB and petroleum contaminated soil.

HOW TO COMMENT: The project files may be reviewed by appointment at DEQ's Eugene office, 165 East 7th Street, Eugene. Written comments must be received by January 31, 2010. Comments should be submitted to DEQ's Eugene office, 165 East 7th Street, Eugene, OR 97401 or by e-mail at aitken.greg@deq.state.or.us. Questions may also be directed to Greg Aitken at the Eugene address or by calling him at 1-800-844-8467 ext 7361. The TTY number for the hearing impaired is 541-687-5603.

THE NEXT STEP: DEQ will consider all public comments before taking final action on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

REQUEST FOR COMMENTS RECOMMENDATION FOR NO FURTHER CLEANUP ACTION, LUCIA COMMUNITY SITE, EUGENE

COMMENTS DUE: 5 pm, January 31, 2011

PROJECT LOCATION: 2710 Friendly Street, Eugene

PROPOSAL: Per OAR 340-120-0078, a 30-day public comment period is required before DEQ can approve a No Further Action Determination for a cleanup project. Lucia Community, LLC conducted assessment and cleanup of petroleum contamination at the Friendly Street site. DEQ is recommending that no further action is necessary to address contaminants in shallow soil originating from historical automobile repair activities at the site.

HIGHLIGHTS: The current property owner, Lucia Community, LLC is planning a multi-use development consisting of residential and commercial facilities at the Friendly Street site. Historically, the property was used for automobile repair which was most recently operated under the name Transmission Specialists. Earlier waste oil collection, storage, and on-site disposal through a waste oil burner, and a leaking hydraulic hoist resulted in petroleum contamination in shallow soil.

Between 1990 and 1997, several assessments were conducted to define the magnitude and extent of contamination. In July 2010, Lucia Community, LLC performed a cleanup consisting of the removal of approximately 71 tons of petroleum-contaminated soil followed by additional confirmation sampling. Confirmation sampling showed that very limited contamination remains at the site. Residual contamination is well below safe cleanup levels and does not pose a risk to future occupants of the site.

DEQ is recommending no further action for assessment or cleanup of petroleum contamination at the site. DEQ is soliciting public comment on the recommendation. A summary report presenting details of the cleanup project along with a basis for DEQ's recommendation, is available for review during the month of January 2011.

HOW TO COMMENT: The summary report is available for review electronically by going online to the Environmental Cleanup Site Inventory (ECSI) at http://www.deq.state.or.us/lq/ecsi/ecsi.htm and entering ECSI site #1357. There will be a link to the Site Summary Report. An electronic copy of the report can be emailed if requested. The report can be viewed in person at the DEQ Eugene office by appointment by contacting the DEQ project manager, Bryn Thoms at 541-687-7424 or at thoms.bryn@deq.state.or.us. The Eugene office address is 165 E. 7th Avenue, Suite 100, Eugene, OR 97401.

Comments on the proposed cleanup need to be received by the Eugene Office, attn: Bryn Thoms, no later than 5 pm on January 31, 2011. Fax or email comments are acceptable.

THE NEXT STEP: The comments will be addressed upon completion of the comment period. Once the comments have been adequately addressed, the DEQ may approve, modify, or recommend that additional work is needed.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call Oregon Telecommunications Relay Service 1-800-735-2900.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

The following agencies provide Notice of Proposed Rulemaking to offer interested parties reasonable opportunity to submit data or views on proposed rulemaking activity. To expedite the rulemaking process, many agencies have set the time and place for a hearing in the notice. Copies of rulemaking materials may be obtained from the Rules Coordinator at the address and telephone number indicated.

Public comment may be submitted in writing directly to an agency or presented orally or in writing at the rulemaking hearing. Written comment must be submitted to an agency by 5:00 p.m. on the Last Day for Comment listed, unless a different time of day is specified. Written and oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

Agencies providing notice request public comment on whether other options should be considered for achieving a proposed administrative rule's substantive goals while reducing negative economic impact of the rule on business.

In Notices of Proposed Rulemaking where no hearing has been set, a hearing may be requested by 10 or more people or by an association with 10 or more members. Agencies must receive requests for a public rulemaking hearing in writing within 21 days following notice publication in the *Oregon Bulletin* or 28 days from the date notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received by an agency, notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**Auxiliary aids for persons with disabilities are available upon advance request*. Contact the agency Rules Coordinator listed in the notice information.

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Board of Examiners for Speech-Language Pathology and Audiology
Chapter 335

Rule Caption: Clarifies equivalent licensing requirements, delinquency fees, SLPA supervisor qualifications; changes renewal deadline; addresses written exceptions.

Date:	Time:	Location:
1-19-11	4 p.m.	800 NE Oregon St., Rm. 445 Portland, OR 97232

Hearing Officer: Sandy Leybold
Stat. Auth.: ORS 681
Stats. Implemented: ORS 681
Proposed Amendments: 335-001-0009, 335-060-0005, 335-060-0010, 335-060-0030, 335-070-0020, 335-070-0055, 335-070-0085, 335-095-0030, 335-095-0040
Proposed Repeals: 335-095-0055
Last Date for Comment: 1-20-11
Summary: • Defines equivalent credentials for licensure.

• Clarifies under what circumstances delinquent fees will or may be charged for rule infractions.

• Makes permanent previous temporary rules regarding elimination of "Permit to Supervise SLPAs" and its associated fee.

• Makes permanent previous temporary rules regarding qualifications and conditions for SLPA supervision.

• Moves license renewal deadline to December 31st of odd-numbered years to create one-month period between renewal deadline and expiration date of previous license.

• Changes professional development hours required for reactivation of recently expired licenses to conform to those of renewed licenses.

• Conforms rule regarding filing written exceptions and argument to the Administrative Procedures Act.

• Changes miscellaneous text for clarity.

Rules Coordinator: Sandy Leybold
Address: Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0220

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Rule corrections and updates; doctoral program accreditation requirement; equivalency of foreign degrees.
Stat. Auth.: ORS 675.010–675.150
Stats. Implemented: ORS 675.110(17)
Proposed Amendments: 858-010-0007, 858-010-0010, 858-010-0015, 858-010-0036, 858-010-0039
Last Date for Comment: 1-22-11, Close of Business
Summary: Removes regional accreditation for doctoral degree program as a qualification for psychologist licensure and replaces with doctoral degree program equivalent to American Psychological Association accreditation as a qualification for a psychologist licensure; adds foreign degree equivalency determination by Board approved credentialing body as a qualification for psychologist licensure; other minor housekeeping items.
Rules Coordinator: Debra Orman McHugh
Address: 3218 Prinlge Rd. SE, Suite 130; Salem, OR 97302
Telephone: (503) 378-4154

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Columbia River Gorge Commission
Chapter 350

Rule Caption: Amending existing rules to clarify and streamline processes for commission and other uses.

Date:	Time:	Location:
2-8-11	9 a.m.	Multnomah County Rural Fire Prot. Dist. #14 36930 E Historic Columbia River Hwy. Corbett, OR 97019

Hearing Officer: Staff
Stat. Auth.: ORS 196.150
Other Auth.: RCW 43.97.015; 16 USC § 544e
Stats. Implemented: ORS 196.150, RCW 43.97.015; 16 USC § 544e
Proposed Adoptions: 350-040-0055, 350-060-0046, 350-060-0047, 350-081-0017
Proposed Amendments: 350-030-0015, 350-030-0020, 350-030-0025, 350-030-0030, 350-030-0060, 350-030-0080, 350-040-0010, 350-040-0020, 350-040-0050, 350-040-0060, 350-040-0065, 350-040-0070, 350-040-0080, 350-050-0020, 350-050-0035, 350-050-0040, 350-050-0045, 350-050-0060, 350-050-0070, 350-050-0080, 350-050-0085, 350-050-0090, 350-050-0100, 350-060-0040, 350-060-0042, 350-060-0045, 350-060-0050, 350-060-0055, 350-060-0060, 350-060-0070, 350-060-0080, 350-060-0100, 350-060-0110, 350-060-0120, 350-060-0130, 350-060-0160, 350-060-0170, 350-060-0190, 350-060-0200, 350-060-0205, 350-060-0210, 350-060-0220, 350-070-0040, 350-070-0042, 350-060-0045, 350-070-0050, 350-070-0070, 350-070-0080, 350-081-0020, 350-081-0082, 350-081-0540, 350-081-0560, 350-081-0570, 350-081-0580, 350-081-0590
Last Date for Comment: 2-1-11
Summary: Changes to All Rules except 350-081 are being made to clarify and streamline internal Commission processes and process for users of Commission rules These changes are needed to reduce workload for Commission staff as a result of its significantly reduced budget during the past biennium and going forward. Changes to rule 350-081 are required by remand from the Oregon Court of Appeals and Oregon Supreme Court and a settlement agreement in another pending litigation matter. Interested persons may contact the Commission Office for copies of the relevant court decisions. These changes resulting from the court decisions have been adopted into the management plan for the National Scenic Area and received the concurrence of the Secretary of Agriculture. The changes resulting

from the settlement agreement are procedural for users and commission staff.
Rules Coordinator: Nancy A. Andring
Address: Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672
Telephone: (509) 493-3323

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Department of Administrative Services
Chapter 125

Rule Caption: Revision of rules setting standard, policies, and governance structures for state agency internal audit functions.

Date:	Time:	Location:
1-19-11	9 a.m.**	155 Cottage St. NE Conference Rm. A Salem, OR 97301

Hearing Officer: Pamela Stroebel Valencia
Stat. Auth.: ORS 184.360
Stats. Implemented: ORS 184.360
Proposed Adoptions: 125-700-0120, 125-700-0125, 125-700-0130, 125-700-0135, 125-700-0140, 125-700-0145, 125-700-0150, 125-700-0155
Proposed Amendments: 125-700-0015
Proposed Repeals: 125-700-0012, 125-700-0020, 125-700-0025, 125-700-0030, 125-700-0035, 125-700-0040, 125-700-0045, 125-700-0050, 125-700-0055, 125-700-0060
Last Date for Comment: 1-19-11, 5 p.m.
Summary: **If no parties appear to testify by 9:30 a.m. the hearing will end.

The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. Revisions to rule 125-700-0015 and adoption of rules 125-700-0120 through 125-700-0155 revise and create policies and governance structures that are recommended for internal audit functions within state government. These rules now align the policies and governance structures more closely with professional auditing standards.
Rules Coordinator: Jeffery Kohlleppel
Address: 155 Cottage St. NE, U90, Salem, OR 97301
Telephone: (503) 378-2349, ext. 325

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Department of Administrative Services,
Oregon Educators Benefit Board
Chapter 111

Rule Caption: Amendments to procurement and contracting rules per DOJ review.

Date:	Time:	Location:
1-20-11	10 a.m.	PEBB/OEBB Boardroom 1225 Ferry St. SE Salem, OR 97301

Hearing Officer: OEBB Staff
Stat. Auth.: ORS 243.860–243.886
Stats. Implemented: ORS 243.864
Proposed Adoptions: 111-005-0047, 111-005-0055, 111-005-0080
Proposed Amendments: 111-005-0010, 111-005-0015, 111-005-0020, 111-005-0040, 111-005-0042, 111-005-0044, 111-005-0046, 111-005-0050, 111-005-0070
Proposed Repeals: 111-005-0060
Last Date for Comment: 1-31-11, 5 p.m.
Summary: All amendments made to OEBB's Division 5 are changes that were reviewed by DOJ. These amendments clarify that the DOJ Model Public Contract Rules apply when OEBB's and DAS' procurement and contracting rules do not. In addition, amendments made to Division 5 have been updated to reflect the more detailed standards now found in the states public contracting and procurement rules and statutes.
Rules Coordinator: April Kelly
Address: 1225 Ferry Street SE, Salem, OR 97301
Telephone: (503) 378-6588

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Rule Caption: Amended to update and incorporate policies and By-laws into rule.

Date:	Time:	Location:
1-20-11	10 a.m.	PEBB/OEBB Boardroom 1225 Ferry St. SE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 243.864–243.886
Stats. Implemented: ORS 243.864
Proposed Amendments: 111-002-0005
Last Date for Comment: 1-31-11, 5 p.m.
Summary: The amendments to 111-002-0005 include early retirees and dependents as well as the educational entities that we provide services to and ultimately impact. Other amendments to this rule also include statements about what authority may be delegated to staff. Previously, this was in the OEBB By-laws but did not exist in rule. These amendments incorporate into rule several statements that are written in policy or the Board By-laws. Based upon this new knowledge and review of our rules, it was determined that it is very important to include several statements that guide our administrative processes into rule. All amendments have been reviewed by DOJ.
Rules Coordinator: April Kelly
Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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Department of Consumer and Business Services,
Building Codes Division
Chapter 918

Rule Caption: Adopts carbon monoxide alarm provisions amend the 2008 ORSC and 2010 OSSC.

Date:	Time:	Location:
1-18-11	10 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Richard Rogers
Stat. Auth.: ORS 447.231, 447247, 455.020, 455.030, 455.110, 455.112, 455.360, 455.525 & 455.610
Stats. Implemented: ORS 447.247, 455.110, 455.360, 455.112 & 455.610
Proposed Amendments: 918-460-0015, 918-480-0010
Last Date for Comment: 1-21-11, 5 p.m.
Summary: These proposed rules implement a portion of House Bill 3450, approved by the 2009 Legislature, known as the Lofgren and Zander Memorial Act. The bill requires carbon monoxide alarms to be installed in Group R structures (as identified in Section 315 of the Oregon Structural Specialty Code) that is either new construction or undergoes reconstruction, alteration or repair where a building permit is required. Group R structures are regulated under either the Oregon Structural Specialty Code (OSSC) or the Oregon residential Specialty Code (ORSC). The bill requires that these provisions become effective April 1, 2011 amending both the 2010 OSSC and the 2008 ORSC, including Appendix N in the 2010 OSSC for low-rise residential apartments.
Rules Coordinator: Stephanie Snyder
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Rule Caption: Adopts structural and mechanical code provisions for the 2011 Oregon Residential Specialty Code.

Date:	Time:	Location:
1-18-11	9 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Richard Rogers

Stat. Auth.: ORS 183.335, 455.020, 455.030, 455.055, 455.110, 455.380, 455.525, 455.610 & 455.628
Other Auth.: 2009 OL Ch. 750 & 2010 OL Ch. 83
Stats. Implemented: ORS 183.335, 455.020, 455.055, 455.210, 455.525, 455.610, 455.628
Proposed Adoptions: Rules in 918-480
Proposed Amendments: Rules in 918-001, 918-480
Proposed Repeals: Rules in 918-001, 918-480
Last Date for Comment: 1-21-11, 5 p.m.
Summary: These proposed rules adopt the structural and mechanical code provisions of the 2011 Oregon Residential Specialty Code. The structural and mechanical provisions are from the 2009 edition of the international residential Code with Oregon amendments. These rules also amend Appendix N, which is applicable to low-rise residential apartments and located in the 2010 Oregon structural Specialty Code. Additionally, these proposed rules include some non-substantive housekeeping changes to administrative rules that provide clarity and consistency among the division's rules.
Rules Coordinator: Stephanie Snyder
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Rule Caption: Adopts the 2011 Oregon Plumbing Specialty Code and low-rise plumbing provisions of 2011 Oregon residential Specialty Code.

Date:	Time:	Location:
1-27-11	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Terry Swisher
Stat. Auth.: ORS 183.341, 447.010, 447.020, 455.020, 455.030, 455.110, 455.380, 455.525 & 693.103
Stats. Implemented: ORS 183.341, 447.010, 447.020, 455.020, 455.030, 455.110, 455.610 & 693.103
Proposed Adoptions: Rules in 918-480, 918-690, 918-750
Proposed Amendments: Rules in 918-480, 918-690, 918-750
Proposed Repeals: Rules in 918-480, 918-690, 918-750
Last Date for Comment: 1-28-11, 5 p.m.
Summary: These proposed rules adopt the 2011 Oregon Plumbing Specialty Code based upon 2009 edition of the Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials with Oregon specific amendments. These proposed rules also adopt the low-rise residential plumbing provision for the 2011 Oregon Residential Specialty Code. Additionally, the proposed rules include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the division's rules.
Rules Coordinator: Stephanie Snyder
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Department of Consumer and Business Services,
Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Amend the "Accredited Investor" rule definition to conform to recent changes in federal law.

Date:	Time:	Location:
1-21-11	9 a.m.	350 Winter St. NE Conference Rm. F Salem, OR

Hearing Officer: Lauren Winters
Stat. Auth.: ORS 59.285
Other Auth.: Section 413 of the Dodd-Frank Wall Street Reform & Consumer Protection Act (Dodd-Frank Act), Effective July 21, 2010
Stats. Implemented: ORS 59.035(5)
Proposed Amendments: 441-035-0010
Last Date for Comment: 1-28-11, 5 p.m.
Summary: The definition of an "accredited investor" under OAR 441-035-0010(5) is amended to exclude the value of a natural person's primary residence from the $1 million net worth calculation. The amended definition reflects the modification of the federal "accredited investor" definition under the Dodd-Frank Act.
Rules Coordinator: Shelley Greiner
Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301
Telephone: (503) 947-7484

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Department of Consumer and Business Services,
Insurance Division
Chapter 836

Rule Caption: Annual Financial Reports for Self-Insured Groups.

Date:	Time:	Location:
1-25-11	9:30 a.m.*	Labor & Industries Bldg., Conference Rm. E 350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 30.282 (6) & 731.036
Proposed Adoptions: 836-011-0250, 836-011-0253, 836-011-0255, 836-011-0258, 836-011-0260
Last Date for Comment: 2-1-11
Summary: *NOTE: The hearing will begin at 9:30 a.m. and end when all present who wish to testify have done so.

This rule will clarify the requirements for annual financial statements filed by self-insured groups comprising three or more public bodies. In particular it will specify how to calculate annual contributions, require the financial statement to be supported by an actuarial opinion, and provide a due date for filing an annual statement.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7272

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Rule Caption: Changes to Oregon Standard Health Statement.

Date:	Time:	Location:
2-3-11	10 a.m.*	350 Winter St. NE Conference Rm. E Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244 & 743.773
Stats. Implemented: ORS 743.745 & 743.766
Proposed Amendments: 836-053-0510
Last Date for Comment: 2-11-11
Summary: *NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so.

This rule is necessary to reflect the changes to the Oregon Standard Health Statement recommended by the Health Insurance Reform Advisory Committee (HIRAC) pursuant to ORS 743.766. The changes update the form to reflect the federal Affordable Care Act's rescission standard and its prohibition against insurers limiting or denying coverage for persons under the age of 19 because of health status or preexisting condition. The changes also include corrections of clerical errors, moving a notice to a more prominent location, and the inclusion of a HIRAC recommendation that insurers be allowed to review their own claims history for those applicants 19 years of age or older. The rule as amended refers to the Oregon Standard Health Statement as set forth on the State of Oregon Insurance Division's website at www.oregon.insurance.gov
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7272

Rule Caption: Annual Update of Rule Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices.
Stat. Auth.: ORS 731.244 & 743A.144
Stats. Implemented: ORS 743A.144
Proposed Amendments: 836-052-1000
Last Date for Comment: 2-15-11
Summary: This rulemaking adopts the annual update to the Insurance Division rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements ORS 743A.144, which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7272

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Department of Consumer and Business Services, Workers' Compensation Division
Chapter 436

Rule Caption: Amendments to rules affecting workers' compensation medical fee schedules and medical services.

Date:	Time:	Location:
1-18-11	1:30 p.m.*	Labor & Industries Bldg. 350 Winter St. NE Room F (basement) Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.726(4), 656.248, 656.325
Stats. Implemented: ORS 656, 656.248, 656.252, 656.254 & 656.325
Proposed Amendments: Rules in 436-009, 436-010-0230, 436-010-0265, 436-010-0290, 436-060-0095
Last Date for Comment: 1-20-11
Summary: *NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so.

Unless stated otherwise, references to "insurers" mean workers' compensation insurers and self-insured employers.

The agency proposes to amend OAR chapter 436, division 009. These proposed rules address:

• Adoption of updated medical fee schedules and resources for the payment of health care providers.

• Data that must be included on hospital inpatient and outpatient bills.

• Billing requirements and payment criteria for ambulatory surgery centers.

• Health care provider and payer communication regarding medical bills, including explanations of benefits that accompany payments or denials of payment.

• Inclusion of certain Healthcare Common Procedure Coding System (HCPCS) level II codes in the maximum allowable payment table (Appendix B).

• Maximum allowable payment when OAR 436-009 does not set a maximum.

• Documentation of time spent with a patient when constant attendance is required, affecting physical medicine codes.

• Payment for independent medical examinations.

• Maximum allowable payment for drugs based on wholesale acquisition cost or average wholesale price.

• Procedures and forms required for clinical justifications when health care providers prescribe certain drugs; results of failure by provider to submit timely justification.

• Prescription pricing guides to be used by insurers in calculating payment for drugs.

• Payment of interpreters when a worker fails to attend a medical appointment required by the insurer or the director.

The agency proposes to amend OAR chapter 436, division 010. These proposed rules address:

• Progress reporting by a physical therapist to the worker's attending physician and the insurer.

• The type and form of information the insurer must make available to the health care provider to give to the patient at a scheduled independent medical examination.

• Procedures for a worker to provide comments to the director about an independent medical examination or to file a complaint.

• Training requirements for health care providers to be included on the list of authorized independent medical examination providers.

The agency proposes to amend OAR chapter 436, division 060. These proposed rules address:

• The information an insurer must include with the independent medical examination appointment notice it sends to the worker.

Request for public comment: The Workers' Compensation Division requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions or requests for paper copies of the rules to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: http://wcd.oregon.gov/policy/rules/rules.html#proprules
Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7717

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Department of Corrections
Chapter 291

Rule Caption: Short-Term Transitional Leave for Inmates in DOC Institutions.
Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Proposed Amendments: 291-063-0010, 291-063-0016, 291-063-0030
Last Date for Comment: 1-24-11
Summary: These rule amendments are necessary to clarify and update the eligibility requirements and approval process for granting inmates short-term transitional leave. Other amendments are necessary for housekeeping issues and organizational changes within the department.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Mental Health Special Housing for Inmates in ODOC Institutions.
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-048-0230, 291-048-0240, 291-048-0270, 291-048-0280, 291-048-0320
Proposed Repeals: 291-048-0120, 291-048-0180
Proposed Ren. & Amends: 291-048-0100 to 291-048-0200, 291-048-0110 to 291-048-0210, 291-048-0115 to 291-048-0220, 291-048-0130 to 291-048-0250, 291-048-0140 to 291-048-0260, 291-048-0150 to 291-048-0290, 291-048-0160 to 291-048-0300, 291-048-0170 to 291-048-0310, 291-048-0190 to 291-048-0330
Last Date for Comment: 2-15-10
Summary: The department recognizes there are inmates it its facilities with significant mental health issues. Modification of these rules is necessary to safely manage and provide an environment oriented to mental health treatment of this high-risk inmate population.

Mental Health Special Housing is separate and apart from the general inmate population. These rules establish policy and procedures for assignment of an inmate to mental health special housing who, because of mental health issues, is unable to adjust in the general inmate population.

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Energy
Chapter 330

Rule Caption: Expands the renewable Portfolio Standard and address programmatic implementation issues.

Date:	Time:	Location:
1-25-11	9:30 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR

Hearing Officer: Michael Schopf
Stat. Auth.: ORS 469A.005–469A.210
Other Auth.: ORS 469.040(1)(d)
Stats. Implemented: ORS 469A.005–469A.210
Proposed Adoptions: 330-160-0040, 330-160-0050
Proposed Amendments: 330-160-0015, 330-160-0020, 330-160-0025, 330-160-0030
Last Date for Comment: 2-1-11
Summary: Pursuant to ORS 469A130, the Oregon Department of Energy (Department) is responsible for determining whether electricity generating units (GU's) are entitled to receive Oregon-eligible Renewable Energy Certificates (REC's). Oregon utilities are REC's to comply with their obligations under Oregon's Renewable Portfolio Standard (RPS). Previously, in OAR 330-160-0020, the Department selected the Western renewable Energy generation Information System (WREGIS) as the electronic tracking system for Oregon RECs. These rules carry out the amendments to ORS 469A in Or Laws 2010, Ch. 71 (HB 3649) (Special Session) and Or Laws 2010, Ch. 17 (HB 3674) (Special Session) that increased the number of GU's that may acquire Oregon REC's The rules also recognize a national organization to certify low-impact hydroelectric facilities as mandated in ORS 469A.020 and address other issues related to administering Oregon's RPS, including the potential failure of WREGIS's to create and track RECs associated with certain electricity.
Rules Coordinator: Kathy Stuttaford
Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301
Telephone: (503) 373-2127

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Department of Environmental Quality
Chapter 340

Rule Caption: Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies.

Date:	Time:	Location:
2-1-11	1 p.m.	Oregon Dept. of Transportation 63055 N. Hwy. 97 Bend, OR 97701
2-2-11	9 a.m.	DEQ Eugene Office 165 East 7th Ave., Suite 100 Eugene, OR 97401
2-2-11	6 p.m.	DEQ Medford Office 221 Stewart Ave., Suite 201 Medford, OR 97501
2-3-11	1:30 p.m.	City Hall, Council Chambers 500 Central Ave. Coos Bay, OR 97420
2-7-11	3:30 p.m.	Ontario City Hall 444 SW 4th St. Ontario, OR 97914
2-8-11	2 p.m.	St. Anthony's Hospital 1601 SE Court Ave. Pendleton, OR 97801
2-10-11	6 p.m.	DEQ Headquarters, Rm. EQC A 811 SW 6th Ave. Portland, OR 97204

Hearing Officer: Eric Nigg, Bobbie Lindberg, Bill Meyer/Jon Gasik, Pam Blake, Debra Sturdevant, Joanie Stevens-Schwenger
Stat. Auth.: ORS 468B.010, 468B.020, 468B.035, 468B.110, & 468.020
Stats. Implemented: ORS 468B.048
Proposed Adoptions: 340-041-0059, 340-045-0105
Proposed Amendments: 340-041-0007, 340-041-0033, 340-041-0061, 340-042-0040, 340-042-0080
Last Date for Comment: 2-18-11, 5 p.m. PST
Summary: DEQ uses Oregon's water quality standards to implement Clean Water Act programs, which includes assessing Oregon's water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily loads and water quality certifications. The proposed rules amend Oregon's water quality standards for toxic pollutants and other water quality standards and policies related to the application and implementation of the water quality standards in Clean Water Act and state nonpoint source control programs.

Proposed rule amendments:

Human health toxics criteria (OAR 340-041-0033): Revised numeric criteria based on an increased fish consumption rate of 175 grams per day. Criteria that are not based on a fish ingestion method are not revised. Additional criteria revisions incorporate EPA's 2002 criteria recommendations, which include added pollutants and revisions to other variables (such as toxicity factors) used to derive some criteria. The rule also specifies that the new criteria become effective upon approval by the Environmental Protection Agency.

Variance provision (OAR 340-041-0061(2) being moved to OAR 340-041-0059): Revised rule specifies procedures and requirements, including a pollutant reduction plan, to obtain a variance from water quality standards. A variance establishes alternate requirements for a discharger when it demonstrates that permit limits based on water quality standards cannot be met based on one of six justification factors. Variances require EPA approval.

Nonpoint source pollution (OAR 340-041-0007 and 340-041-0061): Revised water quality standards implementation rules pertaining to agriculture and forestry are proposed to make DEQ's rules consistent with state statutes affecting nonpoint sources of pollution.

Total maximum daily loads (TMDLs) (OAR 340-042-0040 and 340-042-0080): Makes DEQ's rules consistent with state statutes to allocate load limits to air and land sources of pollutants in establishing TMDLs.

Proposed new rules:

Intake credits (OAR 340-045-0105): New permitting provision that allows DEQ to account for background pollutants that are present in a discharger's intake water and pass through the facility as long as the discharge does not increase the mass or concentration of the pollutant.

Background pollutant allowance (OAR 340-041- 0033): New provision in the toxic substances water quality standards that allows a limited increase in the concentration of pollutants present in a discharger's intake water as long as the facility does not discharge added mass load of the pollutant and the ambient water body concentration does not exceed a 10-4 (1 in 10,000) risk level value.

In October, 2008, the Environmental Quality Commission directed DEQ to pursue rulemaking to set new water quality standards for toxic pollutants in Oregon based upon on an increased fish consumption rate of 175 grams per day. The commission also directed DEQ to propose rule language or develop other implementation strategies to: 1) reduce the adverse impacts of toxic substances in Oregon's waters that are the result of nonpoint source discharges or other sources not subject to permitting, and 2) allow DEQ to implement the standards in an environmentally meaningful and cost-

effective manner. The proposed rules respond to these EQC directives. The proposed human health toxics criteria revisions correct deficiencies identified by the Environmental Protection Agency in their June 2010 disapproval of the human health criteria adopted by the EQC in June, 2004.

For additional information regarding this rulemaking, please contact: Andrea Matzke at the Department of Environmental Quality, call toll free in Oregon 800-452-4011 or 503-229-5384, or visit DEQ's public notices webpage http://www.deq.state.or.us/news/publicnotices/PN.asp

To comment on this rulemaking, submit your comments to: Andrea Matzke, Oregon Department of Environmental Quality, 811 SW 6th Ave, Portland, Oregon, 97204, or by fax to 503-229-6037, or by email to ToxicsRuleMaking@deq.state.or.us *(if you do not receive an auto response to your emailed comments, contact staff listed above)*.

Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390
Telephone: (503) 229-6878

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Rule Caption: New Source Review, Particulate Matter and Greenhouse Gas Permitting Requirements and Other Permitting Rule Updates.

Date:	Time:	Location:
1-24-11	12:30 p.m.	LRAPA, Conference Rm. 1010 Main St. Springfield, OR 97477
2-28-11	12:30 p.m.	LRAPA, Conference Rm. 1010 Main St. Springfield, OR 97477

Hearing Officer: Max Hueftle
Stat. Auth.: ORS 468.020 & 468A.025
Other Auth.: LRAPA Title 14
Stats. Implemented: ORS 468.065, 468A.040, 468A.055 & 468A.310
Proposed Amendments: 340-200-0040
Last Date for Comment: 2-28-11, 3 p.m.
Summary: $PM_{2.5}$ New Source Review/Prevention of Significant Deterioration: This proposed rulemaking would adopt NSR/PSD rules for fine particles ($PM_{2.5}$ or particulate matter less than 2.5 microns in diameter) adopted by a temporary rule on August 23, 2010. The unexpired temporary rule will be repealed upon adoption of the final rule. The proposed rule amendments align LRAPA's rules with federal requirements to allow LRAPA to continue to implement the NSR/PSD program in Lane County.

Greenhouse Gas (GHG) New Source Review/Prevention of Significant Deterioration: LRAPA is proposing rules that would update the PSD program to include greenhouse gases in response to regulations promulgated by EPA. Additional proposed changes clarify requirements based on past implementation of LRAPA's NSR/PSD rules. Adoption of the rules will allow LRAPA to continue implementing the Prevention of Significant Deterioration program in Lane County.

Small Scale Renewable Energy Sources: EPA requires state and local air agencies to have minor source construction approval programs, but gives flexibility in how to do this. LRAPA's minor source construction approval program basically applies major source NSR/PSD requirements to any source with emissions over the Significant Emission Rate (SER). HB 2952 revised how the minor source construction approval program works for small scale local energy projects.

Permitting Rule Updates: The permitting rule updates would align rules with federal standards, correct typographical errors and create permitting and/or registration requirements for many sources subject to new Area Source National Emission Standards for Hazardous Air Pollutants (Area Source NESHAPs).

These amendments, if adopted, will be submitted to the DEQ and U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act

To request additional information regarding this rulemaking or submit comments, please contact Max Hueftle, Lane Regional Air Protection Agency (LRAPA), 1010 Main St., Springfield, OR 97477, toll free at 877-285-7272 or (541) 736-1056, or at max@lrapa.org or fax at (541) 726-1205, or visit LRAPA's website www.lrapa.org
Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390
Telephone: (503) 229-6878

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Rule Caption: Oregon Low Emission Vehicles – 2011 Update.

Date:	Time:	Location:
1-24-11	7 p.m.	DEQ Headquarters 811 SW Sixth Ave. Portland, OR

Hearing Officer: Staff
Stat. Auth.: ORS 468.020, 468.065, 468A.010, 468A.015, 468A.025, 468A.040 & 468A.360
Stats. Implemented: ORS 468.020
Proposed Amendments: 340-257-0030, 340-257-0050, 340-257-0060, 340-257-0070, 340-257-0090, 340-257-0110, 340-257-0120, 340-257-0140
Last Date for Comment: 1-27-11, 5 p.m.
Summary: Oregon adopted California's motor vehicle emissions standards as allowed by the federal Clean Air Act and is obligated to have the same rule requirements as California. This proposed rulemaking will update Oregon's Low Emission Vehicle program by incorporating California's current regulations. The most prominent changes will allow auto manufacturers the option to use streamlined methods to demonstrate they meet greenhouse gas emission limits. The proposed amendments will also adjust Zero Emission Vehicle goals to allow the use of Plug-in Hybrid Electric Vehicles and will incorporate numerous additional revisions.

To request additional information regarding this rulemaking, please contact: Dave Nordberg at the Department of Environmental Quality, call toll free in Oregon 800-452-4011 or (503) 229-5519, or visit DEQ's public notices webpage: www.deq.state.or.us/regulations/rulesandlaws.htm

To comment on this rulemaking, submit your comments to: Dave Nordberg, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204 or by fax to (503) 229-5675, or by email to Oregon.LEV2011@deq.state.or.us *(if you do not receive an auto response to your emailed comments, contact staff listed above)*.

Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390
Telephone: (503) 229-6878

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Columbia River Sturgeon, Salmon, Smelt and Miscellaneous Fishing Regulations for 2011.

Date:	Time:	Location:
2-4-11	8 a.m.	Dept. of Fish & Wildlife 3406 Cherry Ave., Commission Rm. Salem, OR 97103

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 183.325, 496.138, 496.146, 506.109 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.119
Proposed Adoptions: Rules in 635-017, 635-023, 635-041, 635-042
Proposed Amendments: Rules in 635-017, 635-023, 635-041, 635-042
Proposed Repeals: Rules in 635-017, 635-023, 635-041, 635-042
Last Date for Comment: 2-4-11

Summary: Consider amendments of rules related to: (1) Non-Treaty commercial sturgeon and smelt fishing in the Columbia River and Select Areas; (2) Treaty commercial fisheries; and (3) recreational salmon and sturgeon fishing in the Columbia and Willamette rivers.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

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Rule Caption: Amend Rules Relating to Wildlife Taxonomy and the Controlled, Non-Controlled, Exempt and Prohibited Species Lists.

Date:	Time:	Location:
2-4-11	8 a.m.	3406 Cherry Ave. Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242 & SB 391 (2009 Laws. Ch. 492)

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242 & SB 391 (2009 Laws. Ch. 492)

Proposed Amendments: Rules in 635-044, 635-056, 635-057

Last Date for Comment: 2-4-11

Summary: Review, update and amend rules relating to controlled, non-controlled, exempt and prohibited species. Specific rule changes include: updating taxonomic standards, updating scientific and common names. Amend rules to implement portions of SB 391, enacted by the 2009 Legislative Assembly. This amendment moves Crocodylia from a non-controlled to exempt species. Amendments may also include housekeeping and other changes necessary to update the rules.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

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Department of Human Services,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309

Rule Caption: Repeal rules relating to Early Intervention Services and Intermediate Care Facilities for MR/DD.

Date:	Time:	Location:
1-21-11	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137A Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

Proposed Repeals: 309-041-0200, 309-041-0205, 309-041-0210, 309-041-0215, 309-041-0220, 309-041-0225, 309-041-0230, 309-041-0235, 309-041-0240, 309-041-0245, 309-041-0250, 309-041-0255, 309-043-0000, 309-043-0005, 309-043-0010, 309-043-0015, 309-043-0020, 309-043-0025, 309-043-0030, 309-043-0035, 309-043-0040, 309-043-0045, 309-043-0050, 309-043-0055, 309-043-0060, 309-043-0065, 309-043-0070, 309-043-0075, 309-043-0080, 309-043-0085, 309-043-0090, 309-043-0095, 309-043-0100, 309-043-0105, 309-043-0110, 309-043-0115, 309-043-0120, 309-043-0125, 309-043-0130, 309-043-0135, 309-043-0140, 309-043-0145, 309-043-0150, 309-043-0155, 309-043-0160, 309-043-0165, 309-043-0170, 309-043-0175, 309-043-0180, 309-043-0185, 309-043-0190, 309-043-0195, 309-043-0200

Last Date for Comment: 1-24-11, 5 p.m.

Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to repeal:

• OAR 309-041-0200 to 309-041-0255 relating to early intervention services (EIS). SPD no longer provides EIS and the statutory authority for EIS was transferred to the Department of Education (DOE). DOE adopted OAR 581-015-2700 to 581-015-2910 relating to EIS in 1992.

• OAR 309-043-0000 to 309-043-0200 relating to intermediate care facilities for mentally retarded and other developmentally disabled persons (ICF/MR). SPD no longer has an ICF/MR to offer and is currently working on statutory revisions to remove references of ICF/MRs.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301

Telephone: (503) 945-6398

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Department of Human Services,
Public Health Division
Chapter 333

Rule Caption: A thorough review and revision of the Organizational Camp rules.

Date:	Time:	Location:
1-18-11	1 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1-C Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.310–446.350

Proposed Adoptions: 333-030-0106, 333-030-0107

Proposed Amendments: 333-030-0015, 333-030-0020, 333-030-0025, 333-030-0030, 333-030-0035, 333-030-0040, 333-030-0045, 333-030-0050, 333-030-0055, 333-030-0060, 333-030-0070, 333-030-0075, 333-030-0080, 333-030-0085, 333-030-0090, 333-030-0095, 333-030-0100, 333-030-0103, 333-030-0105, 333-030-0110, 333-030-0115, 333-030-0120, 333-030-0125

Last Date for Comment: 1-22-11, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend the Oregon Administrative Rules in chapter 333, division 30, related to organizational camp licensing and regulation. These changes to the organizational camp rules modernize and provide more flexibility in the organizational camp regulations to address new health and safety concerns, types of operation, year-around operation, and new activities and programs. The rules help address the concerns of camp license holders concerning accountability for contract and rental operations with other groups and organizations.

Rules Coordinator: Brittany Sande

Address: Department of Human Services, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

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Department of Oregon State Police
Chapter 257

Rule Caption: Amends OSP's rules allowing criminal justice Regional Information Sharing Systems access to offender information.

Date:	Time:	Location:
1-25-11	12 p.m.	Department of Public Safety Standards & Training 4190 Aumsville Hwy. SE Salem, OR 97317

Hearing Officer: Patricia Whitfield

Stat. Auth.: ORS 181.548

Stats. Implemented: ORS 181.548

Proposed Amendments: 257-010-0015, 257-010-0020, 257-010-0025, 257-010-0045, 257-010-0050

Proposed Repeals: 257-010-0015(T), 257-010-0020(T), 257-010-0025(T), 257-010-0045(T), 257-010-0050(T)

Last Date for Comment: 1-21-11

Summary: Pursuant to ORS 181.030, each member of the Department is authorized and empowered to prevent crime, pursue and apprehend offenders, obtain legal evidence necessary to ensure criminal convictions of offenders, institute criminal proceedings, and execute any lawful warrant or order of arrest issued against any person or persons for any violation of law. Regional Information Sharing Systems RISS) are inter-jurisdictional intelligence entities designed to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and actives that span jurisdictional boundaries, pursuant to 42 USC section 3796(h) and 28 CFR Part 23. While membership in RISSs is limited to law enforcement agencies, how an RISS functions as an entity differs across the United States. In some cases, the RISS is operated and managed by a criminal justice agency. In other cases, the RISS is created as a distinct legal entity, i.e. a non-profit corporation. While the Department's current administrative rules allow criminal justice agencies to access criminal offender information for criminal justice purposes, its rules do not allow RISSs created as distinct legal entities to access criminal offender information. Allowing RISS, even even when they are created as distinct legal entities, clearly advances the duties and responsibilities placed on OSP by the Oregon legislature. The amendments to OAR 257-010-0015, 257-010-0020, 257-010-0025, 257-010-0045, and 257-010-0050 allow all RISSs to access the Department's criminal offender information so that both the RISSs and the Department can carry our their missions of stopping criminal and terrorist conspiracies and activities that occur across state jurisdictional lines.

The Agency will accept public comment at the rulemaking hearing and in writing up to January 21, 2011.

Rules Coordinator: Cort Dokken
Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310
Telephone: (503) 934-0228

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Rule Caption: Revises the authority of Law Enforcement to access Firearm Instant Check System information for criminal investigations.

Date:	Time:	Location:
1-25-11	10 a.m.	Department of Public Safety Standards & Training 4190 Aumsville Hwy. SE Salem, OR 97317

Hearing Officer: Patricia Whitfield
Stat. Auth.: ORS 166.412
Stats. Implemented: ORS 166.412
Proposed Amendments: 257-010-0055
Proposed Repeals: 257-010-0055(T)
Last Date for Comment: 1-21-11
Summary: This rule amend Oregon Administrative Rule (OAR) 257-010-0055 by deleting that portion of subsection (2) that authorizes law enforcement agencies to access the Department's Firearm Instant Background Check (FICS) when they are conducting general criminal investigations. ORS 166.412(8) provides that "[a] law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent f a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant." Effective December 7, 2000, the provisions of ORS 166.412 apply to the transfer of firearms other than handguns to the same extent that they apply to the transfer of handguns. See ORS 166.434(1). The Department has recently revised its policy to discontinue the practice of law enforcement accessing FICS for criminal investigatory purposes and this rule implement that policy.

The Agency will accept public comment at the hearing or in writing if received by January 21, 2011.

Rules Coordinator: Cort Dokken
Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310
Telephone: (503) 934-0228

Department of Revenue
Chapter 150

Rule Caption: Defining tangible personal property for corporation tax apportionment.

Date:	Time:	Location:
1-24-11	10 a.m.*	955 Center St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100 & 314.665
Stats. Implemented: ORS 314.665
Proposed Amendments: 150-314.665(2)-(A)
Proposed Repeals: 150-314.665(2)-(A)(Temp)
Last Date for Comment: 1-24-11, 5 p.m.
Summary: *Sign in beginning at 9:45. If no person appears to testify the hearing will adjourn at 10:15.

The permanent rule is amended to add a definition of "tangible personal property" from the Multistate Tax Commission Streamlined Sales Tax Agreement in new section (1). Amend wording in renumbered section (6) to clarify that the provision applies when property is shipped to a purchaser in another state, rather than a consignee, making the policy statement consistent with the following example. Also provide that renumbered section (8) is authorized under ORS 314.670.

Rules Coordinator: Debra L. Buchanan
Address: 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: Determining Oregon sales of electricity or natural gas for corporation tax apportionment.

Date:	Time:	Location:
1-24-11	10 a.m.*	955 Center St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Proposed Adoptions: 150-314.665(2)-(C)
Proposed Repeals: 150-314.665(2)-(C)(Temp)
Last Date for Comment: 1-24-11, 5 p.m.
Summary: *Sign in beginning at 9:45. If no person appears to testify the hearing will adjourn at 10:15.

The proposed rule outlines a long standing corporation tax policy for computing sales of electricity and natural gas for purposes of the Oregon sales factor. The temporary rule that suspended operation of the 2007 rule is proposed for repeal.

Rules Coordinator: Debra L. Buchanan
Address: 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Department of Transportation,
Driver and Motor Vehicle Services Division
Chapter 735

Rule Caption: Action Taken Upon Failure to Establish Identity when Committing an Act in ORS 809.310(a) through (h).
Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.024
Stats. Implemented: ORS 807.021, 807.024, 807.400, 809.135, 809.310, 809.320 & 809.411
Proposed Amendments: 735-062-0016, 735-070-0004
Last Date for Comment: 1-21-11
Summary: Before issuing a driver license or identification card (ID card), a person must submit to collection of biometric data in order to establish the person's identity. This means DMV takes a digital photograph of an applicant for an original, renewal or replacement driver license or ID card, which is then compared to all other digital photos in the DMV database using facial recognition software. Based on this new technology, DMV has identified many cases where a person was issued a driver license or ID card in a false name. Often this occurred many years before when the person obtained identification because he or she was under 21 years of age.

It has been DMV's policy to suspend a person's driving privileges and cancel any driver license or identification card, and to suspend the person's right to apply for driving privileges and an identification card for one year when it is determined the person has committed an act listed in ORS 809.310(3). These acts include submitting false information to DMV, using an invalid license obtained by fraud, or giving false information to a police officer. DMV recently reviewed this policy and determined the sanction is too harsh in most instances, particularly since the majority of these situations arise because the person applied for a false driver license or ID card several years ago in order to misrepresent his or her age. State issued identification, either in the form of a driver license or ID card, is a necessity in today's world. Taking both a driver license and ID card away from a person for a year can have a devastating effect on the person's ability to maintain a job, complete financial transactions and travel. DMV has therefore changed its policy and will not suspend an identification card and a person's right to apply for an identification card under these circumstances, although DMV will cancel an ID card that has been issued in a false name.

DMV therefore proposes to amend OAR 735-062-0016 and 735-070-0004 to delete the requirement that DMV suspend an ID card or the right to apply for an ID card when the person commits an act set forth in ORS 809.310(3). The proposed rule amendments also correct a statutory citation in OAR 735-062-0016. The proposed amendments to OAR 735-070-0004 also clarify that DMV will suspend driving privileges and the right to apply for driving privileges in all cases where DMV has determined that the person has knowingly committed an act listed in ORS 809.310(3)(a) through (h).

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Department of Transportation,
Motor Carrier Transportation Division
Chapter 740

Rule Caption: ODOT intends to amend rules re-adopting IRP, HVUT, and IFTA regulations and designate voting official.

Stat. Auth.: ORS 184.616, 184.619, 823.011, 825.555, 826.003 & 826.007

Stats. Implemented: ORS 184.616, 184.619, 823.011, 825.555, 826.003 & 826.007

Proposed Amendments: 740-200-0010, 740-200-0020, 740-200-0040

Last Date for Comment: 1-21-11

Summary: Many provisions of the International Registration Plan (IRP) related to commercial vehicle apportioned registration have been revised. It is necessary to amend OAR 740-200-0010 to adopt the revised version of IRP and all amendments with the effective date of January 1, 2011 to ensure compliance with, and uniformity in application of the IRP. The plan requires the assignment of a voting member from each jurisdiction. The proposed amendment specifies the Administrator of the Motor Carrier Transportation Division (MCTD) as the designated voting member for Oregon. Title 26 Code of Federal Regulations (CFR) Part 41 (Heavy Vehicle Use Tax – HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740-740-200-0020 adopts HVUT and amendments with the effective date of January 1, 2011, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2011 to ensure Oregon remains current with the international IFTA standards.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Motor Carrier Transportation Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Department of Transportation,
Transportation Safety Division
Chapter 737

Rule Caption: Emergency Vehicle designation for ODOT and non-ODOT vehicles.

Stat. Auth.: ORS 184.616, 184.619, 801.260, 820.350 & 820.370

Stats. Implemented: ORS 801.260, 815.230, 816.310, 820.350 & 820.370

Proposed Adoptions: 737-100-0010, 737-100-0040

Proposed Ren. & Amends: 735-100-0030 to 737-100-0030

Last Date for Comment: 1-21-11

Summary: These amendments will streamline internal and customer processes resulting in labor and time savings for all affected parties. ODOT has internal policies in place that preclude it from having to provide the same information that non-ODOT requestors of Emergency Vehicle designation must provide. This rule change clarifies procedures for ODOT-owned vehicles, and more clearly defines external candidate vehicles. Also, this rule revision moves the rule from Chapter 735 (DMV) to Chapter 737 (TSD) which has administrative responsibility for Emergency Vehicle designations.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Transportation Safety Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Office for Oregon Health Policy and Research
Chapter 409

Rule Caption: Amendment and renumber of Pain Management Commission Rules.

Stat. Auth.: ORS 409.570

Stats. Implemented: ORS 409.500–409.570

Proposed Ren. & Amends: 407-020-0000 to 409-050-0100, 407-020-0005 to 409-050-0110, 407-020-0010 to 409-050-0120, 407-020-0015 to 409-050-0130,

Last Date for Comment: 1-21-11, 5 p.m.

Summary: The Office for Oregon Health Policy and Research needs to amend and renumber 407-020-0000 through 407-020-0015. The rule is being moved from Chapter 407 (Administrative Services Division) to Chapter 409 (Office for Oregon Health Policy and Research) to align and update references consistent with agency reorganization. Language has been clarified to show that material is reviewed every two years and updated as needed.

Rules Coordinator: Zarie Haverkate

Address: 1225 Ferry St. SE, 1st Floor, Salem, OR 97301

Telephone: (503) 373-1579

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Rule Caption: Amendments to Safety Net Capacity Grant Program Rules.

Stat. Auth.: ORS 413.225

Stats. Implemented: ORS 413.225 & 414.231

Proposed Amendments: 409-110-0000, 409-110-0005, 409-110-0010, 409-110-0015, 409-110-0020

Last Date for Comment: 1-21-11, 5 p.m.

Summary: The Office for Oregon Health Policy and Research (OHPR) is amending rules to align and update references consistent

with agency reorganization and simplify the process for considering and making recommendations on submitted proposals and notification of applicants.
Rules Coordinator: Zarie Haverkate
Address: 1225 Ferry St. SE, 1st Floor, Salem, OR 97301
Telephone: (503) 373-1574

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Office of Private Health Partnerships
Chapter 442

Rule Caption: Adopt and amend rules for the Healthy KidsConnect Program.
Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231 & 414.826
Proposed Adoptions: 442-010-0200, 442-010-0210, 442-010-0220, 442-010-0230, 442-010-0240, 442-010-0250, 442-010-0260, 442-010-0270, 442-010-0280, 442-010-0290
Proposed Amendments: Rules in 442-010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0055, 442-010-0060, 442-010-0070, 442-010-0100, 442-010-0110, 442-010-0120, 442-010-0190
Last Date for Comment: 1-22-11
Summary: The Office of Private Health Partnerships is amending permanent administrative rules for the Healthy KidsConnect program. These rules, 442-010-0010 through 442-010-0190, apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.

The Office of Private Health Partnerships is adopting administrative rules for the Health KidsConnect Program. Rules include: Termination of Subsidy, Misrepresentation/Civil Penalty, Overpayments, Payment Plans, Collections, Audits, Appeals, Contested Case Hearings, Member/HKC Carrier – Grievances and Appeals, and Rule Authorizing Agency Representative. These rules, 442-010-0200 through 442-010-0290, apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.
Rules Coordinator: Margaret Moran
Address: Office of Private Health Partnerships, 250 Church St. SE, Suite 200, Salem, OR 97310
Telephone: (503) 378-5664

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Oregon Department of Education
Chapter 581

Rule Caption: Modifies rule relating to administration of pupil transportation.

Date:	Time:	Location:
1-26-11	1 p.m.	255 Capitol St. NE, Rm. 200A Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 327.013, 820.100–820.120
Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120
Proposed Amendments: 581-053-0002
Last Date for Comment: 1-16-11, 5 p.m.
Summary: Clarifies terminology used in regards to the administration of pupil transportation.
Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

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Rule Caption: Modifies rule relating to school bus driver training and certification.

Date:	Time:	Location:
1-26-11	1 p.m.	255 Capitol St. NE, Rm. 200A Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 327.013 & 820.100–820.120
Stats. Implemented: ORS 327.013, 820.100, 820.105 & 820.110 & 820.120
Proposed Amendments: 581-053-0006
Last Date for Comment: 1-26-11, 5 p.m.
Summary: The rule amendments bring rule into alignment with state and federal law changes that take effect in January 2012 and January 2014. The changes reflect that testing and training must occur prior to the driver submitting an application. The amendments also reconnect our rule to federal regulations and clarify provisions.
Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Removes the maximum project award limit of $300,000.

Date:	Time:	Location:
1-19-11	8 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR 97301

Hearing Officer: Tony Penrose
Stat. Auth.: ORS 456.515–456.720 & 458.600–458.630
Stats. Implemented: ORS 456.555
Proposed Amendments: 813-043-0030
Last Date for Comment: 2-8-11, 5 p.m.
Summary: 813-043-0030 Removes the maximum project award limit of $300,000.
Rules Coordinator: Sandy McDonnell
Address: 725 Summer St. NE, Suite B, Salem OR 97301-1266
Telephone: (503) 986-2012

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Rule Caption: Removes the maximum project award limit of $300,000.

Date:	Time:	Location:
1-19-11	8 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR 97301

Hearing Officer: Tony Penrose
Stat. Auth.: ORS 456.515–456.720 & 458.600–458.630
Stats. Implemented: ORS 456.555
Proposed Amendments: 813-042-0030
Last Date for Comment: 2-8-11, 5 p.m.
Summary: 813-042-0030 Removes the maximum project award limit of $300,000.
Rules Coordinator: Sandy McDonnell
Address: 725 Summer St. NE, Suite B, Salem OR 97301-1266
Telephone: (503) 986-2012

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Rule Caption: Provides clarification on the program requirements, program administration and monitoring.

Date:	Time:	Location:
1-26-11	9 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR 97301

Hearing Officer: Lynn Adams
Stat. Auth.: ORS 184.082 & 458.505–458.515
Stats. Implemented: ORS 458.505–458.515
Proposed Adoptions: 813-230-0007
Proposed Amendments: 813-230-0000, 813-230-0005, 813-230-0015
Last Date for Comment: 2-4-11, 5 p.m.
Summary: 813-230-0000 - Clarifies the terminology used within the rules.

813-230-0005 - Provides clarification on the antipoverty programs and the eligible entities that will be used to administer the programs.

813-230-0007 - Sets out the selection criteria and requirements for eligible entities.

813-230-0015 - Stipulates that the program is subject to periodic monitoring by the Department and sets out the requirements.
Rules Coordinator: Sandy McDonnell

Address: 725 Summer St. NE, Suite B, Salem OR 97301-1266
Telephone: (503) 986-2012

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Oregon Medical Insurance Pool
Chapter 443

Rule Caption: Updates rule to be consistent to the current years benefits and benefit provisions.
Stat. Auth.: ORS 735.600; 735.610(6), 735.615;& 735.625
Other Auth.: OMIP Board of Directors
Stats. Implemented: ORS 735.600, 735.610(6), 735.615 & 735.625
Proposed Amendments: 443-002-0070
Last Date for Comment: 1-24-11
Summary: Updates this administrative rule to be consistent with the 2011 benefits, benefit limitations, benefit exclusions, and claims administration, based on the terms of the contract, application, member handbook, and benefit and rate instructions.
Rules Coordinator: Linnea Saris
Address: Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97301
Telephone: (503) 378-5672

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Rule Caption: Updates language to mirror enrollee's contract/policy and align with current processing procedures and administration.
Stat. Auth.: ORS 735.610(6)
Other Auth.: OMIP Board of Directors
Stats. Implemented: ORS 735.610(6)
Proposed Amendments: 443-002-0190
Last Date for Comment: 1-24-11
Summary: This rule filing updates language in rule to mirror current contract language and administration. The current language uses the terms "member", "enrolled dependent" and "enrollee", which OMIP does not define. OMIP is replacing all of these terms with "enrollee". Furthermore, in 2009 OMIP updated the number of days by which an enrollee has to file for an appeal in the benefit contracts to 30 from 180 calendar days, but inadvertently did not update the rule at that time; therefore, the language in the current rule is not consistent with the language used in the current enrollee's policy/ contract.
Rules Coordinator: Linnea Saris
Address: Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97301
Telephone: (503) 378-5672

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Oregon State Lottery
Chapter 177

Rule Caption: Changes the percentage of gross Keno sales allocated to the Keno Jackpot Bonus.

Date:	Time:	Location:
2-15-11	10–10:30 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott
Stat. Auth.: ORS 190 & 461
Other Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.220, 461.230, 461.240, 461.250 & 461.260
Proposed Amendments: 177-099-0100
Last Date for Comment: 2-15-11, 10:30 a.m.
Summary: The Oregon State Lottery has initiated permanent rulemaking to amend this administrative rule to change the percentage of gross Keno sales allocated to the Keno jackpot Bonus prizes.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

Oregon University System,
University of Oregon
Chapter 571

Rule Caption: Revise and repeal athletic department substance use and drug testing rules.

Date:	Time:	Location:
1-27-11	10 a.m.	Erb Memorial Union Alsea & Coquille Rms. University of Oregon Eugene, OR

Hearing Officer: Deb Donning
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 571-004-0020, 571-004-0025, 571-004-0030, 571-004-0045, 571-004-0050, 571-004-0055
Proposed Repeals: 571-004-0035, 571-004-0040
Last Date for Comment: 1-28-11, 12 p.m.
Summary: These rules affect approximately 450 student-athletes at the University of Oregon and have not been revised since 1989. The amended rules will continue to permit testing of student-athletes only on the basis of individualized reasonable suspicion or on the basis of failing a laboratory-generated specimen integrity test. Other changes reflect the improvement and standardization of testing and testing protocols since 1989 and the new emphasis on performance-enhancing substances. The privacy of the student-athlete continues to be protected under the revised rules.

Copies of the proposed amendments may be obtained from Deb Donning, Rules Coordinator, at djm@uoregon.edu or 541-346-3013
Rules Coordinator: Deb Donning
Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403
Telephone: (541) 346-3082

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general service fees.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-050-0005
Last Date for Comment: 1-21-11
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.
Rules Coordinator: Debra L. Charlton
Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8597

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Secretary of State,
Audits Division
Chapter 162

Rule Caption: General Housekeeping.
Stat. Auth.: ORS 297
Stats. Implemented: ORS 297–465
Proposed Amendments: 162-010-0030
Proposed Repeals: 162-001-0010, Rules in 162-011, 162-012, 162-013, 162-014, 162-015, 162-016
Last Date for Comment: 1-21-11, Close of Business
Summary: Repealing 162-001-0010 and 162-011-0000 to 162-016-0000: General Housekeeping.

Amending 162-010-0030 to remove reference to repealed rules.
Rules Coordinator: Julie A. Sparks
Address: 255 Capitol St NE, Suite 500, Salem, OR 97310
Telephone: (503) 986-2262

Secretary of State,
Elections Division
Chapter 165

Rule Caption: Amend the 2010 State Candidates Manuals, County Candidates Manual and Forms.
Stat. Auth.: ORS 246.120, 246.150 & 249.009
Stats. Implemented: ORS 246.120, 246.150 & 249.009
Proposed Amendments: 165-010-0005
Last Date for Comment: 1-31-11
Summary: This proposed amendment revises the *2010 State Candidate's Manual: Major Political Party; 2010 State Candidate's Manual: Nonpartisan; 2010 State Candidate's Manual: Minor Political Party; 2010 State Candidate's Manual: Assembly of Elections; 2010 State Candidate's Manual: Individual Electors;* and the *2010 County Candidate's Manual* and all associated forms to provide that a candidate is not required to establish a campaign account, file a State of Organization or file contribution and expenditures transactions if a candidate serves as the candidate's own treasurer, the candidate does not have an existing candidate committee and the candidate does not expect to receive or spend more than $750 during a calendar year.
Rules Coordinator: Brenda Bayes
Address: Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310
Telephone: (503) 986-1518

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Rule Caption: Amends the 2010 City Elections Manual and the 2010 District Elections Manual.
Stat. Auth.: ORS 246.120 & 246.150
Stats. Implemented: ORS 246.120 & 246.150
Proposed Amendments: 165-020-0005
Last Date for Comment: 1-31-11
Summary: This proposed amendment revises the *2010 City Elections Manual* and the *2010 District Elections Manual* and all associated forms to provide that a candidate is not required to establish a campaign account, file a State of Organization or file contribution and expenditure transactions if a candidate serves as the candidate's own treasurer, the candidate does not have an existing candidate committee and the candidate does not expect to receive or spend more than $750 during a calendar year.
Rules Coordinator: Brenda Bayes
Address: Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310
Telephone: (503) 986-1518

Veterinary Medical Examining Board
Chapter 875

Rule Caption: Eliminates application screening requirements for candidates for the North American Veterinary Medical Exam (NAVLE).
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.040(13)
Proposed Amendments: 875-010-0006, 875-010-0016
Last Date for Comment: 1-31-11
Summary: Eliminates the need for NAVLE applicants to be screened by the Board.
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

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Rule Caption: Repeals Euthanasia Task Force.
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190, 609.405 & 686.510
Proposed Repeals: Rules in 875-020, 875-020-0005, 875-020-0010, 875-020-0015, 875-020-0020, 875-020-0025, 875-020-0030, 875-020-0035, 875-020-0040, 875-020-0045, 875-020-0050, 875-020-0055
Last Date for Comment: 1-31-11
Summary: The Euthanasia Task Force ceased to exist in 2008. Division 20 rules are obsolescent.
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

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Rule Caption: Aligns Oregon rules with eligibility revisions for the Veterinary Technician National Exam (VTNE) implemented by the American Association of Veterinary State Boards (AAVSB).
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.045 & 686.065
Proposed Amendments: 875-030-0010, 875-030-0020, 875-030-0025
Last Date for Comment: 1-31-11
Summary: Eliminates on-the-job experience as an eligibility criterion for the Veterinary Technician National Exam (VTNE). Updates VTNE information and application process.
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

Board of Accountancy
Chapter 801

Rule Caption: Amended to update the effective date of professional standards adopted by the Board.
Adm. Order No.: BOA 1-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 801-001-0035
Subject: The rule is amended to update the effective date of professional standards to January 1, 2011.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-001-0035
Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2011.

Stat. Auth.: ORS 183.332 & 673.410
Stats. Implemented: ORS 183.337 & 673.410
Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Clarifications on definitions, addition of censure definition.
Adm. Order No.: BOA 2-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 801-005-0010
Subject: The rules is revised to clarify some definitions and add a definition for 'censure.'
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-005-0010
Definitions

As used in OAR Chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA** means American Institute of Certified Public Accountants.

(2) **Applicant** means a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attestation Services** means the following financial statement services must be performed under the following standards means :

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS):

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any engagement to be performed in accordance with the statements on Standards for Attest Engagements (SSAE);

(d) An engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board in the United States (PCAOB)

(e) The statements on standards specified in subsections (a) through (c) of this definition are those developed by the AICPA.

(4) **Business organization** means any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA** or **Certified Public Accountant** means a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam** means the Uniform Certified Public Accountant Examination.

(7) **CPE** means continuing professional education.

(8) **Candidate** means a person applying for the CPA Exam.

(9) **Censure** means an official written expression of reprimand, by Board action, to a licensee for specified conduct.

(10) **Certificate** means a certificate of certified public accountant issued under ORS 673.040.

(11) **Client** means a person or entity who agrees with a licensee to receive any professional service from the licensee.

(12) **Commission** means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(13) **Compilation Services** means a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(14) **Contingent fee** means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(15) **Enterprise** means any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(16) **Fees** includes commissions, contingent fees and referral fees.

(17) **Financial statements** means the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(18) **Firm** means a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(19) **First time candidate** means a candidate for the CPA exam who is sitting for the exam for the first time in Oregon.

(20) **Generally Accepted Accounting Principles** means accounting principles or standards generally accepted in the United States, including but not limited to *Statements of Financial Accounting Standards* and interpretations thereof, as published by the Financial Accounting Standards Board, and *Statements of Governmental Accounting Standards* and interpretations thereof, as published by the Government Accounting Standards Board.

(21) **Generally Accepted Auditing Standards** means the *Generally Accepted Auditing Standards* adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in *Statements on Auditing Standards* issued by the AICPA, and for federal audits, the *Single Audit Act* and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office.

(22) **Holding out as a CPA or PA** means to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(23) **Inactive status** is a permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

(24) **In good standing** means the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(25) **Jurisdiction** means the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(26) **License**: means

(a) A certificate, permit or registration, or a license issued under ORS 673.100, enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(27) **Licensee** means the holder of a license as defined in these rules.

(28) **Material participation** means participation that is regular, continuous and substantial.

(29) **Manager** means a manager of a limited liability company.

(30) **Member** means a member of a limited liability company.

(31) **NASBA** means National Association of State Boards of Accountancy.

(32) **Non-licensee owner** means a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(33) **PA** or **Public Accountant** means a person who is the holder of a license issued under ORS 673.100.

(34) **Peer Review** means a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services that is conducted by a CPA who holds an active license issued by any state or a public accountant licensed under 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the permit holder or registered business organization being reviewed.

(35) **Permit** means a permit to practice public accountancy issued under ORS 673.150.

(36) **Practice of public accountancy** means performance of or any offer to perform one or more services for a client or potential client, including the performance of such services while in the employ of another person by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated. These standards include Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC), Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, International Financial Reporting Standards, International Accounting Standards, Statements on Standards for Attestation Engagements, and Statements on Standards for Valuation Services.

(37) **Principal Place of Business** means the office location designated by a person for purposes of substantial equivalency and reciprocity.

(38) **Professional** means arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(39) **Professional services** means any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(40) **Regional Accreditation** means the college or university is accredited by one of the six regional accrediting associations or by another accrediting body that is recognized by the Board.

(41) **Referral fee** means a referral fee that includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(42) **Registration** means the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(43) **Report** see OAR 801-005-0200 and OAR 801-005-0300.

(44) **Returning candidate** means a person who has received grades for any section of the Uniform CPA exam who applies to sit for any part of the CPA exam in Oregon.

(45) **Single Audit Act** means the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(46) **Standards for Accounting and Review Services** means the *Statements on Standards for Accounting and Review Services* published by the AICPA.

(47) **Standards for board approved peer review programs** means the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(48) **Statements on Standards for Attestation Engagements** means the statements by that name issued by the AICPA.

(49) **State** means any state, territory or insular possession of the United States, and the District of Columbia.

(50) **Substantial equivalency** means:

(a) An individual holds a valid license as a certified public accountant from another state that requires an individual, as a condition of licensure as a certified public accountant to:

(A) Complete at least 150 semester hours of college education and obtain a baccalaureate or higher degree conferred by a college or university;

(B) Achieve a passing grade on the Uniform Certified Public Accountant Examination; and

(C) Possess at least one year of experience, verified by a licensee, providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or related consulting skills, obtained through public practice or government, industry or academic work; or

(b) An individual has the qualifications specified in paragraph (a) of this subsection and holds a valid license as a certified public accountant from another state that does not require an individual to have the qualifications specified in paragraph (1) of this subsection as a condition of licensure as a certified public accountant.

(51) **Uniform Accountancy Act** (**UAA**) is a model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(52) **Valid** means a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license or certificate in active status is one that is not revoked, suspended, subject to probation, lapsed or inactive.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 670.310
Stats. Implemented: ORS 670.310
Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 2-2010, f. 12-15-10, cert. f. 1-1-11

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Rule Caption: Revise supervisor licensee roles and responsibilities; create a firm reinstatement, complaint procedure revision.
Adm. Order No.: BOA 3-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 801-010-0010, 801-010-0050, 801-010-0060, 801-010-0065, 801-010-0073, 801-010-0075, 801-010-0078, 801-010-0079, 801-010-0080, 801-010-0100, 801-010-0110, 801-010-0115, 801-010-0120, 801-010-0125, 801-010-0130, 801-010-0170, 801-010-0190, 801-010-0340, 801-010-0345
Subject: General housekeeping,increase firm renewal late fee and create municipal roster application fee, amend and clarify rules for pertaining to supervisor licensee, clarify procedures for complaint processing and review, create reinstatement for firms who allow their registration to lapse.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-010-0010
Fees, Civil Penalties and Cost Recovery

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) **Application fees**. All application fees are non- refundable.

(a) CPA Examination:

(A) Initial Examination — $100.

(B) Re-Examination — $50.

(b) CPA Certificate or PA License — $150.

(c) Municipal Auditor Roster Application — $100.

(2) **Initial permit and registration fees**:

(a) Initial CPA or PA Permit — $160.

(b) Municipal Auditor — $100.

(c) Firm Registration — $100.

(3) **Biennial renewal application fees**:

(a) Active CPA and PA Permits — $160.

(b) Inactive CPA and PA — $50.

(c) Municipal Auditor — $100.

(d) Firm Registration — $175.

(4) **Late renewal penalty fees**:

(a) Active CPA and PA Permits — $50.

(b) Inactive CPA and PA — $35.

(c) Firm Registration — $175.

(5) **Miscellaneous fees**:

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of $2.50 for five pages or less, and 25 cents per page thereafter. If certified copies of records are requested, there will be a $2.50 fee for each document certified in addition to the copy cost.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows: Staff time, $23 per hour, in quarter hour increments at $5.75 per quarter hour.

(6) **Civil Penalties assessed for Specific Violations**.

(a) Failure to provide change of address in 30 days — $100.

(b) Failure to renew firm registration by January 31 — $500.

(c) Failure to respond to Notice of Complaint in 21 days — $1000.

(d) Failure to respond to Notice of CPE audit and all follow-up in 21 days — $250.

(e) Failure to respond to Notice of Peer Review Audit in 21 days — $1000.

(f) Failure to respond in 21 days to any Board Communication that is not described above — $100.

(7) **Cost Recovery**. The Board may recover costs associated with a contested case hearing in which the Board has prevailed. The following costs may be included in cost recovery:

(a) Attorney General Fees;

(b) Administrative Hearing Costs;

(c) Contract Investigator Fees;

(d) Expert Witness Fees;

(e) Costs of Appeal.

(8) **Form of Payment**:

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and MasterCard payments may be submitted in person, by mail or by fax. Any Visa or MasterCard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or MasterCard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153
Stats. Implemented: ORS 673, 297 & 192.440
Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0050
Application for Uniform CPA Examination

(1) **Definitions**.

(a) **Authorization to Test** (**ATT**): Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit an application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) **Notice to Schedule** (**NTS**): Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS must remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) **Testing Center**: Computer testing facilities, approved by the Board and listed on the Board website, at which candidates may take the CPA examination. Testing centers are located throughout the United States, Guam, Puerto Rico and the Virgin Islands.

(d) **Testing Opportunity**: Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

(e) **Testing Windows**: The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that exam sections can be graded and maintenance may be performed.

(2) **Applications**.

(a) Applications for the CPA exam must be submitted on a form provided by the Board and must be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and evidence that the candidate has met eligibility requirements.

(c) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(d) An application for the CPA examination must be complete in every particular within 3 months from the date it is received at the Board office. If an application is incomplete, the candidate will be found ineligible and the file will be closed. A candidate whose file has been closed as described herein is required to submit a new application, application fee and all required documents.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are nonrefundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day.

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate must not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate must certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination is cause for disciplinary action under ORS 673.170.

(h) The Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database once eligibility is determined.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

(3) **Eligibility under education requirements**. Candidates for admission to the CPA exam after January 1, 2000 that apply under the educational requirements of ORS 673.050(1)(a) must demonstrate eligibility as follows:

(a) **150 Hour rule**: Satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from a regionally accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) The required number of hours in accounting or related subjects may be obtained by satisfactory completion of such hours taken from divisions of continuing education extended by a regionally accredited four-year college or university, or from a community college, providing the commu-

nity college courses are transferable as equivalent courses to an accredited four-year college or university.

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from a regionally accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university. However, completion of 150 hours consisting entirely of courses taken from a community college or divisions of continuing education shall not be considered equivalent to a baccalaureate or higher degree from a four-year accredited college or university under the requirements of ORS 673.050.

(b) **Candidates who applied before January 1, 2000**: Returning candidates after January 1, 2000 who do not meet the educational requirement under ORS 673.050(1)(a) are required to sit for at least two sections of the CPA exam, per calendar year, in order to maintain eligibility under the requirements of ORS 673.050, which were in effect prior to January 1, 2000. Returning candidates must provide satisfactory evidence that:

(A) The candidate met CPA exam eligibility requirements that were in effect in Oregon at the time the candidate sat for the CPA exam for the first time in any jurisdiction; and

(B) The candidate sat for and received grades for at least one of the Uniform CPA Examinations in any jurisdiction in 1998 or 1999.

(c) **Evidence of eligibility**. Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree must provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been awarded must provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted.

(D) Colleges or universities, which are accredited by one of the six regional accrediting associations and listed as accredited in the *Directory of Post secondary Institutions*, published by the National Center for Education Statistics, are recognized by the Board.

(4) **Eligibility under experience standards**. Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant must submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board that meets the requirements of OAR 801-010-0100(2) and OAR 801-010-0065(2).

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for at least one exam section in any two testing windows each year in order to maintain eligibility under those requirements.

(5) **Authorization to Test and Notice to Schedule**.

(a) An ATT authorizes the candidate to test one time for those sections of the CPA exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety (90) days after it is issued if the candidate has not paid the appropriate fees to NASBA.

(b) Expiration of the ATT. Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) **Suspension of the ATT**. An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) **Payment of CPA Exam testing fees**. To obtain a Notice to Schedule (NTS), the candidate must remit the CPA exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA exam fee, to receive another ATT.

(e) **NTS**. When the candidate receives an ATT from the Board, the candidate is required to:

(A) Submit to NASBA payment of all fees related to testing of the CPA exam sections authorized by the ATT;

(B) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the NTS. CPA exam sections do not have to be scheduled on the same date.

(C) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

(D) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) **Testing**.

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) **Re-examination**. A completed re-examination application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six-month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0060
Credit for Uniform CPA Examination Sections

(1) **Exam section requirements**.

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who were eligible under the provisions of ORS 673.050(2) (1999 Edition) and who sat and received grades for two sections of the CPA exam before January 1, 2002 are required to take and pass the following two sections of the CPA exam: Regulation and Audit & Attestation.

(c) After January 1, 2002, candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) **Credit for CPA exam sections**.

(a) The passing grade for all sections of the exam is 75

(b) **Credit for Computer Based CPA Exam**. Upon implementation of the computer based CPA exam, a candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed are valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA exam within a rolling eighteen month period, which begins on the date of the first section is passed;

(B) Upon passing any CPA exam section, the passing date of that section is the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen month period lose credit for any section passed outside the eighteen month period and that section must be retaken.

(c) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

(d) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) **Transfer of CPA exam scores from other jurisdictions**. The Board allows the transfer of CPA exam scores and may grant credit to a candidate who has successfully completed any section of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section passed; and

(c) A candidate who first sat for the CPA exam, after January 1, 2000, and met the 150 hour educational requirement at the time the section was taken and passed for which grades are requested to be transferred.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.050, 673.060 & 673.075

Hist.: 1AB 12, f. 3-30-65; 1AB 14, f. 8-15-68; 1AB 16, f. 1-30-70, ef. 2-25-70; 1AB 19, f. 10-22-71, ef. 11-15-71; 1AB 21, f. 3-2-72, ef. 3-15-72; 1AB 30, f. 9-18-73, ef. 10-1-73; 1AB 35, f. 10-29-74, ef. 11-25-74; 1AB 36, f. 1-28-75, ef. 2-25-75; 1AB 40, f. & ef. 5-5-76; 1AB 41, f. & ef. 12-2-76; 1AB 43, f. & ef. 3-31-77; 1AB 2-1978, f. & ef. 3-21-78; 1AB 11-1978, f. & ef. 12-1-78; 1AB 3-1979, f. & ef. 12-21-79; 1AB 2-1980, f. & ef. 4-8-80; 1AB 3-1980, f. 10-23-80, ef. 12-1-80; 1AB 5-1981, f. & ef. 7-27-81; 1AB 6-1981, f. & ef. 7-27-81; 1AB 3-1982, f. & ef. 4-20-82; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0065

Qualifications for Certification

(1) **Requirements**. Applicants for the certificate of Certified Public Accountant must meet the following requirements:

(a) Complete and pass all sections of the CPA exam;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.040 as follows:

(A) Applicants who qualified for the CPA exam by meeting CPA exam requirements under provisions of ORS 673.040 in effect prior to January 1, 2000 are required to have two years of experience and competency in the seven core areas described in this rule, which means at least 24 months of full-time employment, or a total of 4,160 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment must be at least 20 hours per week.

(B) Applicants who qualified for the CPA exam by meeting the CPA exam requirements under ORS 673.040 (1999 Edition), otherwise known as the "150-hour rule", that is effective after January 1, 2000, must have at least 12 months of full-time employment, or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifiying part-time employment must be at least 20 hours per week and must apply under one of the following paths:

(i) **Attest Experience**, applicants who gained experience under the attest function are required to have at least one year of experience and competency in the seven core areas described in this rule.

(ii) **Other Professional Standards**: applicants who gained experience in other professional standards are required to have at least one year experience and competency in the seven core areas described in this rule.

(iii) **Industry**, **Government and Other**: applicants who gained experience in industry, government or other area not described above are required to have at least one-year of experience and competency in the seven core areas as described in this rule.

(C) Applicants who sat and received grades at the CPA exam prior to January 1, 2000, without the completion of 150 semester hours or 225 quarter hours, may choose to complete the 150 hour requirement under ORS 673.050(1)(a) and meet the experience requirement by completing the required hours of experience as described in paragraph (1)(c)(B)(i) through (iii) of this rule.

(d) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application for a certificate.

(2) **Experience Requirements**.

(a) "Supervisor licensee" is a person who qualifies under this rule as a supervisor for the purpose of verifying the experience requirement of an applicant for a CPA certificate under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(b) To qualify as a supervisor licensee the person providing supervision must have held an active CPA license issued by any state or a PA license issued under ORS 673.100 or a chartered accountant certificate recognized by the Board under OAR 801-010-0085for at least five consecutive years immediately prior to such supervision and during the period of supervision.

(c) A licensee who provides direct supervision over an applicant must act as supervisor licensee and shall certify to the Board whether or not the applicant has gained qualifying experience under this rule.

(d)(A) "Direct supervision" as used in this rule means that there is a regular and meaningful interaction between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority to influence the decision to discharge the employee being supervised.

(B) A licensee who acts as a consultant or independent contractor to the applicant's employer will not generally meet the requirement of direct supervision. The Board may consider an exception if the consultant or independent contractor has a written agreement outlining the roles and responsibilities as well as the hours worked monthly and the reporting requirements to the employer.

(e) The experience required under ORS 673.040 must consist solely of experience within activities generally performed by certified public accountants and public accountants licensed in Oregon, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestations, management advisory services, tax advisory services, tax return preparation, personal financial planning or reporting on an entity's internal controls.

(f) Overtime hours worked are not credited toward the experience requirement.

(3) **Experience portfolio**. The applicant must develop a portfolio of experience that demonstrates to the satisfaction of the Board that the applicant has achieved experience in all of the following competencies:

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operat-

ing cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) **Qualifying experience**. An applicant must demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) **Experience based on attest or assurance**. Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(a)(A) of this rule including internal audit employment; or

(C) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted. Experience under this subsection must include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting;

(iv) The audit agency, internal audit department, or other organization is independent of the entity, and

(v) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(b) **Experience based on other professional standards**. Any other experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants; or

(B) Experience described in paragraph (4)(b) of this rule must be performed in accordance with the standards of the profession. For example, other experience may be performed in accordance with the established standards for:

(i) Consulting services;

(ii) Tax practice;

(iii) Personal financial planning;

(iv) Internal audits;

(v) Regulatory agencies.

(C) Experience obtained in accordance with other professional standards must meet guidelines established by the Board.

(c) **Experience based on industry**, **government**, **and other**. Qualifying experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed in industry, government, or other settings under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry, government or other experience related to subsection (3)(b) of this rule, assessing the achievement of an entity's objectives, will include obtaining an understanding of the industry in which the entity operates, including the employer's competition (or other similar service providers in the case of government) and key competitiveness factors that affect the industry.

(B) Industry, government or other experience related to subsection (3)(d) of this rule, understanding transaction streams and information systems, will include assessing the adequacy of an entity's internal controls.

(C) Experience, other than experience described in subsections (4)(a) and (b) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience is equivalent to subsection (4)(a) or (b) of this rule.

(5) **Submitting applications to the Board**.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the permit fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0073
Certification of Applicant's Experience

(1) **Requirement to provide verification of experience**.

(a) A supervisor licensee who is requested by an applicant to submit evidence of the applicant's experience to the Board or to the licensing agency of another jurisdiction must complete and submit a certificate of experience for such applicant within 21 days of the request.

(b) The certificate of experience must be made on forms provided by the Board. A supervisor licensee who completes and submits a certificate of experience must certify in writing that the experience obtained under the licensee's supervision is sufficient to fulfill the requirements of OAR 801-010-0065.

(c) A supervisor licensee who submits a certification of experience must maintain the Competency Evaluation worksheet for a period of three years after the applicant's certificate is issued.

(d) A supervisor licensee must not commit any act, which unjustly jeopardizes an applicant's ability to obtain a certificate in this or any jurisdiction.

(2) **Cooperation of supervisor licensee**. A supervisor licensee who has furnished evidence of an applicant's experience to the Board must provide full cooperation with any Board inquiry pertaining to such certification.

(a) The supervisor licensee must respond in writing to any request for further information from the Board including, but not limited to, the following:

(A) Description of any disagreement between an applicant and the supervisor licensee as to dates, quality, and/or type of work performed;

(B) Explanation regarding a certificate of experience submitted to the Board for which the period of experience appears to be unduly short for achievement of the competencies;

(C) Verification, on a sample basis, of information submitted by an applicant or attested thereto on a certificate of experience;

(D) Explanation regarding questions based on the Board's reasonable belief that the information in the certificate of experience may be false or incorrect; or

(E) Explanation regarding the basis of refusal, if any, for which the supervisor licensee declines to submit evidence of an applicant's experience to the Board or to the licensing agency of another jurisdiction.

(b) The supervisor licensee must cooperate with any inspection, by the Board or by its representative, of documentation relating to an applicant's claimed experience. The inspection may, at the option of the Board, be made at the Board's offices or such other places as the Board may designate. A licensee or audit agency or group who has custody of the documentation must produce the required documentation upon request.

Stat. Auth.: ORS 670.310 & 673.040
Stats. Implemented: ORS 673.040
Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; 1AB 3-1986, f. & ef. 11-17-86; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2000, f. & cert. ef. 5-31-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0075
Public Accountants Applying for Certificate of Public Accountancy

A public accountant licensed in Oregon who is applying for a certificate of public accountancy must:

(1) Hold an active public accountant license issued under ORS 673.100 that is not revoked, suspended, on probation or lapsed;

(2) Present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(a) A baccalaureate or higher degree from an accredited college or university as described in ORS 673.050(1)(a)

(b) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(c) A minimum of 24 semester hours or 36 quarter hours in accounting and or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(3) Successfully complete all sections of the CPA exam. Credit may be received for sections of the CPA exam previously completed if the requirements of OAR 801-010-0060 are satisfied; and

(4) Satisfy the experience requirements under ORS 673.040 and OAR 801-010-0065.

(5) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application

(6) Licensee must surrender the Public Accountant license issued before the CPA Certificate will be issued.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: BOA 4-1998, f. & cert. ef. 6-16-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0078

Experience as a Self-Employed Public Accountant

Self-employment eligible to meet the experience requirement. A public accountant licensed in Oregon prior to January 1, 2000 that is self-employed in the practice of public accountancy may fulfill the one-year experience requirement under ORS 673.040 from the applicant's experience as a self-employed public accountant. The applicant must show to the satisfaction of the Board that:

(a) The applicant is a public accountant licensed in Oregon prior to January 1, 2000;

(b) The applicant's experience was gained while the applicant was employed full-time, or the equivalent of full-time, in the practice of public accountancy. In no case will employment of less than 30 hours per week be accepted under this rule; and

(c) The experience meets all of the requirements of OAR 801-010-0065, with the exception of the requirement for direct supervision by a public accountant or a certified public accountant.

(d) Experience used to qualify for the CPA exam may not also be used to qualify under the requirements of ORS 673.040 and OAR 801-010-0065.

(2) **Verification of self-employment**. The period of self-employment must be verified either by a public accountant or a certified public accountant licensed in Oregon and approved by the Board, who is qualified to review the applicant's practice. The applicant must submit the name of a proposed reviewer to the Board.

(3) **Requirements for proposed reviewer**.

(a) Must be in full-time practice.

(b)Must not be the subject of current or past disciplinary action by the Board, or the subject of ongoing complaints.

(c) Must not be found to have violated technical standards.

(d) Must not be related to or financially affiliated with the applicant.

(4) The applicant shall reimburse the reviewer for expenses of the review.

(5) **Verification required**. The reviewer shall certify to the following information about the applicant:

(a) Length of time in full-time public practice;

(b) Nature and extent of the work performed;

(c) Whether the work performed by the applicant demonstrates satisfactory knowledge of current practice standards and pronouncements of the accounting profession;

(d) Whether the applicant has been practicing public accountancy as defined in OAR 801-005-0010; and

(e) Whether the applicant's experience is sufficient to meet the entry requirements stated in OAR 801-010-0065, including the seven core competencies prescribed in OAR 801-010-0065(3).

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 6-1989, f. & cert. ef. 9-11-89; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0079

Experience Obtained in Foreign Countries

Experience obtained by an applicant outside the United States that is claimed to be equivalent to public accountancy experience obtained in the United States may be acceptable under ORS 673.040 provided that the experience meets all of the requirements of OAR 801-010-0065. The applicant's experience must be directly supervised by:

(1) A licensed public accountant or a certified public accountant whose license is active and in good standing, and who held an active permit during the period of supervision and for a period of no less than five years prior to the period of supervision, or

(2) A chartered accountant licensed by a jurisdiction that is eligible for reciprocal licensing under agreement with the International Qualifications Appraisal Board (IQAB) as described in OAR 801-010-0085, who also meets the following requirements:

(a) The chartered accountant certificate is active and in good standing;

(b) The chartered accountant held an active chartered accountant certificate during the period of supervision and for no less than five years prior to the period of supervision, and

(3) The person who directly supervises the applicant's experience must certify to the Board that the applicant's experience is obtained under professional standards approved by the Board of Accountancy, including but not limited to the Statements on Auditing Standards (SAS) for audits or other engagements, the Statement of Standards for Accounting and Review Services (SSARS) for the review of financial statements and the Statements on Standards of Attestation Engagements (SSAE) for examinations of prospective financial information, or

(4) That the applicant's experience is obtained under professional standards deemed by the Board of Accountancy to be equivalent to experience obtained in the practice of public accountancy in this state.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0080

Holders of Certificates in Other States, US Territories or Foreign Countries

(1) **Substantial equivalency**. An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency as defined in ORS 673.010(21) and OAR 801-005-0010(48), may practice public accountancy in this state.

(2) **Applications by reciprocity**. Individuals who wish to establish a principal place of business in this state are required to obtain a CPA certificate and permit under this section prior to practicing as a CPA in this state.

(a) The applicant must complete an application and certify that:

(A) The applicant holds an active license in good standing as a certified public accountant issued by another jurisdiction whose requirements are substantially equivalent to Oregon as defined in Section 23 of the Uniform Accountancy Act.

(b) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (2)(a) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application. Four years means 48 months (8,000 hours) of full-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one full-time month. Qualifying part-time employment must be at least 20 hours per week; and

(3) **Reciprocity application requirements**. Applicants under section (2) of this rule must:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(4) **Verification of National Qualification Appraisal Service comparable licensing standard**s. The Board reviews the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153
Stats. Implemented: ORS 673.040 & 673.153
Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0100
Public Accountant Licenses

(1) **Application requirements**. Applicants for the license of public accountant must meet the following requirements:

(a) Complete and pass the required sections of the CPA exam as described in ORS 673.100 and OAR 801-010-0060;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.100 as follows:

(A) Obtain one year of experience, which means at least 12 months of full-time employment or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(d) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application for license.

(2) **Experience requirements**.

(a) Applicants must meet the experience requirements described in OAR 801-010-0065(2).

(b) The experience required under ORS 673.100 must consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.

(3) **Experience portfolio**. The applicant's experience portfolio must meet the requirements stated in OAR 801-010-0065(3).

(4) **Public Accountant practice restrictions**.

(a) Licensed public accountants who qualified for the CPA exam after January 1, 2002 must not perform audits.

Stat. Auth.: ORS 670.310, 673.410 & 673.100
Stats. Implemented: ORS 673.100, 673.150 & 673.103
Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; 1AB 4-1982, f. & ef. 5-21-82; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0110
Renewal of Permits

(1) Unless properly renewed, permits issued under ORS 673.150 that end in even numbers expire on June 30 of even-numbered years and permits that end in odd numbers expire on June 30 of odd-numbered years. To renew an active or inactive permit, the certificate or license holder must:

(a) Submit the current renewal form provided by the Board, fully completed and postmarked by the US Post Office or other delivery service no later than June 30 of the year in which the permit expires;

(b) Pay the renewal fee specified in OAR 801-010-0010, and

(c) If applying for renewal of an active permit, provide evidence that the applicant has satisfied continuing education and peer review requirements.

(d) Submit the late fee described in OAR 801-010-0010, if the renewal application is postmarked by the US Post Office or other delivery service after June 30..

(2) The Board may waive a licensee's first renewal fee if the licensee's initial permit is issued in May or June of the year in which the permit is due for renewal.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.150
Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0115
Resignation of Licensee

(1) **Resigning permits that are not the subject of pending complaints or Board investigations**. A certified public accountant or public accountant may resign and surrender the licensee's certificate or license and permit issued under ORS 673.040, ORS 673.100 and ORS 673.150, by submitting a written resignation, together with the original certificate or license issued by the Board. All resignations are effective upon acceptance by the Board. (a) After such resignation, in the event that the licensee wishes to reapply for a permit to practice public accountancy, the licensee will be required to meet all requirements of ORS Chapter 673 and OAR chapter 801.

(2) **Resigning permits that are the subject of pending complaints or Board investigations**. If the licensee's certificate or license is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be deemed to be a revocation for cause in the event that the licensee applies for a certificate or license after such resignation is accepted by the Board. A licensee who resigns under this section is required to notify all clients of the date of resignation and provide the Board with a list of the clients notified. The Board may refuse to accept a resignation under this provision if the written resignation does not include a written acknowledgment by the resigning licensee of the following:

(a) That the licensee is required to return the CPA certificate or PA license to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) That the licensee understands that in the event the licensee submits a subsequent application to be licensed to practice public accountancy, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation; and

(d) That upon any subsequent application to practice public accountancy, the licensee must meet all requirements of ORS Chapter 673 and OAR Chapter 801.

(e) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation.

(3) **Requirements upon acceptance of resignation**. Upon resignation, a former licensee is required to:

(a) Surrender the CPA certificate or PA license to the Board;

(b) Take all reasonable steps to avoid foreseeable harm to any client;

(c) Maintain client records for a period of at least six years, or return such records to the client; and

(d) Continue to comply with the requirements of OAR 801, Division 030 pertaining to confidential information and client records.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.410
Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0120
Inactive Status

(1) **Inactive**.

(a) An application for inactive status must be made on a form provided by the Board and must be accompanied by a fee prescribed by OAR 801-010-0010.

(b) The licensee applying for inactive status must certify to the Board that:

(A) The licensee holds a permit issued under ORS 673.150 which is not lapsed, revoked or suspended; and

(B) The licensee will not perform any public accountancy services during the period in which the licensee is granted inactive status

(2) **CPE and Peer Review Requirements**. A licensee who is granted inactive status is not required to complete continuing education under ORS 673.165 and is not subject to Peer Review requirements under ORS 673.455 during the period in which inactive status is approved.

(3) **Inactive Licensees' Use of CPA or PA Designation**. A licensee who is granted inactive status shall not display the Certified Public Accountant certificate or Public Accountant license and shall not use the CPA or PA designation.

(a) Licensees who are granted inactive status will not receive a permit card from the Board office upon renewal.

(b) Must include the words "inactive" or "retired" either before or after the CPA or PA designation, and

(c) Does not otherwise violate the provisions of OAR 801-030-0005(5).

(4) Except as provided in this rule, a licensee who is granted inactive status shall not hold out as a CPA or PA and the licensee shall be subject to disciplinary action under ORS Chapter 673 for violations of this provision.

Stat. Auth.: ORS 670.310 & 673.220
Stats. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 5-1989, f. & cert. ef. 8-2-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0125
Renewal of Inactive Status

(1) Inactive status granted to a licensee under ORS 673.220 expires on June 30 of each expiration year of the licensee's permit under the provisions of OAR 801-010-0110, unless properly renewed.

(2) To renew inactive status, the holder must, before the time at which the inactive permit would otherwise expire, apply to renew such permit on a form provided by the Board.

(3) The application must be accompanied by the appropriate renewal fee prescribed by OAR 801-010-0010.

(4) Applications that are postmarked by the US Postal Service or other delivery service after June 30 must include a late fee described in OAR 801-010-0010.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0130
Restoration to Active Status

A person who is granted inactive status under ORS 673.220 and who subsequently applies to renew such permit to active status must submit an application on a form provided by the Board. The applicant must:

(1) Pay the permit fee for the renewal period in which the application is submitted;

(2) Meet the CPE requirements for reinstatement described in OAR 801-040-0090;

(3) Meet the peer review requirements described in OAR 801, division 050; and

(4) The applicant must not perform any public accountancy services until after the applicant receives an active permit.

Stat. Auth.: ORS 670.310 & 673.220
Stat. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 3-1994, f. & cert. ef. 8-10-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0170
Publication of Disciplinary Action

The Board in its discretion will publicize disciplinary action taken under ORS 673.170 in such manner and for such period as it may direct.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.170
Hist.: 1AB 9, f. 6-24-60; AB 4-1991, f. & cert. ef. 7-1-9; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0190
Procedure for Complaints

Pursuant to ORS 673.185, the Board is authorized to investigate complaints alleging violations of ORS 673.010 through 673.455 and OAR chapter 801. The following procedures govern complaints received by the Board:

(1) The Board mustinvestigate all complaints that describe activities that are the subject of the complaint and that provide information in support of the complaint.

(2) Anonymous or unsigned complaints will only be investigated if they meet the criteria of (1).

(3) The Board may also investigate other information of which the Board has knowledge, such as media stories and information provided by law enforcement or other regulatory agencies, which indicates that a violation of the statutes or rules enforced by the Board may have occurred.

(4) Any person submitting a complaint may be required to support the complaint by personal appearance before the Board.

(5) The Board may employ private investigators or contract investigators to provide assistance in determining the facts of any case being investigated.

(6) A licensee who is the subject of a complaint may meet with the Complaints Committee to discuss the complaint.

(7) In accordance with ORS 673.415 the Board may obtain a copy of the signature block, including the name, address and signature of the tax preparer, for any tax return or report permitted or required to be filed with the Oregon Department of Revenue, if the Board has reasonable grounds to believe that a licensee who prepared such tax return or report violated any provision of ORS 673.010 to 673.455 or rules promulgated by the Board.

(8) If the Board determines that the available evidence is insufficient to indicate that a violation may have occurred, the Board shall dismiss the complaint.

(9) If the Board determines that the available evidence is sufficient to indicate that a violation may have occurred, the Board shall make a preliminary finding of a violation(s) and offer the subject of the complaint a contested case hearing.

(10) A person under investigation and the Board's Executive Director may negotiate a proposed Stipulated Final Order to conclude a matter at any time after the Complaints Committee has considered it.

(11) A negotiated settlement as described in paragraph (10) shall not be binding on either party until approved by the Board and signed by Chairperson of the Board.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.170 & 673.185
Hist.: 1AB 9, f. 6-24-60; 1AB 24, f. 9-15-72, ef. 10-1-72; 1AB 5-1978, f. & ef. 5-16-78; 1AB 3-1982, f. & ef. 4-20-82; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0340
Non-CPA and Non-PA Ownership of Business Organizations

(1) **Requirements of non-CPA or non-PA ownership**. The ownership of a business organization, defined in ORS 673.010 and registered as a firm under 673.160 and OAR 801-010-0345, that is lawfully engaged in the practice of public accountancy in this state, may include owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(a) Licensed certified public accountants and public accountants shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(b) If the business organization has its principal place of business in this state and performs public accountancy services in this state, licensees under the provisions of ORS 673.150 or ORS 673.100 shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(c) The business organization shall designate in writing a permit holder under ORS 673.150 who shall be responsible for the management and registration of the business organization in this state;

(d) A permit holder under ORS 673.150 shall have ultimate responsibility for each financial statement attest service engagement performed in this state;

(e) Non-licensee owners shall be material participants in the business of the firm or an entity affiliated with the firm;

(f) Non-licensee owners may be natural persons or legal entities provided that each ultimate beneficial owner of an equity interest in such entity shall be a natural person who materially participates in the business conducted by the firm.

(g) Non-licensee owners must not hold themselves out as certified public accountants or public accountants.

(h) Business organizations with non-CPA or non-PA ownership that are registered under OAR 801-010-0345 must comply with the require-

ments for peer review as provided in ORS 673.455 if such business organization performs attestation or compilation services.

(i) For purposes of this rule, "material participation" means an activity that is regular, continuous and substantial.

(2) **Registration**. A business organization with non-licensee ownership that is registered in this state under OAR 801-010-0345 must certify at the time of registration and at each renewal that the business organization is in compliance with the provisions of this rule.

(3) **Request for extension**. If the licensee ownership of a registered business organization whose principal place of business is in this state does not meet the requirements of section (1) of this rule because of a death or other unforeseen circumstance, the business organization may request an extension of 180 days, or until the next renewal period, whichever is longer, for the business organization to meet such requirement.

(4) **CPA designation**. A business organization, of which the majority ownership is held by individuals licensed as public accountants under ORS 673.100, must not use the term "CPA firm" or any similar name that would indicate that a majority of the owners of the firm hold CPA certificates issued under ORS 673.040.

Stat. Auth.: ORS 670.310, 673.410 & 673.160
Stats. Implemented: ORS 673.160
Hist.: 1AB 18, f. 11-25-70, ef. 12-25-70; 1AB 29, f. 4-25-73, ef. 5-15-73; 1AB 3-1982, f. & ef. 4-20-82; AB 5-1990, f. & cert. ef. 8-16-90; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

801-010-0345
Registration of Business Organizations

(1) **Requirement to register as a firm**. A business organization organized for the practice of public accountancy must register with the Board as a firm if the business organization:

(a) Is located in Oregon and

(A) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or

(C) Performs attestation or compilation services, as defined by these rules.

(b) Is **not** located in Oregon and

(A) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy and performs any of the following services:

(i) An audit or other engagement for which performance standards are included in Statements on Auditing Standard (SAS)

(ii) Examination of prospective financial information for which performance standards are included in the Statement on Standards for Attestation Engagements (SSAE)

(iii) Engagements for which performance standards are included in the auditing standards of the Public Company Accounting Oversight Board (PCAOB)

(C) Has a person, who is a permit holder under ORS 673.150 or meets the substantial equivalency requirements of ORS 673.153, that is responsible for supervising attestation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the business organization.

(2) **Registration of sole proprietors**. A business organization organized as a sole proprietorship, a professional corporation or a limited liability company, and comprised of a single permit holder under ORS 673.150, is required to register as a firm if the business organization engages in any of the following activities in this state:

(a) Holds out to clients or to the public that it is composed of more than one licensee, or

(b) Performs attestation or compilation services.

(3) **Application requirements**.

(a) **Firms located in Oregon**: Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) must be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application must provide the following information in writing:

(A) Name of the firm;

(B) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(C) The physical address of every office and branch office in this state;

(D) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(E) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(F) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(G) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(b) **Firms not located in Oregon**.

(A) Name of the firm.

(B) Identification by name and by active certificate or license number, indicating the state in which the certificate or license is issued of each CPA who is associated with or employed by the business organization and is authorized to practice in Oregon under substantial equivalency pursuant to ORS 673.153 who will practice public accounting in Oregon.

(C) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(c) Any out of state firm that is required to register in Oregon and subsequently opens an office in Oregon shall notify the Board of the existence of the new office within 30 days of opening the office.

(C) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(4) **Application requirements for firms with non-CPA and non-PA ownership**. In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm must provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) **Issuance of firm registration**. The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration, which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal.

(b) Business organizations that fail to renew a registration within 60-days of the close of the renewal period will be terminated and required to pay the renewal fee plus a late fee and submit a reinstatement form to the Board office;

(c) Notify the Board in writing of any change in the firm name within 30 days of such change;

(d) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business

organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(e) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) **Form of practice**. A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a)(A) **Non-CPA or non-PA ownership**. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(B) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant previously licensed in any state whose license to practice public accountancy has been revoked by any state, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) **Branch offices**.

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) **Internet Practice**. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Housekeeping.
Adm. Order No.: BOA 4-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 801-040-0010, 801-040-0050
Subject: General housekeeping.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-040-0010
Basic Requirements

(1) **Biennial CPE requirement**. Each biennial renewal period, certified public accountants and public accountants must report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement must be completed as follows:

(a) At least 24 of the required 80 CPE hours must be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics CPE requirement**. CPE hours in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(a) **All active licensees who are applying for the first renewal permit in Oregon** are required to complete and report at least four hours of CPE in a professional conduct and ethics program that meets the requirements of section three (3) of this rule.

(b) **Licensees who are not renewing for the first time and whose principal place of business is located in another jurisdiction** may meet the ethics requirement of this rule by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE Ethics hours that meets the Ethics requirement of such other jurisdiction will be accepted in Oregon, so long as the other jurisdiction requires the licensee to complete an ethics program as a condition of renewal.

(c) **An active licensee who is not renewing for the first time and whose principal place of business is in another jurisdiction** that does not have a professional conduct and ethics CPE requirement must complete the ethics requirement described in subsection (2)(d) of this rule.

(d) **All other active licensees** are required to complete and report four hours of CPE in professional conduct and ethics with each biennial renewal application, which

may be satisfied by any ethics program that meets the general CPE requirements described in OAR 801-040-0030.

(3) **CPE ethics programs**. CPE programs in professional conduct and ethics required by subsection (2)(a) of this rule are eligible for CPE credit if the program is offered by a sponsor registered with the Board and includes information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees.

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 4-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 6-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 4-2010, f. 12-15-10, cert. ef. 1-1-11

801-040-0050
Credit Allowed and Evidence of Completion

(1) **Credit hours**. Eligible CPE credit is measured by program length, with one 50 minute period equal to one CPE credit. CPE credit may be issued in half increments (equal to 25 minute program periods) after the first credit has been earned.

(2) **Evidence of completion**. Licensees are required to document all CPE programs claimed for CPE credit and to provide the appropriate proof of completion for the number of qualifying CPE credits claimed for each program. Licensees must retain proof of completion for each CPE program reported for a period of 5 years after completion of the program.

(3) **Group study programs**.

(a) CPE credit is allowed for actual class hours attended.

(b) Evidence of completion includes a written course outline and certificate of completion or attendance record provided by each program sponsor. The evidence of completion must include the sponsor name, course title, date of attendance or date of completion, name of participating licensee, statement that the program and sponsor are QAS approved, if appropriate, and the number of CPE hours earned;

(4) **Individual study programs**.

(a) Individual study programs are eligible for CPE credit only if the program is offered by a NASBA-QAS approved sponsor and the program itself is QAS approved;

(b) CPE credit will be awarded in an amount equal to the average completion time determined by the QAS approved sponsor.

(c) The date for which CPE credit is allowed is the completion date specified on the evidence of completion provided by the sponsor.

(d) Evidence of completion must include the name of the participating licensee, sponsor name, program title, date of completion, Instructor name, if applicable and number of QAS CPE hours allowed.

(5) **Lecturer, discussion leader or speaker**.

(a) CPE credit for a lecture, training session or speaking engagement at which the licensee was an instructor, discussion leader or speaker is allowed provided that the lecture, training or engagement meets CPE requirements for the participants;

(b) One CPE hour is allowed for each 50 minute period completed as an instructor or discussion leader for the first presentation of the subject material if such activity increases the instructor's professional competence. CPE credit may be allowed for additional presentations if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research;

(c) CPE credit for preparation time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CPE hours of preparation for each hour of teaching;

(d) The maximum CPE credit allowed for preparation and teaching under this section and for published articles described in section (6) of this rule, combined, must not exceed one-half of the total number of CPE hours required for the renewal period;

(e) Evidence of completion includes a copy of the agenda or outline provided for each presentation, lecture or speaking engagement, stating the date of presentation and name of the sponsoring organization.

(6) **Published articles**.

(a) CPE credit may be allowed for authoring published articles or books, provided the work directly contributes to the professional competence of the licensee;

(b) CPE credit for authoring published articles or books is allowed as of the date of publication and is only allowed for the first publication of such writing. The number of CPE hours is based on the time spent writing the published article,

(c) Authorship of a published article does not contribute to the professional competence of the licensee unless the published article is suitable for a professional audience. Published articles may be reviewed on a case-by-case basis to determine whether such articles contribute to the licensee's professional competence

(d) The maximum credit for published articles and books allowed under this section and for preparation and teaching under section (5) of this rule, combined, is no more than one-half of the total CPE requirement for the renewal period.

(e) A licensee may request additional CPE credit for authoring a published article by submitting an explanation of the circumstances which justify greater credit than is otherwise allowed. The Board shall determine whether additional credit is justified.

(f) Evidence of completion includes a copy of the title page or other pages that show the title, date of publication and a description of the content for each article reported for CPE credit.

(7) **Reviewing peer review reports for Board approved Peer Review Programs**.

(a) Licensees who serve as volunteer members of the Review Acceptance Body or any other committee that reviews peer review reports on behalf of a board approved peer review program are allowed two hours of CPE credit per meeting attended, for a maximum of 16 hours for the renewal period.

(b) Evidence of completion includes proof of attendance, provided by the sponsor of the approved Peer Review Program, for each meeting attended.

(8) **State Legislative Joint Ways and Means Committee members**.

(a) Licensees who serve as members of the Oregon Joint Ways and Means Legislative Committee are allowed up to 16 hours of the total CPE requirement for the renewal period during which the licensee served on the legislative committee.

(b) Evidence of completion shall be a copy of the membership roster published during the legislative session indicating the specific section of the Joint Ways and Means sub-committee on which the licensee served.

(9) **University and college courses**.

(a) CPE credit allowed is described in OAR 801-040-0030.

(b) An official copy of the college transcript is evidence of completion for courses that earn college credit.

(c) An attendance schedule or sign-in sheet demonstrating the licensee's attendance and prepared and maintained by the college will provide evidence of completion for courses that do not earn college credit.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410
Stats. Implemented: ORS 673.165
Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 7-1992, f. & cert. ef. 12-15-92; AB 4-1993, f. & cert. ef. 5-14-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; AB 4-1997, f. & cert. ef. 7-25-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2000, f. 3-22-00, cert. ef. 3-24-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2010, f. 12-15-10, cert. ef. 1-1-11

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Board of Architect Examiners
Chapter 806

Rule Caption: Reinstatement Fee.
Adm. Order No.: BAE 3-2010
Filed with Sec. of State: 12-14-2010
Certified to be Effective: 12-14-10
Notice Publication Date: 10-1-2010
Rules Amended: 806-010-0105
Subject: The Board transitioned in stages to a two-year renewal cycle for individual architect registrations. Now that the transition is complete, there is no longer a one-year renewal cycle This rule eliminated the fee to renew for one year or less and leaves the fee for the two-year renewal cycle intact. In addition, the Board unintentionally overlooked the reinstatement fee. This rule adjusts that fee to be appropriate for a two-year renewal cycle.
Rules Coordinator: Carol Moeller—(503) 763-0662, ext. 23

806-010-0105
Schedule of Actual Fees

(1) Initial Registration:
(a) One year or less — $75;
(b) More than one year to two years — $150;
(2) Renewal — $200;
(a) Late Renewal — $100;
(b) Obtaining CPE after deadline, but during grace period — $100;
(3) Examination Application Fee — $75;
(4) Reciprocal Application Fee — $100;
(5) Duplicate Wallet Card Certificate — $25;
(6) Firm Registration — $100;
(7) Firm Renewal — $100;
(8) Reinstatement — $400;
(9) Miscellaneous:
(a) Labels, lists, or computer disk of licensees -- $50;
(b) Copying charges:
(A) The first 5 pages — free;
(B) Additional pages — $0.25 per page.

Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.085
Hist.: AE 3-1983, f. 1-12-83, ef. 3-1-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 1-1988, f. & cert. ef. 3-14-88; AE 2-1988, f. & cert. ef. 9-9-88; AE 4-1992, f. & cert. ef. 9-2-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 2-2002, f. & cert. ef. 4-30-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08; BAE 3-2010, f. & cert. ef. 12-14-10

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Board of Licensed Professional Counselors and Therapists
Chapter 833

Rule Caption: Rule amendment for impaired professional program, foreign degree review, intern supervision, business name, online degrees.
Adm. Order No.: BLPCT 6-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 12-1-2010
Rules Adopted: 833-060-0062, 833-130-0080
Rules Amended: 833-020-0081, 833-040-0021, 833-050-0081, 833-060-0012, 833-100-0021, 833-110-0021
Rules Repealed: 833-055-0001, 833-055-0010, 833-055-0020
Subject: • 833-020-0081 – Establishes time limits for passage of the competency exam for licensed professional counselors and licensed

marriage and family therapists; establishes consequences for failure to pass the exam within the time limits.

• 833-040-0021 – Eliminates duplicate language in license requirements for marriage and family therapists.

• 833-050-0081 – Clarifies intern supervision requirements to reflect that requirements are to be applied each month.

• 833-055 – Repeals rules related to an Impaired Professional Program.

• 833-060-0012 —Amends accreditation standards for online graduate programs.

• 833-060-0062 – Establishes requirements for review of foreign degrees.

• 833-100-0021 – Adds requirement that business practice name must be name of licensee or reflect the licensee's organization or location.

• 833-110-0021 – Eliminates reference to an impaired professionals program.

• 833-130-0080 – Establishes an appeal process for licensees who have been denied placement on the board's supervisor registry because of discipline imposed by the board.

Rules Coordinator: Becky Eklund—(503) 378-5499, ext. 3

833-020-0081
Examination

(1) Applicants approved for examination must maintain examination status by sitting for the competency portion of the state examination once per year based on the eligibility date established by the board.

(2) Registered interns may take the competency exam any time during their internships.

(3) Failure to document passage of an acceptable competency examination or failure to register and attempt to pass the competency portion of the state examination at least once per year will result in denial of licensure.

(4) Applicants must pass the competency exam within two years after meeting experience requirements for licensure.

(5) Applicants who fail to pass the competency portion of the state exam after taking the exam three times, must:

(a) Complete graduate level coursework in the content areas failed in the exam;

(b) The graduate level coursework must be completed from:

(A) A program accredited by CACREP, CORE, or COAMFTE; or

(B) A regionally accredited college or university;

(c) Re-apply for licensure.

(6) Applicants are allowed 30 days, from the date the board sends the law and rules exam to the applicant, to complete and return the law and rules portion of the state examination. Failure to complete and return the examination to the Board office will result in closure of the application.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-040-0021
Experience Requirements for Licensure as a Marriage and Family Therapist

(1) To qualify for licensure as a marriage and family therapist under ORS 675.715(4) and 675.720, an applicant must have at least three years of full-time supervised clinical experience that consisted of no less than 2,000 supervised client contact hours of therapy with at least 1,000 of those hours working with couples and families.

(2) Direct client contact hours must have been:

(a) Obtained after receipt of the qualifying graduate degree; and

(b) Face to face with a client or clients including through electronic communication.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-050-0081
Supervision

(1) Supervision of direct client contact must take place within the same calendar month as the completed direct client contact hours.

(2) Supervision meetings must take place at least twice per month, and in different weeks.

(3) Supervision meetings must be no less than one hour, defined as no less than 50 minutes.

(4) Supervision each month must total at least:

(a) Two (2) hours for months in which 45 or fewer hours of direct client contact are completed; or

(b) Three (3) hours for months in which 46 or more hours of direct client contact are completed.

(5) At least 25% of supervision hours each month must be conducted in a professional setting, face to face. Up to 75% of supervision hours may be conducted through electronic communication.

(6) At least 50% of the required number of monthly supervision hours must be individual supervision 1-to-1.

(7) Group supervision must meet the following requirements at each meeting.

(a) Include no more than six (6) supervisees;

(b) Have leadership that does not shift from one supervisor to another; and

(c) Not be a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(8) If in any month an intern does not receive the minimum supervision hours required, no client contact hours would be credited for that month.

(9) Interns must take steps to ensure consistency in supervision throughout the internship. The intern must request approval from the Board to change supervisors more than three times during the internship and provide steps taken to ensure consistency when changing supervisors.

(10) An approved plan for a single practice, such as private practice or employment by one agency offering services at one or more sites, may have no more than two supervisors at any given time.

(11) The supervisor must have the authority to:

(a) Review all case records, billings, appointment books, and client population;

(b) Review and determine appropriateness of individual charts and case records;

(c) Direct the intern to refer clients to other therapists when client needs are outside the intern's scope of practice; and

(d) Determine appropriate client caseload to be served by the intern.

(12) The supervisor of interns, at the time of supervision must:

(a) Be someone other than a spouse or relative by blood or marriage or a person with whom the application has or had a personal relationship; and

(b) Meet registered intern supervisor qualifications as required in OAR chapter 833, division 130.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 5-2010, f. 6-15-10, cert. ef. 7-1-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-060-0012
Comparable Full Standards

A graduate degree shall be determined by the Board as comparable in content and quality to degrees from CACREP, COAMFTE, or CORE approved programs. Only CACREP accredited online graduate degrees in counseling or marriage and family therapy will be accepted as comparable in content and quality. Degrees must meet the following standards. The degree was from an institution that:

(1) Was a fully accredited member of one of the regional institutional accreditation bodies at the time the degree was granted;

(2) Offered a minimum of a master's degree;

(3) Was at least two years' duration and at least:

(a) 48 semester credit hours or 72 quarter hours for graduate degrees granted before October 1, 2014; or

(b) 60 semester credit hours or 90 quarter credit hours for graduate degrees granted on or after October 1, 2014.

(4) Included all coursework requirements set forth in OAR 833-060-0042 or 833-060-0052.

(5) Included a required supervised clinical experience for all students of no less than:

(a) 600 total clock hours to include 240 direct client contact hours, for graduate degrees granted before October 1, 2014; or

(b) 700 total clock hours to include 280 direct client contact hours, for graduate degrees granted on or after October 1, 2014.

(6) Facilitated a practicum and/or internship experience that:

(a) Had supervisory staff with a minimum of a master's degree in the program emphasis and with pertinent professional experience;

(b) Made provision for faculty monitoring of operations;

(c) Kept records of student-client contact hours including summary of student progress by the supervisor;

(d) Had a written agreement with the program and student specifying learning objectives;

(e) Had a mechanism for program evaluation; and

(f) Maintained adherence to the Oregon Board Code of Ethics OAR 833 division 100.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-060-0062
Foreign Degrees

Applicants with degrees from universities outside the United States must submit a degree equivalency analysis conducted by an organization accepted by the board. The applicant will pay the cost of the analysis.

Stat. Auth.: ORS 675.785 - 675.835 & 676.150 - 676.405
Stats. Implemented: ORS 675.785 - 675.835 & 676.150 - 676.405
Hist.: BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-100-0021
Responsibility

(1) A licensee's primary professional responsibility is to the client. A licensee makes every reasonable effort to advance the welfare and best interests of all clients for whom the licensee provides professional services. A licensee respects the rights of those persons seeking assistance and makes reasonable efforts to ensure that the licensee's services are used appropriately.

(2) A licensee recognizes that there are other professional, technical, and administrative resources available to clients. The licensee makes a reasonable effort to provide referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services or when the client requests a referral.

(3) Licensees do not give or receive commissions, rebates or any other form of remuneration when referring clients for professional services.

(4) A licensee seeks appropriate professional assistance for the licensee's own personal problems or conflicts that are likely to impair the licensee's work performance or clinical judgment.

(5) A licensee provides supervision only when the licensee's professional competence is sufficient to meet the needs of the trainee or intern. A licensee does not permit a trainee or intern under the licensee's supervision to perform, nor purport to be competent to perform, professional services beyond the trainee's or intern's level of training and accepts responsibility for the effects of the actions of the trainee or intern of which they should be aware.

(6) A licensee does not practice under the influence of alcohol or any controlled substance not prescribed by a physician, or if incapacitated by habitual or excessive use of intoxicants, drugs or controlled substances.

(7) A licensee does not practice when adversely influenced by either physical or emotional impairment that would interfere with their ability to provide professional services.

(8) A licensee abides by all applicable statutes and administrative rules regulating the practice of counseling or therapy or any other applicable laws, including, but not limited to, the reporting of abuse of children or vulnerable adults.

(9) A licensee does not condone or engage in discrimination based on age, color, culture, disability, ethnicity, national origin, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

(10) A licensee does not provide services to a client when the licensee's objectivity or effectiveness is impaired. If a licensee's objectivity or effectiveness becomes impaired during a professional relationship with a client, the licensee notifies the client that the licensee can no longer serve the client professionally and makes a reasonable effort to assist the client in obtaining other professional services.

(11) A licensee respects the right of a client to make decisions and helps the client understand the consequences of these decisions. A licensee advises a client that all decisions are the responsibility of the client.

(12) A licensee displays in a prominent place, available to clients, a Board issued license.

(13) A licensee practices under his or her name or other name that describes a place or organization with which the licensee practices.

(14) A licensee obtains written informed consent from the client or legal representative of the client for rendering professional services. Informed consent constitutes informing the client as early in the therapeutic relationship as possible of the nature and anticipated course of therapy, services and approaches to be used, potential risks or experimental methods proposed, alternatives for treatment, fees, involvement of third parties, limits of confidentiality, and the client's right to accept or refuse any and all therapeutic treatment.

(15) A licensee makes available as part of the disclosure statement a bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(a) To expect that a licensee has met the minimum qualifications of training and experience required by state law;

(b) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee;

(c) To obtain a copy of the Code of Ethics;

(d) To report complaints to the Board;

(e) To be informed of the cost of professional services before receiving the services;

(f) To be assured of privacy and confidentiality while receiving services as defined by rule or law, including the following exceptions:

(A) Reporting suspected child abuse;

(B) Reporting imminent danger to the client or others;

(C) Reporting information required in court proceedings or by client's insurance company or other relevant agencies;

(D) Providing information concerning licensee case consultation or supervision; and

(E) Defending claims brought by the client against licensee;

(g) To be free from being the object of discrimination on any basis listed in subsection (9) of this rule while receiving services.

(16) A licensee terminates a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests. Whenever possible prior to termination, a licensee provides pre-termination counseling and recommendations and alternatives for the client.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-110-0021
Disciplinary Action

(1) The Board will initiate disciplinary actions for failure to meet professional conduct and practice standards, or violation of the licensing law or rules when it determines probable cause of:

(a) Failure to meet the standards requirements for continuation of licensure that are unlikely to harm clients or the public;

(b) Professional misconduct or incompetence capable of causing or resulting in harm to a client or the public; and

(c) Title violation.

(2) Proposed disciplinary actions include, but are not limited to:

(a) Suspension or revocation of licensure;

(b) Refusal to issue or renew a license;

(c) Civil penalty of up to $2,500 per occurrence for violation; and

(d) Reprimand, probation, probation with specific conditions.

(3) Negotiated disciplinary actions include, but are not limited to, letter of reprimand, limited suspension, probation, limited practice, education, enrollment in an impaired professional program, rehabilitation, supervision, therapy, payment of disciplinary costs or civil penalties, or any combination thereof.

(4) Non-disciplinary actions include, but are not limited to, letter of concern or voluntary diversion.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

833-130-0080
Supervisor Registry Appeal Process

(1) LPC and LMFT supervisor applicants denied placement on the registry may appeal the decision if the denial was based on discipline imposed by the Board.

(2) During review of the appeal, the Board will consider

(a) Type of violation and imposed discipline;

(b) The passage of time since the violation and discipline;

(c) Whether discipline was corrective, punitive or both;

(d) Compliance with imposed discipline;

(e) Results of national health care database search;

(f) Whether behavior resulted in harm to clients;

(g) Previous complaints resulting in discipline;

(h) Results of criminal background check; and

(j) Any other information the board finds relevant.

Stat. Auth.: ORS 675.705 - 675.835 & 676.150 - 676.405
Stats. Implemented: ORS 675.705 - 675.835 & 676.150 - 676.405
Hist.: BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11

Board of Licensed Social Workers
Chapter 877

Rule Caption: Permanent rules and fees to implement Senate Bill 177 (2009), and House Bill 2345 (2009).
Adm. Order No.: BLSW 3-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 8-1-2010
Rules Adopted: 877-001-0006, 877-001-0015, 877-001-0020, 877-001-0025, 877-005-0101, 877-015-0105, 877-015-0108, 877-015-0131, 877-015-0136, 877-015-0146, 877-015-0155, 877-040-0019
Rules Amended: 877-010-0005, 877-010-0010, 877-010-0015, 877-010-0020, 877-010-0025, 877-010-0030, 877-010-0040, 877-010-0045, 877-020-0000, 877-020-0005, 877-020-0008, 877-020-0009, 877-020-0010, 877-020-0016, 877-020-0046, 877-020-0055, 877-020-0057, 877-020-0060, 877-022-0005, 877-025-0001, 877-025-0006, 877-025-0011, 877-025-0016, 877-025-0021, 877-030-0025, 877-030-0030, 877-030-0040, 877-030-0070, 877-030-0080, 877-030-0090, 877-030-0100, 877-040-0000, 877-040-0003, 877-040-0010, 877-040-0050
Rules Repealed: 877-020-0015, 877-020-0020, 877-020-0030, 877-030-0050, 877-035-0000, 877-035-0010, 877-035-0012, 877-035-0013, 877-035-0015
Subject: The permanent rules as adopted by the Board have been posted on the Board's website at www.oregon.gov/blsw, and implement Senate Bill 177 (2009) provisions that become law on January 1, 2011, including fees and requirements for application and renewal for new, voluntary, non-clinical licensing options that become available then: Registered Bachelors of Social Work – RBSW, and Licensed Masters of Social Work – LMSW. The proposed amended rule substantially increases the late fee for LCSW licensure renewals, defines certain terms used in the definition of clinical social work in ORS 675.510(2), and adopts a rule exempting MSW students engaging in clinical social work from the mandatory licensure requirement for clinical social work. The proposed amended rule consolidates mandatory reporting requirements, including those required by House Bill 2059 (2009), into one section of the Board's Ethics Code, and applies Ethics Code to all regulated social workers. The proposed amended rule adopts the temporary rule to implement House Bill 2345, which eliminated the Board's Impaired Professional Program, and adopts the definition of impairment required by HB 2345, and makes related changes to complaint management rules.
Rules Coordinator: Martin Pittioni—(503) 373-1163

877-001-0006
Definitions

(1) "Authorization to practice regulated social work" is defined in ORS 675.510 as a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) "Regulated social worker" is defined in ORS 675.510 as a baccalaureate social worker registered under ORS 675.532; a master's social worker licensed under ORS 675.533; a clinical social work associate certified under ORS 675.537; or a clinical social worker licensed under ORS 675.530.

(3) For the purpose of interpreting ORS 675.510(2), "professional practice" is characterized by all of the following:

(a) A client who receives professional services.

(b) Mental health services provided by a person who has or, by offering the services, purports to have specialized training in or knowledge of applying principles and methods listed in or suggested by ORS 675.510(2)(a) to (e).

(c) The organized providing of services in coordination with a volunteer organization or in a setting through which the provider receives remuneration for the services.

(4) For the purpose of interpreting ORS 675.510(2)(f):

(a) "Supervising clinical social work practice" means providing evaluation and direction of the clinical social work practice of the person supervised.

(b) "Administering clinical social work practice" means providing leadership, oversight, or direction to a practitioner who engages in the practice of clinical social work that substantially affects the use by the practitioner of principles and methods listed in or suggested by ORS 675.510(2)(a) to (e).

(c) "Teaching clinical social work practice" means providing instruction to one or more students in an academic or instructional setting by using one of the principles and methods listed in or suggested by ORS 675.510(2)(a) to (e) but does not include the use of such teaching tools as role plays, process recordings, case discussions, or video or audio tapes of client interactions that do not involve providing mental health services to a live client in the class room setting.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-001-0015
Required Documentation

The board will accept as evidence that a person meets a requirement to hold an academic degree only:

(1) A certified transcript from the institution awarding the degree; or

(2) A copy of a transcript from the awarding institution or other written verification provided by the social work registry maintained by the Association of Social Work Boards.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-001-0020
Fees for Certification and Licensing

Following are the fees due, without pro ration, as a condition of obtaining and retaining a certificate or license under this division of rules:

(1) With an application for an initial certificate or license:
(a) For Registered Baccalaureate Social Worker – $50
(b) For Licensed Master's Social Worker – $50
(c) For Clinical Social Work Associate – $150
(d) For Licensed Clinical Social Worker – $150

(2) For the initial issuance of a certificate or license:
(a) For Registered Baccalaureate Social Worker – $50
(b) For Licensed Master's Social Worker – $100
(c) For Clinical Social Work Associate – $60
(d) For Licensed Clinical Social Worker – $130

(3) For the renewal of a certificate or license:
(a) For Registered Baccalaureate Social Worker:
(A) Active – $100
(B) Inactive – $40
(b) For Licensed Master's Social Worker:
(A) Active – $200
(B) Inactive – $80
(c) For Clinical Social Work Associate – $60
(d) For Licensed Clinical Social Worker:
(A) Active – $130
(B) Inactive – $48

(4) For a request for renewal of a certificate or license received by the board after the renewal date of the certificate or license:
(a) For Registered Baccalaureate Social Worker – $50
(b) For Licensed Master's Social Worker – $50
(c) For Clinical Social Work Associate – $50
(d) For Licensed Clinical Social Worker – $200

(5) The fees in 877-001-0020 (1)(b) and (2)(b) are waived for any Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0013(3)(b)(A).

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-001-0025
Renewals of Authorization to Practice Regulated Social Work

(1) Renewal of authorizations to practice regulated social work: The holder of an authorization to practice regulated social work may renew the authorization by submitting the following to the board:

(a) A completed application for renewal that shows that the holder of the authorization has met the requirements for continuing education in division 25 of this chapter of rules.

(b) The fee required by OAR 877-001-0020.

(2) An authorization lapses at the conclusion of the 30th day following the renewal date unless the holder has met the requirements of section (1) of this rule.

(3) The renewal date for an authorization is the final day of the birth month of the holder in the year the authorization expires. An authorization expires as follows:

(a) A certificate of clinical social work associate and a license as a clinical social worker expire each year.

(b) A master's social worker license and a certificate of baccalaureate social worker registration expire in the month following the first birth month that occurs a minimum of 18 months following the initial issuance and every second year thereafter.

(4) An authorization expires when it lapses under section (2) of this rule.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-005-0101
Authorization for Graduate Students to Practice Clinical Social Work

(1) A student in a social work graduate degree program at a college or university accredited by a credentialing body recognized by the board under OAR 877-020-0009 may practice clinical social work under the direction of the college or university.

(2) An authorization to practice clinical social work under section (1) of this rule expires upon the completion of required field instruction for the student.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0005
Quorum Required

A majority of the Board constitutes a quorum for the transaction of business. A majority of the quorum of the Board must concur in any official business transacted by the Board at the meeting.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1994, f. & cert. ef. 2-17-94; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0010
Internal Organization

At the first meeting beginning each fiscal year, organizational matters, including review of responsibilities assigned to Board members, shall be the first order of business. The terms of the previous Chair and Vice-Chair and all other positions of assigned responsibility shall expire at this time. However, a Chair or Vice-Chair or any assigned responsibility can be changed or replaced by a majority vote of the members at a meeting if the proposal has been placed on the agenda and sent to the members two weeks in advance of the meeting, or by unanimous consent of members at the meeting.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0015
Chair's Responsibilities

(1) Decisions required to be made by the Board, and administrative actions which the Chair intends to carry out shall be presented for the Board's review at the next meeting. The Chair is authorized to take emergency action between Board meetings, subject to ratification by the Board. However, in the case of actions significant enough to normally require Board decision, the Chair shall first attempt to get authorization for such decision for the Board members through telephone communication. All emergency actions shall be noted in the agenda for the next meeting and shall become the first order of business at that next meeting.

(2) The Vice-Chair shall officiate in lieu of the Chair when the Chair is unable to perform the required duties.

Stat. Auth.: ORS 675
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0020
Board Communications

All correspondence in support of Board activities shall be prepared by the Board Executive Director. When deemed necessary or appropriate, the Executive Director will review correspondence with the Board Chair or the Board's legal counsel. The full Board should approve in advance any correspondence which may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the Chair may be required to take immediate action which shall be reviewed at the next meeting of the Board.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0025
Board Files

All Board files shall be retained in the Board's official office. The Board Executive Director shall maintain a master record of each file checked out of the Board office by Board members. The Board Executive Director shall be notified whenever a Board file is transferred from the possession of one person to another, and shall so note in the Board's records. Individuals who have in their possession documents or files pertaining to Board affairs are responsible for their protection and privacy. Board files shall be retained for a period of seven years after the lapse of a license.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0030
Minutes and Agendas

(1) The minutes of a meeting shall be distributed promptly following the meeting to all Board members.

(2) The Board Executive Director shall prepare a draft agenda with review by the Chair before distribution to Board members and the public. The agenda items shall include reports by the Board Executive Director, the Chair, and each Board member who has received a specific assignment at the previous meeting or has a report to make regarding standing assignments. If there is insufficient time to inform the Chair, the Board Executive Director may make additional scheduling at the direct request of Board members. The Board may, at its discretion, revise the agenda or limit it to a particular topic under special circumstances. Reports not discussed may be added to the typed minutes of a meeting.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0040
Publications

The Board shall make available, upon request and payment of a fee, a list of the names and addresses of all persons who have been registered, certified, or licensed under ORS 675.510 to 675.600.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BSCW 1-1982, f. & ef. 1-29-82; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; Renumbered from 877-020-0040; BCSW 1-1997, f. & cert. ef. 3-25-97; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-010-0045
Charges for Materials and Services

(1) All requests for copies of public records pertaining to the State Board of Licensed Social Workers available at the Board office shall be submitted in writing.

(2) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, the accepted government agency rate per copy.

(b) For documents developed by the Board, an amount fixed by the Board Executive Director not exceeding the actual preparation and materials cost per copy.

(c) For both machine copies and documents, an additional amount set at the discretion of the Board Executive Director for staff time required for search, handling, and copying.

(3) Charges for the general public may be payable in forms acceptable to the Board. Charges to state agencies may be payable in cash unless billing to such agencies is authorized by the Board Executive Director.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.590
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0105
Rules Applicable to Registration and Licensure

This division of rules describes the procedures and requirements to obtain and renew a certificate of registration as a baccalaureate social worker and a license as a master's social worker and the requirements regarding surrender and reissuance of a certificate or license. The board may issue a certificate of registration as a baccalaureate social worker or a license as a master's social worker commencing January 1, 2011.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0108
Eligibility Requirements

To be eligible for initial certificate of registration or license, a person must meet the requirements in sections (1) through (6) of this rule:

(1) The person must submit a complete and accurate application on a form provided by the board.

(2)(a) The person must hold the degree described in sub-section (b) of this section from a college or university accredited by a credentialing body recognized by the board. For an initial certificate of registration only, the person may hold the degree described in sub-section (b)(A) of this section from a college or university accredited by or considered in candidacy status by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(b)(A) The degree required for initial registration is a bachelor's degree in social work.

(B) The degree required for initial licensure is a master's degree in social work.

(3) The person must be fit to practice social work in Oregon. The board uses the following standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(4) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action.

(5) The person must pass the following examination administered by the Association of Social Work Boards:

(a) For registration as a baccalaureate social worker, the bachelor's level examination.

(b) For licensure as a master's social worker, the master's level examination.

(6) The person must achieve a score of 90 percent on the examination on the Oregon statutes and rules prepared by the board on:

(a) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing regulated social work.

(b) Oregon Revised Statutes relating to mental health practice that may be relevant to regulated social work.

(7) In the case of an application submitted to the board prior to January 1, 2013, the requirement in section (5) of this rule to pass a test is not applicable. An application mailed to the board is considered submitted on the date the application is postmarked if it is subsequently received by the board.

(8) In the case of an application submitted to the board by a Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0013(3)(b)(A), the requirement in section (5)(b) of this rule to pass a test is not applicable.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0131
Surrender of Certificate of Registration

(1) A baccalaureate social worker or master's social worker may offer to surrender a certificate of registration or license at any time.

(2) No complaint pending. If no complaint is pending at the time an offer to surrender is received by the board, the board may accept the surrender and void the certificate or license.

(3) Complaint pending:

(a) If a complaint is pending at the time an offer to surrender is received by the board, or after the board has initiated disciplinary action, the offer to surrender may be accepted by the board. The board may make acceptance of the offer to surrender contingent upon terms of a final order in a contested case.

(b) If the surrender is required by a final order in a contested case, the final order may specify whether and under what conditions the holder of the certificate or license may apply for a new certificate or license and may attach conditions that restrict the use of the certificate or license.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0136
Reissuance of Certificate of Registration

(1) Following a voluntary surrender under OAR 877-015-0131, the board may reissue the certificate of registration or license if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice as a regulated social worker;

(b) The board approves the applicant's proposal to demonstrate competence to hold the certificate of registration. The plan may involve participation in continuing education programs; and

(c) The applicant takes and passes the examination described in OAR 877-015-0108(6) on Oregon law.

(2) If the board accepts a voluntary surrender after a complaint was filed with the board against the holder while the complaint is pending, the board may issue the certificate of registration or license under conditions that take into account the circumstances of the surrender and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a certificate of registration or license that has been surrendered. A person who surrenders a certificate of registration or license may apply for a new certificate of registration three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate of registration or license, other than for the holder's failure to timely apply for renewal, the former holder may request reissuance at the expiration of three years from the time it was revoked. The board may reissue the certificate of registration or license upon finding the applicant is fit to practice social work and otherwise meets the requirements for registration or licensure and may attach conditions to the registration or licensure, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0146
Inactive Status

(1) Upon written request and certification by a baccalaureate social worker or a master's social worker who plans not to practice as a regulated social worker in Oregon for an extended period of time, the board may place a certificate or license in inactive status.

(2) A baccalaureate social worker or master's social worker whose certificate or license is in inactive status is subject to the requirements imposed on baccalaureate social workers or master's social workers except for the requirement to submit annual reports of continuing education.

(3) At the time a request to be placed on inactive status is submitted, the person making the request must be current on the fees required by OAR 877-001-0020. At the time of the request, and at the time of each renewal of the certificate or license while it is inactive, the baccalaureate social worker or master's social worker must certify on a form provided by the board that the baccalaureate social worker or master's social worker will

not use a title that indicates the person has an authorization to practice regulates social work while the certificate or license is inactive.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-015-0155
Return to Active Status

(1) The holder of an inactive certificate or license may submit a written request to the board to return to active status.

(2) As a condition of approving the request, the board may require the holder to complete continuing education in specified topics. Normally, the board will not impose a requirement to complete continuing education if the period of inactive status is less than two years.

(3) The holder must pass the examination on Oregon statutes and rules described in OAR 877-015-0108 if the request to return to active status is received by the board more than 36 months after the board notified the holder that the certificate or license was inactive.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0000
Definitions

An "agency" is a private or public organization that, through its employees, engages in clinical social work (defined in ORS 675.510 (2)) generally characterized by the following:

(1) Cases are assigned through a central process;

(2) Billing is centralized and done in the organization's name;

(3) The organization collects all fees including deductibles and copayments;

(4) The organization controls client records and is responsible for their proper storage and destruction;

(5) The organization controls office space by renting, owning, or leasing it;

(6) The organization displays its name on the premises so as to be clearly visible to clients;

(7) The name of the organization is on all forms given to the client;

(8) The organization maintains the responsibilities for hiring and firing of staff;

(9) The organization pays the staff for clinical services;

(10) Supervision of clinical social work associates is provided on a regular basis;

(11) Evaluation of the competence of social workers who provide social work services at the organization is provided on a regular basis; and

(12) Policies and procedures of the organization are available in written form for the staff and clients.

Stat. Auth.: ORS 675.510 – 675.600 & 675.990
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0005
Rules Applicable to Certification and Licensing

This division of rules contains:

(1) The requirements to obtain and renew a certificate of social work associate.

(2) The requirements to obtain and renew a clinical social work license.

(3) The rules regarding the surrender and reissuance of a license.

(4) The rules regarding the surrender and reissuance of a certificate.

(5) The process of de-activating and re-activating a clinical social work license.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.537
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0008
Licensing Requirements

To be eligible for an initial clinical social work license, except when the provisions of OAR 877-020-0016 apply, a person must meet the requirements in sections (1) through (7) of this rule:

(1) The person must complete the requirements in OAR 877-020-0009 to receive a certificate of social work associate and must hold a current certificate in good standing.

(2) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action. The board uses the following additional standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubt about the individual's honesty, fairness, or respect for the rights of others or for the laws of the state or nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice clinical social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(3) The person must not be the subject of a pending investigation or disciplinary action by a regulatory board.

(4) The person must complete the requirements of an approved plan of practice and supervision in accordance with the rules in this division of rules.

(5) The person must pass both the examination administered by the board on the subjects listed in section (6)(a) of this rule with a score of not less than 90 per cent and a national examination for clinical social workers administered by an organization approved by the board on the subjects listed in section (6)(b) of this rule. The person may take the national exam any time after having completed 75 hours of supervision required in OAR 877-020-0013 (3)(b)(A).

(6) The subjects tested on the exam are:

(a) For the examination on the Oregon statutes and rules:

(A) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing the practice standards and responsibilities of a licensed clinical social worker.

(B) Oregon Revised Statutes relating to mental health practice that may be relevant to clinical social work practice.

(b) For the national examination:

(A) Human Development and Behavior.

(B) Issues of Diversity.

(C) Diagnosis and Assessment.

(D) Psychotherapy and Clinical Practice.

(E) Communication.

(F) The Therapeutic Relationship.

(G) Professional Values and Ethics.

(H) Clinical Supervision, Consultation, and Staff Development.

(I) Practice Evaluation and the Utilization of Research.

(J) Service Delivery.

(K) Clinical Practice and management in the Organizational Setting.

(7) The person must hold a license as a masters social worker or hold a certificate of clinical social work associate that was issued before January 1, 2011.

Stat. Auth.: ORS 675.510 – 675.600 & 675.990
Stats. Implemented: ORS 675.535
Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0009
Requirements for Certificate of Clinical Social Work Associate

To be eligible for a certificate of clinical social work associate, a person must:

(1) Submit a complete and accurate application on a form provided by the board.

(2) Hold a master's degree in social work from a college or university accredited by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(3) Meet the fitness requirements of OAR 877-020-0008(2).

(4) Submit to the board for approval and, following approval, satisfactorily work toward completing an approved plan of practice and supervision that:

(a) Shows that the person will meet the requirements in OAR 877-020-0010(3) while working in an agency that:

(A) Provides the associate with sufficient support to progress toward licensure;

(B) Screens patients who are served by the agency and by the associate; and

(C) Either:

(i) Is licensed by the Oregon Department of Human Services; or

(ii) If not required to be licensed by the Oregon Department of Human Services, is in compliance with the requirements to conduct business in Oregon.

(b) Requires a minimum of 3,500 practice hours of which at least 2,000 hours must involve direct contact with a client of the agency.

(c) Provides for all clinical social work practice by the associate to be supervised and that supervision of the associate meets the requirements of OAR 877-020-0012.

(d) Provides that the associate meet with the plan supervisor for a minimum of one hour not fewer than two times a month. This requirement of the supervision is not met through a training or administrative activity. The associate may meet alone with the supervisor (individual supervision) or may meet with the supervisor and as many as four other mental health professionals (group supervision).

Stat. Auth.: ORS 675.510 – 675.600 & 675.990
Stats. Implemented: ORS 675.537
Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0010
Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(3)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(3)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, at least once each month with a plan supervisor for a minimum of one hour.

(c) All supervision must be accomplished directly, in a professional setting.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) The associate must pass the national examination required by OAR 877-020-0008.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600, 675.990
Stats. Implemented: ORS 675.537
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0016
Licensing of People Qualified in Another Jurisdiction

A person licensed, certified, or registered as a clinical social worker in another jurisdiction is eligible to be licensed in Oregon if:

(1) The person meets the education requirement in OAR 877-020-0009(2);

(2) The person is fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action;

(3) As a condition of licensure, certification, or registration in the other jurisdiction, the person was required to meet requirements for supervised practice substantially equivalent to those set out in this division of rules; and

(4) The person successfully completes the exam on Oregon law and the national exam for clinical social worker described in and subject to the limitation in 877-020-0008.

(5) The person holds a license as a master's social worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.535(4)
Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1998, f. & cert. ef. 9-14-98; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0046
Inactive Status

(1) Upon written request and certification by a certified social work associate or a licensed clinical social worker who plans not to practice clinical social work in Oregon for an extended period of time, the board may place a certificate or license in inactive status.

(2) A certified social work associate or licensed clinical social worker whose certificate or license is in inactive status is subject to the requirements imposed on certified social work associates and licensed clinical social workers except for the requirement to submit annual reports of continuing education.

(3) At the time a request to be placed on inactive status is submitted, a certified social work associate or licensed clinical social worker must be current on the fees required by OAR 877-001-0020. At the time of the request, and at the time of each renewal of the certificate or license while it is inactive, the associate or licensee must certify on a form provided by the board that the associate or licensee will not use a title that indicates the person has an authorization to practice regulates social work while the certificate or license is inactive.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.560
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0055
Return to Active Status for Licensees

(1) The holder of an inactive certificate or license may submit a written request to the board to return to active status.

(2) As a condition of approving the request, the board may require the holder to complete continuing education in specified topics. Normally, the board will not impose a requirement to complete continuing education if the period of inactive status is less than two years.

(3) As a condition of approving the request, the board may require the holder to work under a plan of practice and supervision, or to meet other requirements that demonstrate the holder's fitness before re-activating the license. The requirement to work under a plan of practice and supervision is based on the candidate's circumstances, including the candidate's practice experience and the duration of the inactive period. Normally, the board will not impose a requirement to work under a plan of practice and supervision if the period of inactive status is less than five years.

(4) The holder of an inactive license must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(6) if the request to return to active status is received by the board more than 36 months after the board notified the holder that the license was inactive.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0057
Re-licensing of Former License Holder

(1) A person whose license has lapsed (applicant) may apply to the board to receive a new license.

(2) To be eligible for a license, an applicant:

(a) Must meet the degree requirements in OAR 877-020-0009(2).

(b) Must meet the fitness requirements in OAR 877-020-0008(2) and is subject to the provisions of OAR 877-022-0005 as an applicant for a license.

(c) Must have passed the national examination described in OAR 877-020-0008(5) and (6).

(e) May be subject to requirements of the board, determined on an individual basis, to work under a plan of practice and supervision designed to take into account the experience of the applicant, recency of practice, and other factors that pertain to the applicant.

(f) May be subject to requirements of the board, determined on an individual basis, to complete continuing education in specified topics.

(g) Must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(6).

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-020-0060
Reduced Requirements

(1) A person described in section (2) of this rule is subject, upon written request submitted to and approved by the board, to the following requirements for continuing education and renewal fees:

(a) Continuing education:

(A) The number of hours required by OAR 877-025-0011(1) is reduced to 20.

(B) Continuing education described in OAR 877-025-0006(1) or (6) only is authorized.

(C) Carryover of hours, addressed in OAR 877-025-0016(4), is not authorized.

(D) This rule does not change the continuing education hours required for a supervisor or the continuing education requirement for ethics training.

(b) The fee for renewal of a license, described in OAR 877-001-0020, is reduced by half.

(2) The requirements described in section (1) of this rule are applicable to a licensed clinical social worker who:

(a) Has practiced clinical social work under the authority of a license for twenty years;

(b) Has not been disciplined by a licensing authority during the prior 15 years of social work practice; and

(c) Engages in the practice of social work for not more than 500 hours a year.

(3) A person subject to the provisions of section (1) of this rule may not apply for an inactive license.

(4) In this rule, "the practice of social work" means the application of social work theory, knowledge, methods, and ethics to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 2-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-022-0005
Requirements Pertaining to Criminal Records Check

(1) A person who wishes to be registered, certified, or licensed under this chapter must meet the fitness requirements of OAR 877-015-0108 or 877-020-0008, as applicable. As part of a fitness determination, the board considers past conduct, including conduct that resulted in a criminal conviction, that is related to a person's honesty, or is related to the practice of social work. The purpose of this rule is to implement ORS 181.534(9) and provide for criminal records checks by the board. The results of criminal records checks are used by the board to determine fitness to be a regulated social worker.

(2) The following persons must, upon request of the board, take the steps necessary to complete a request for a state or nationwide criminal records check under ORS 181.534:

(a) A person who applies to be a regulated social worker.

(b) A regulated social worker who is the subject of inquiry by the board.

(3) To complete the request for criminal records, the board may require the person to:

(a) Provide information necessary to obtain the criminal records check.

(b) Provide fingerprints on forms made available by the board.

(c) Pay the actual cost to the board of conducting the criminal records check.

(4) In reviewing the information obtained from a criminal records check, the board may consider:

(a) Any criminal conviction and related information a court could consider in imposing a punishment, in compliance with ORS 670.280

(b) Any arrests and records related to any crime that may be indicative of a person's inability to perform as a regulated social worker with care and safety to the public.

(5) Fitness determination. In deciding whether an individual is fit to hold an authorization to practice regulated social work, the board may consider:

(a) A criminal records background check.

(b) False statements made by the individual regarding criminal history of the individual.

(c) A refusal to submit or consent to a criminal records check including fingerprint identification.

(d) Other pertinent information obtained as part of an investigation.

(6) The board may make a fitness determination conditional upon the individual's acceptance of probation, conditions, limitations, or other restrictions upon becoming a regulated social worker. In the process followed by the board for making a fitness determination, the following apply:

(a) A person identified in section (2) of this rule who makes a false statement regarding the person's criminal history is unfit and subject to denial of an application for an authorization to practice regulated social work or to disciplinary action authorized in ORS 675.510 to 675.990, including denial of the application.

(b) If a person identified in section (2) of this rule refuses to consent to a criminal records check or refuses to be fingerprinted, the board will revoke the person's authorization to practice regulated social work or, in the case of an applicant, will consider the application incomplete.

(c) For all fitness determinations not covered by subsection (a) or (b) of this section, the board will consider, at a minimum, the following:

(A) The nature of the crime of which the person has been convicted or indicted;

(B) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position as a holder of an authorization to practice regulated social work; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position as a holder of an authorization to practice regulated social work. Intervening circumstances include but are not limited to the following factors with respect to a crime of which the person has been convicted:

(i) The length of time since the commission of the crime;

(ii) The age of the subject individual at the time of the crime;

(iii) The likelihood of a repetition of an offense or of the commission of another crime;

(iv) The subsequent commission of another relevant crime;

(v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(vi) A recommendation of an employer who employed the person after the conviction.

(E) Other relevant information.

(7) Protection of information:

(a) Information obtained by the board in carrying out its responsibilities under this rule is considered part of the investigation of an applicant or licensee and is confidential under ORS 676.175.

(b) Criminal offender information obtained from the Law Enforcement Data System must be handled in accordance with the applicable requirements in ORS chapter 181 and OAR chapter 257, division 15.

(8) The board will permit the person for whom a fingerprint-based criminal records check is conducted to inspect the individual's own state and national criminal offender records in the possession of the board and, if requested by the applicant, provide the individual with a copy of those records.

(9) Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or Federal Bureau of Investigation must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or the reporting agency and not to the board.

(10) A person against whom disciplinary action is taken by the board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS chapter 183.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-025-0001
General

A regulated social worker must complete and report continuing education according to the requirements in this division of rules. A certified social work associate is not required to complete or report continuing education.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-025-0006
Types of Continuing Education

To meet the requirements of this division of rules, continuing education must be one of the following:

(1) A conference, seminar, or workshop that:

(a) Addresses subjects related to the regulated social worker's work practice;

(b) Is attended by the regulated social worker in person, on-line or through a web cast; and

(c) Is provided or approved by a credentialing body recognized and approved by the board. The board recognizes and approves a credentialing body based on the following practices of the body:

(A) The body uses an established process for determining which training to provide or approve.

(B) The body uses an established process for determining who will present the training.

(C) The body provides, with respect to the training, written materials that demonstrate the relevance of the training to the field of clinical social work.

(D) The body establishes an appropriate number of continuing education credits for the training.

(E) The body verifies the credentials of the presenters of the training.

(F) The body uses an established system for the evaluation of presenters.

(G) The body provides a certificate of completion to those who attend, based on actual attendance.

(2) A conference, seminar, or workshop that:

(a) Meets the following requirements:

(A) Is related to the field of clinical social work or, in the case of a baccalaureate social worker or master's social worker, the field of social work;

(B) Addresses subjects related to the regulated social worker's work practice;

(C) Is not provided or approved by a credentialing body recognized and approved by the board; and

(D) Is attended by the regulated social worker in person, on-line, or through a web cast.

(b) Is approved by the board based on the regulated social worker's written application that:

(A) Contains the following information:

(i) Name or description of the event

(ii) Date of the event

(iii) Brief description of the training sufficient to show that the training meets the requirements of section (2)(a) of this rule.

(iv) Name and credentials of each presenter

(v) Number of continuing education units requested

(vi) Copy of the certificate of completion

(B) Is received by the board not later than the time of the submission of the report required by OAR 877-025-0021 and not later than 45 days prior to the last day of the birth month of the regulated social worker.

(3) A course related to social work at an accredited college or university.

(4) A training video or audio recording approved by a credentialing body recognized and approved by the board using the standards provided in section (1)(c) of this rule. Successful completion is demonstrated by award to the regulated social worker by the credentialing body.

(5) Participation in a study group, subject to the following limitations:

(a) The group must contain a minimum of five and a maximum of 10 licensed mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of clinical social work.

(b) The focus of the group's meeting must be a presentation or discussion of a book or article published by a professional body.

(c) The topics of the group's discussion must be directly related to established mental health care and relevant to good practice.

(d) A maximum of two hours may be credited for a group meeting.

(e) Credit for participation in a study group must be approved in advance by the board. To apply for approval, a regulated social worker must submit the names of the group members and discussion topics to the board.

(6) Development and presentation of a conference, workshop, or seminar that would be countable for credit under section (1) or (2) of this rule.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-025-0011
Required Hours of Continued Education

(1) Generally.

(a) A regulated social worker is required to report continuing education for all periods during which the person's registration or license is active except for the period covered by the initial certificate of registration or license, unless a waiver is granted under section (2) of this rule. An initial issuance is the first issuance of the board of a certificate of registration or license to the regulated social worker.

(b) Following the first renewal of a certificate of registration or license, except when the regulated social worker is on inactive status, the regulated social worker must complete continuing education in each reporting period at the times described in OAR 877-025-0021. The holder of an inactive certificate of registration or license is not required to submit the biennial report.

(c) A report covering a two-year period must include:

(A) For a registered baccalaureate social worker, a minimum of 20 hours of creditable continuing education.

(B) For a master's social worker, a minimum or 30 hours of creditable continuing education.

(C) For a licensed clinical social worker, a minimum of 40 hours of creditable continuing education.

(d) In a report that covers a shorter period than two years, as may happen in the case of the first report by a new regulated social worker or following the reactivation of a registration or license, the number of hours required by sub-section (c) of this section is pro rated.

(2) Waiver of requirement.

(a) Upon timely written request of a regulated social worker, made as soon as the regulated social worker is aware of the possible need for a waiver, the board may reduce the number of hours required by section (1) of this rule in the event the regulated social worker is unable, due to circumstances beyond the reasonable control of the [licensee] regulated social worker, to complete the number of hours of continued education required by this division of rules.

(b) A reduction authorized by the board would normally reflect the regulated social worker's ability to attend training during the time not affected by the adverse circumstances leading to the request. For instance, a regulated social worker unaffected by the adverse circumstance during the first year of a two-year reporting period would be expected to obtain 20 hours of credit.

(c) Examples of circumstances that may justify a waiver are:

(A) A circumstance beyond the reasonable control of the regulated social worker makes it impracticable to attend training for an extended time.

(B) The health of the regulated social worker or of another person makes it impracticable to attend training for an extended time.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-025-0016
Limitations on Types of Continuing Education

The number of hours creditable in a two-year reporting period is subject to the following provisions:

(1) The report must contain six or more hours of continuing education in ethics.

(2) No more than 10 hours of continuing education described in OAR 877-025-0006(2) may be credited in a report.

(3) The hours of continuing education described in OAR 877-025-0006(5) that may be credited in a report is limited to half the number required by OAR 877-025-0011.

(4) A licensed clinical social worker who reports more than 40 hours for a two-year reporting period or 20 for a one-year reporting period may carry over the excess hours to the next required report. No more than 10 hours may be carried over to the next reporting period.

(5) If the first reporting period is one year rather than two, the limits in sections (2) and (3) of this rule are pro-rated.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-025-0021
Reporting Requirements

(1) Regulated social workers must report the completion of continuing education every two years in a manner prescribed by the board. The report must be made at the time the regulated social worker submits an application to renew a certificate or license except that in the case of a licensed clinical social worker.

(a) A licensee whose license number ends with an odd number must submit the report with an application for renewal effective in an odd-numbered year.

(b) A licensee whose license number ends with an even number must submit the report with an application for renewal effective in an even-numbered year.

(2) The report is part of the renewal application and must contain information sufficient to demonstrate that the regulated social worker has met the requirements in this division of rules. A regulated social worker who fails to meet the requirements is subject to a denial of the application for renewal or to sanction by the board unless the failure was due to circumstances beyond the reasonable control of the regulated social worker and the regulated social worker agrees to a plan to compensate for the deficiency.

(3) The Board conducts routine, random audits of compliance with continuing education requirements. A regulated social worker must retain completion certificates, program information, and other documents needed to demonstrate compliance with the requirements of this division of rules for a minimum of 24 months after reporting completion of continuing education requirements to the board and must provide them to the Board upon request.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0025
Applicability

The following rules in this division of rules provide a standard of ethics to be followed by regulated social workers.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0030
Ethical Responsibility

Regulated social workers' ethical responsibilities to their clients begin when the client-provider professional relationship is entered into by the regulated social worker and the client and remain in effect until the relationship is terminated by either party, except as provided in OAR 877-030-0070.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0040
Conduct and Reporting Requirements of Regulated Social Workers

(1) Conduct: The following minimum standards of professional conduct apply to regulated social workers:

(a) Private conduct of regulated social workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Regulated social workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Regulated social workers may not misrepresent their professional qualifications, education, experience, or affiliations.

(2) Reporting Requirements:

(a) Regulated social workers must report to the Board as soon as practicable, but not later than 10 days after:

(A) Being convicted of a misdemeanor or felony;

(B) Being arrested for a felony crime;

(C) Receiving notice of a civil lawsuit that names the regulated social worker as a defendant and makes allegations related to the regulated social worker's practice of clinical social work or the regulated social worker's license or certificate;

(D) Becoming an in-patient in a psychiatric hospital or psychiatric day treatment facility; or

(E) Receiving notice of a regulatory action related to the regulated social worker's license or certificate.

(b) Regulated social workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095.

(c) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker is required to report to the board any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired professional or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580. A regulated social worker is an impaired professional if the regulated social worker is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(d) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker licensee who has reasonable cause to believe that a licensee has engaged in prohibited or unprofessional conduct is required to report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting regulated social worker must report the conduct without undue delay, but in no event later than 10 working days after the reporting regulated social worker learns of the conduct. In this section:

(i) "Licensee" means a health professional licensed or certified by or registered with a board.

(ii) "Board" has the meaning given that term in ORS 676.150.

(iii) "Prohibited conduct" means conduct by a licensee that:

(I) Constitutes a criminal act against a patient or client; or

(II) Constitutes a criminal act that creates a risk of harm to a patient or client.

(iv) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0070
Ethical Responsibility to Clients

A regulated social worker's primary responsibility is to clients. Regulated social workers must serve clients with professional skill and competence including but not limited to the following:

(1) Dual Relationship:

(a) Regulated social workers must not violate their position of power, trust, and dependence;

(b) Regulated social workers may not enter into a relationship with a client that conflicts with the ability of the client to benefit from social work practice;

(c) Regulated social workers may not enter into a relationship with a client that may impair the regulated social worker's professional judgment or increase the risk of exploitation of the client;

(d) Regulated social workers may not enter into a relationship with a client that increases the risk of exploitation for the client for the regulated social worker's advantage;

(e) Regulated social workers may not provide professional social-work services to an employee, supervisee, close colleague, or relative, or to any other person if there is a risk that providing the service would impair the regulated social worker's judgment or increase risk of client exploitation.

(f) Regulated social workers may not enter into an employer, supervisor, or any other relationship if there is a potential for exercising undue influence on a client. This includes the sale of services or goods in a manner that might exploit a client for the financial gain or personal gratification of the regulated social worker or a third party, or if there is a risk that such a relationship would be likely to impair the regulated social worker's judg-

ment and increase the risk of client exploitation. This applies both to current clients and to those to whom the regulated social worker has, at any time in the previous year, rendered services as a regulated social worker.

(g) Regulated social workers may not, under any circumstances, engage in or solicit sexual acts or engage in any conduct, verbal behavior or other communication with or towards a client that may reasonably be interpreted as sexual, seductive or sexually demeaning. This prohibition applies to current clients and to clients to whom the regulated social worker has at anytime within the previous three years provided social work services. The client's consent to, initiation of, or participation in, sexual behavior with the regulated social worker does not change the prohibited nature of the conduct.

(2) Regulated social workers must provide services with professional skill, cultural awareness, and language competency with respect to each client's needs.

(3) Regulated social workers may not provide inappropriate or unnecessary professional services to clients.

(4) Regulated social workers must provide clients with accurate and complete information regarding the extent and nature of services available. This includes the risks, rights, opportunities, and obligations associated with the provision of professional services to the client.

(5) Regulated social workers must seek consultation or make referrals whenever it may improve the provision of social-work services and is in the best interest of the client.

(6) Regulated social workers may not attempt to provide professional social-work services to clients outside their area of competence, training, and qualifications.

(7) Regulated social workers must terminate professional social-work services to clients when the services are no longer required or no longer serve the client's needs or interests.

(8) Regulated social workers may withdraw professional social-work services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effect. Regulated social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the client does not pose an imminent danger to self or others; if the financial arrangements have been made clear to the client; and if the clinical and other consequences of nonpayment have been addressed and discussed with the client.

(9) Regulated social workers who anticipate the termination or interruption of service to clients must notify those clients promptly and provide for transfer, referral, or continuation of service in relation to the client's needs and preferences.

(10) Regulated social workers may not violate the legal rights of their clients.

(11) When a regulated social worker must act on behalf of a client who has been adjudged legally incompetent, the regulated social worker must safeguard the interests and rights of that client.

(12) When another individual is legally authorized to act on behalf of a client, regulated social workers may conduct business with that person, always keeping the client's best interests in mind.

(13) Except as permitted in ORS 675.580 and ORS 40.250, regulated social workers must respect the privacy of clients and hold in confidence information obtained in the course of professional contact between client and the regulated social worker.

(14) Information received by a regulated social worker from a potential client at the point of initial contact must be treated with the same respect for privacy as that of information received from a client.

(15) Regulated social workers must inform clients fully about the limits of confidentiality requirements.

(16) Access to records:

(a) Regulated social workers must provide clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records. Client access to their own records should be restricted only in exceptional circumstances when there is compelling evidence that access would cause harm to the client. Regulated social workers who are concerned that client access to their own records could cause serious misunderstanding or harm to the client should assist the client in interpreting the records. Both the client's request and the rationale for withholding some or all of the record should be documented by the regulated social worker in the case file.

(b) The provisions of sub-section (a) of this section do not apply in the case of a request for a public record.

(c) The provisions of sub-section (a) of this section do not apply in the case of regulated social worker who practices within an agency.

(17) Regulated social workers must obtain informed consent from clients before taping, recording, or permitting third party observation of their activities.

(18) Regulated social workers, when making reports, must obtain a release of confidentiality and shall avoid undue invasion of privacy by only presenting patient data pertinent to the purpose of the report.

(19) Fees. Regulated social workers in fee-for-service settings may charge reasonable fees and must inform clients of the fee arrangement before providing services.

(20) Regulated social workers may not solicit the clients of colleagues.

(21) Regulated social workers may not solicit clients from their employer for private practice.

(22) Regulated social workers may not assume professional responsibility for the clients of another agency or colleague without appropriate communication with that agency or colleague.

(23) Regulated social workers must relate to the clients of colleagues with full professional consideration.

(24) A regulated social worker who serves the clients of colleagues, during a temporary absence or emergency, must serve those clients with the same professional competence as to his or her own.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0080
Administrators, Supervisors, and Teachers of Clinical Practice

(1) A regulated social worker serving as an administrator, supervisor, or teacher must promote conditions that foster and support ethical and competent professional performance.

(2) Clinical social workers in the role of administrator, supervisor, or teacher may not, under any circumstances, engage in a sexual relationship with a supervisee or student.

(3) Clinical social workers in the role of administrator, supervisor, or teacher may not enter into a therapeutic relationship with any employee, supervisee, or student.

(4) Clinical social workers in the role of administrator, supervisor, or teacher must explicitly define the conditions of their professional relationship to their supervisees or students.

(5) Clinical social workers as an employer, or in the role of administrator, supervisor, or teacher, must support and emphasize the need for formulation, development, enactment, and implementation of policies and agency rules which provide for safeguarding the rights of clients.

(6) Clinical social workers as employer, or in the role of administrator, supervisor, or teacher, bear the ethical responsibility for persons practicing under their direct supervision who are not regulated by professional registration, certification, or license.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; Renumbered from 877-030-0015; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0090
General Provisions Governing Conduct

(1) A regulated social worker must cooperate with the Board, its investigators, and its committees in investigations made under OAR Chapter 877.

(2) A regulated social worker must fully comply with a final order issued to the regulated social worker by the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-030-0100
Retention of Client Records; Disposition of Client Records in Case of Death or Incapacity of Licensee

(1) In this rule, "client record" means information maintained in a written or electronic form regarding treatment or billing of a client.

(2) A regulated social worker who serves clients outside of an agency setting must ensure that a client record is maintained for each such client and that all client records are legible and are kept in a secure, safe, and retrievable condition. At a minimum, a client record must include an assessment of the client, a treatment or intervention plan, and progress notes of

therapy sessions, all of which should be recorded concurrently with the services provided.

(3) Retention of records. A regulated social worker must retain a client record for seven years from the date of the last session with the client.

(4) A regulated social worker in private practice must make necessary arrangements for the maintenance of and access to client records that ensure the clients' right to confidentiality in the event of the death or incapacity of the licensee. In regard to this requirement:

(a) The regulated social worker must name a qualified person or appropriately qualified records management company to intercede for client welfare and to make necessary referrals, when appropriate.

(b) The regulated social worker must keep the board informed of the name of the qualified person or records management company.

(c) The board will not release the name of the qualified person or records management company except in the following cases:

(A) The death or incapacity of the regulated social worker

(B) A client is unable to locate the regulated social worker.

(5) To be a qualified person under this rule a person must be a Licensed Clinical Social Worker or other licensed mental health professional licensed under Oregon law or a certified alcohol and drug abuse counselor.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-040-0000
Management of Complaints

(1) The board intends to provide fair, expeditious response to complaints.

(2) A board member who is unable to render an impartial, objective decision regarding a complaint must abstain from participating in the preparation, hearing, deliberation and disposition of the complaint. An abstention is effective at the time a board member announces a decision not to participate.

(3) A board member who is a complainant or respondent in a complaint is disqualified from participating in the preparation, hearing, deliberation and disposition of the complaint.

(4) The board may initiate a complaint.

(5) The Consumer Protection Committee oversees investigations of complaints received by the board. The committee may conduct investigations, prepare reports, require evaluations, and negotiate proposed agreements and may perform other duties prescribed by the board. In carrying out these duties, the committee may assign to the board's staff the duties of conducting investigations and preparing reports. Subject to the approval of the committee, the board Executive Director may assist in negotiating a proposed agreement with a respondent.

(6) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality granting the board and its counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in the dismissal of the complaint.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(2)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-040-0003
Definitions

The following definitions apply in this division of rules:

(1) "Complainant" —A person or group of persons who files a complaint or the Board for Board-initiated complaints.

(2) "Complaint" — A report or an allegation that a person regulated by the board has committed an act that could subject the person to discipline under ORS 675.540 or is impaired. A complaint should specifically describe the conduct complained of to the best of the ability of the complainant

(3) "Consumer Protection Committee" — A committee of one or more board members assigned by the board to fulfill specified functions related to complaints. There may be more than one Consumer Protection Committee.

(4) "Impairment" — an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition.

(5) "Respondent" — A person regulated by the board against whom a complaint is filed.

(6) "Social work" in ORS 675.540(1)(c) and (1)(d) means "clinical social work" as defined in ORS 675.510(2).

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-040-0010
Form of Complaints

Any person may file a complaint alleging a violation of ORS 675.510 to 675.600 or of the rules of the board or an impairment. A complaint must identify the complainant and the respondent.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-040-0019
Procedure for Investigation of Alleged Impairment

(1) On its own motion or upon complaint by any person the board may require a regulated social worker to undergo evaluation to determine if the person has an impairment.

(2) In order to determine whether a regulated social worker has an impairment, the board may require the person:

(a) To cooperate with an evaluation ordered by the board.

(b) To sign a release allowing the board to fully communicate with any treatment program or evaluator to obtain any evaluation respondent has undergone prior to or during the investigation by the board of the alleged impairment.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009), HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994, 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

877-040-0050
Contested Case Hearing

When the board takes disciplinary action, the board will place notice of this action in the Directory of Regulated Social Workers. The board will also provide notice of the action to the Oregon Chapter of the National Association of Social Workers (NASW) and to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11

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Board of Nursing
Chapter 851

Rule Caption: Licensing Fee Increase for Nurses and Nursing Assistants.
Adm. Order No.: BN 16-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 11-29-10
Notice Publication Date: 10-1-2010
Rules Amended: 851-002-0010, 851-002-0040
Subject: These rules cover the agency fees. These rules amendments will increases the licensing renewal fee for nurses and nursing assistants.
Rules Coordinator: KC Cotton—(971) 673-0638

851-002-0010
RN/LPN Schedule of Fees

(1) License Renewal — $145.
(2) Delinquent Renewal — $12.
(3) Workforce Data Analysis Fund at Renewal — $5.
(4) License by Endorsement — $195.
(5) Licensure by Examination — $160.
(6) Written Verification of License — $12.
(7) Limited Licenses:
(a) License Memorandum — $25.
(b) Reentry — $95.
(c) Extension of Reentry — $25.
(8) Limited Licenses for Educational Experience:
(a) International Graduate Nursing Students — $65.

(b) Extension of International Graduate Nursing Students — $25.
(c) International RN in Short-Term Educational Experience — $35.
(d) International Exchange Students — $25.
(e) U.S. RNs in Distance Learning — $15.
(f) Extension of Distance Learning — $15.
(9) Reexamination for Licensure — $25.
(10) Reactivation — $160.
(11) Reinstatement by Reactivation — 160.
Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994 f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07; BN 5-2009, f. & cert. ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10; BN 7-2010, f. & cert. ef. 6-25-10; BN 16-2010, f. & cert. ef. 11-29-10

851-002-0040
Nursing Assistant Schedule of Fees
(1) Certification by Examination — $106.
(2) Certification by Endorsement — $60.
(3) Reexamination — Manual Skills — $45.
(4) Reexamination — Written — $25.
(5) Oral Administration of Written Examination — $35.
(6) Written Verification of Certification — $10.
(7) CNA Certificate Renewal — $60.
(8) CNA Reactivation Fee — $5.
(9) Workforce Data Analysis Fund at Renewal — $5.
(10) CNA Certification for RN or LPN — $60.
(11) CNA Certification for Student Nurses — $60.
(12) Initial Approval CNA Training Program — $100.
(13) Approval of Revised CNA Training Program — $75.
(14) Reapproval of CNA Training Program — $50.
(15) CNA Primary Instructor Approval — $10.
(16) Initial Approval of CNA Program Director — $25.
Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03; BN 7-2004, f. & cert. ef. 2-26-04; BN 14-2004, f. & cert. ef. 10-26-04; BN 7-2007, f. 6-29-07, cert. ef. 1-1-08; BN 5-2009, f. & cert. ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10; BN 8-2010, f. & cert. ef. 6-25-10; BN 16-2010, f. & cert. ef. 11-29-10

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Rule Caption: Nursing Education Rules Revised.
Adm. Order No.: BN 17-2010
Filed with Sec. of State: 11-29-2010
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Notice Publication Date: 10-1-2010
Rules Amended: 851-021-0005, 851-021-0010, 851-021-0045, 851-021-0055, 851-021-0065, 851-021-0090
Subject: These rules cover the standards for the approval of educational programs in nursing, preparing candidates for licensure as practical or registered nurses. These amendments focus mainly on the steps for new program development and are part of a periodic rule review process.
Rules Coordinator: KC Cotton—(971) 673-0638

851-021-0005
Definitions
As used in these rules:
(1) "Accreditation" is a voluntary, non-governmental peer review process by the higher education community. For the purpose of these rules, institutional accreditation applies to the entire institution, whereas nursing program accreditation applies to program accreditation by the Commission on Collegiate Nursing Education (CCNE) or the National League for Nursing Accrediting Commission (NLNAC).
(2) "Accrediting agency" means a regional accrediting association or national accrediting agency approved by the U.S. Department of Education (US DOE) and/or the Council on Higher Education Accreditation (CHEA).
(3) "Approval" is synonymous with accreditation as authorized in ORS 678.150, and means the process by which the Board evaluates and grants official recognition and status to nursing education programs that meet Board established uniform and reasonable standards. The status assigned may be Developmental Approval, Initial Approval or Approval.
(4) "Approval by the office of Degree Authorization" means the approval, under ORS 348.606, to provide any part of a program leading to the award of college credit or to an academic degree.
(5) "Articulation" refers to the process of comparing or matching the coursework completed in one educational institution with the courses or requirements of another institution. For the purpose of these rules, articulation specifically relates to courses completed or required within a nursing education program.
(6) "Basic Master's Program" —A graduate program in nursing leading to initial licensure.
(7) "Board" refers to the Oregon State Board of Nursing.
(8) "Clinical Lab Teaching Assistant" refers to a member of the nursing faculty whose primary responsibility is to assist with the clinical lab teaching under the direction of the nurse educator.
(9) "Clinical Teaching Associate" refers to a nurse who has undergone specific education/training to serve as a role model, resource and coach for nursing students. The clinical teaching associate functions under the direction of the nurse educator or nurse educator associate.
(10) "Community-based nursing" is nursing practice that takes place in the context of family and the community.
(11) "Competencies" mean the knowledge, values, attitudes, and interpersonal, clinical reasoning, and psychomotor skills expected for safe and effective nursing practice.
(12) "Controlling Body" is an accredited educational agency planning to conduct or conducting a program in nursing. For purposes of these rules, "institution," "Educational institution," or "governing institution" is synonymous with "controlling body."
(13) "Developmental approval" means approval of an application for establishing a new program and authorization to proceed with its development.
(14) "Distance nursing education" means the provision of nursing course(s) to students in settings physically separate from the faculty and the campus-based setting. Distance nursing education includes on-line and web-based portals, video-streaming, interactive television, and use of other electronic course delivery methods.
(15) "Extended campus site" means any location of an institution, other than the main campus, at which the institution offers at least 50 percent of a nursing education curriculum.
(16) "Faculty" means the nursing faculty as a whole, functioning as a collective body.
(17) "Faculty member" means an individual nurse educator, nurse educator associate, or clinical lab teaching assistant.
(18) "Home Board" means the approval or accrediting authority by which a particular nursing program is approved and to which it is accountable.
(19) "Initial Approval" means authorization by the Board to accept students for admission in a new nursing program, or in an extended campus site, when the Board deems the extended campus site to be the equivalent of a new program. Initial approval status continues until the first class has graduated and the Board has taken final action on the application for approval.
(20) "Major curriculum change" means a change that results in a refocus of purpose and objectives, a substantive change in program structure or method of instructional delivery, or a change that modifies 10% or more of the credit hours in the curriculum.
(21) "May" indicates permission.
(22) "National accreditation" means accreditation granted by the National League for Nursing Accrediting Commission (NLNAC) or Commission on Collegiate Nursing Education (CCNE).
(23) "Nurse Administrator" refers to the registered nurse who is responsible and accountable for the nursing educational department, division or program, regardless of the official title assigned by any specific institution.
(24) "Nurse Educator" refers to a registered nurse who, as a member of the nursing faculty, is responsible for the development and/or implementation of the nursing program including curriculum, policies, student advising, and evaluation, mentoring and collaborating with nurse educator

associates and clinical teaching associates. For the purpose of these rules, the term "nurse educator" includes all nurse faculty members regardless of rank who have responsibility for development and implementation of the program.

(25) "Nurse Educator Associate" refers to a registered nurse who may contribute to classroom and clinical instruction in collaboration with and under the direction of the nurse educator.

(26) "Nursing experience" means practice as a registered nurse. Specified years of nursing experience mean full time equivalence (FTE).

(27) "Organizing framework" means the mission, philosophy, and/or underlying assumptions upon which the curriculum is based.

(28) "Outcomes" are statements of the expected knowledge, skills, attitudes, values and abilities to be gained by students through completion of the nursing education program or a segment thereof.

(29) "Out-of-State Nursing Program" means a program in the United States that is approved or accredited by the licensing board for nurses in the particular state or U.S. territory, or the appropriate accrediting agency for that state or U.S. territory.

(30) "Population-focused nursing" is nursing practice that merges the body of knowledge from the public health sciences with nursing theories for the purpose of safeguarding and improving the health of populations.

(31) "Post-master's certificate" means a certificate from an accredited graduate nursing education program that prepares licensed nurses who hold a master's degree for an advanced nursing role.

(32) "Practice Site" is a location or situation in which nursing experience with actual patient/client individuals or groups is obtained.

(33) "Practicum" is a course or session in which a student obtains experience in nursing in either a laboratory or practice site.

(34) "Program" means a nursing education program that prepares graduates for licensure as registered or licensed practical nurses. The terms "nursing program," or "nursing education program" as used in these rules, are synonymous with "Program."

(35) "Representative of the Board" means the Education Consultant or Board designee qualified to perform the necessary responsibilities.

(36) "Shall" indicates a requirement.

(37) "Significant increase" means an increase of more than 10% in the enrolled nursing students or an increase of one or more clinical cohorts, whichever is greater.

(38) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(39) "Standards for Approval" — Authoritative statements that set expectations for a program to achieve and maintain for approval status. (OAR 851-021-0040 through 0070).

(40) "Statewide Need" — Assessment and documentation of the need for the nursing program in relation to plans for total state resources and the need for entry level nurses in the state.

(41) "Survey visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(42) "Units or Credits" — For programs on academic quarters, one unit or credit is defined as one academic clock hour per week for ten to twelve weeks or three academic clock hours of practicum per week for ten to twelve weeks. For programs on academic semesters, one unit or credit is defined as one academic clock hour per week for fourteen to sixteen weeks or three academic clock hours of practicum per week for fourteen to sixteen weeks.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.150
Hist.: NER 9, f. 8-15-62; NER 15, f. 1-4-71, ef. 1-25-71; NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 2-1985, f. & ef. 4-5-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0005; NB 2-1996, f. & cert. ef. 3-12-96; NB 4-1996, f. & cert. ef. 9-3-96; BN 7-1998, f. & cert. ef. 7-16-98; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

851-021-0010
Approval of Nursing Education Programs

(1) Letter of Intent and Preliminary Application:

(a) An institution or consortium of accredited institutions wishing to establish a new program in nursing shall submit a letter of intent and preliminary application to develop the program to the Board in advance of anticipated opening date.

(b) The letter of intent and preliminary application shall address at least the following information:

(A) Purpose, size, and type of program proposed

(B) Studies documenting the statewide need for graduates of the program. The study should also specifically address the need for the program in relation to the nursing needs of the geographical area to be served;

(C) An analysis of potential impact on other nursing programs in the state including:

(i) An analysis of current usage of potential clinical sites in area(s) proposed for student placements including impact on other programs placing students in clinical sites; and

(ii) Projected number of faculty positions and availability of qualified faculty in the area(s) proposed for clinical placements.

(D) Evidence of administrative and financial support for development of a nursing program;

(E) Anticipated student enrollment and proposed date of enrollment;

(F) For consortium applicants, any charters, contracts and other documents that show:

(i) Relationships among member institutions;

(ii) Member institution commitment to the consortium and the proposed nursing program; and

(iii) Mechanisms within the consortium for attainment and maintenance of Board standards for nursing education programs.

(G) The applicant shall respond to any Board requests for additional information;

(H) The Board, after timely review and consideration of the information contained in the letter of intent and any supplementary information, shall either grant or deny permission to begin development of a nursing program, including rationale for the decision;

(I) The Board shall provide notice to the nurse administrator and academic administrator of all Oregon-approved nursing education program within 30 days of Board decision regarding approval to develop a nursing program;

(J) The nurse administrator and academic administrator of an Oregon-approved nursing education program shall have 30 days from notification of new program development to respond to the Board addressing potential adverse impact to their program;

(K) If the applicant is denied permission to begin development of a nursing program, the program may submit a revised letter of intent and preliminary application no sooner than six months from the previous submission;

(L) If the applicant is denied permission to begin development of a nursing program, a hearing before the Board may be requested and the provisions of the Administrative Procedures Act shall apply; and

(M) If the applicant does not submit a complete developmental approval application within twelve months after the date of the Board granting permission to proceed, the permission to begin program development shall expire.

(2) Application for Developmental Approval:

(a) An institution or consortium of accredited institutions that has received approval of their letter of intent to develop a nursing program may make application for developmental approval.

(b) The developmental approval application shall include at least the following:

(A) Evidence of accreditation of the institution, or of all member institutions in a consortium, by an appropriate regional or national accrediting association or agency; institutions seeking to establish a registered nursing program shall show evidence of;

(i) Approval as a degree-granting institution of higher education in Oregon; and

(ii) Accreditation by a regional association or national agency recognized by the Council on Higher Education Accreditation (CHEA).

(B) Letters of response from Oregon-approved nursing programs addressing specific concerns regarding adverse impact on current programs,

(C) Evidence of the appointment of a qualified nurse administrator and sufficient administrative support for program development;

(D) Administration and organizational plan delineating lines of authority and decision making impacting the nursing program;

(E) Description of proposed instructional modalities and resources to support these modalities with dates of availability;

(F) Availability of adequate practice sites for the program with supporting documentation from persons assigned to coordinate clinical placements for each facility;

(G) Availability of adequate educational facilities, services, and resources for the program;

(H) Evidence of financial resources adequate for planning, implementation and continuation of the program, including proposed operating costs;

(I) Tentative timetable for planning the program;

(J) Tentative start date for the program; and

(K) Current institution catalog(s).

(c) The applicant shall respond to the Board's request(s) for additional information.

(d) If the Board, after timely review and consideration of the information contained in the application and any supplementary information, including response statements from other programs, shall either approve or deny the application and notify the applicant, including rationale for the decision.

(e) If developmental approval is denied, the program may submit a revised developmental application no sooner than six months from the previous submission.

(f) If developmental approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply; and

(g) If the applicant does not submit an application for initial approval within twelve months after the date designated for initiating the program in the approved plan, the developmental approval shall expire.

(3) Initial Approval:

(a) Initial approval status may be applied for when the following conditions have been met:

(A) Application as described in OAR 851-021-0010(2) has received Board approval;

(B) Evidence of approval for the new program has been obtained from the appropriate agencies or bodies that review and approve new programs for public and private educational institutions.

(i) An institution shall provide one copy of the report that was submitted to each agency and a copy of the letter(s) indicating that approval for the program have been granted;

(ii) A consortium shall provide documentation that each member institution has approved the program, as well as documentation of agency approval as above; and

(iii) An institution licensed by the Oregon Department of Education, Private Career Schools section shall provide documentation of current licensure.

(C) There are sufficient qualified nurse educators, other required educators and administrative support services to initiate the program a minimum of six months prior to the beginning of the courses;

(D) A tentative written proposed program plan, including curriculum developed in accordance with the Standards for Approval, has been submitted a minimum of three months prior to the offering of the first course to nursing students;

(E) There is evidence of readiness for admission of students in educational and clinical facilities including clinical placement sites for the maximum number of students enrolled at one time a minimum of three months prior to the offering of the first course to nursing students;

(F) Policies for admission and progression are in place a minimum of three months prior to the offering of the first course to nursing students;

(G) There is a comprehensive plan for evaluation of the nursing program that addresses key outcomes a minimum of three months prior to the offering of the first course to nursing students; and

(H) There is a signed agreement(s) for the articulation of program graduates into the next level of nursing education a minimum of three months prior to the offering of the first course to nursing students:

(i) Programs leading to a certificate or degree in practical nursing shall have an agreement with an Oregon-approved program preparing candidates for licensure as a registered nurse; and

(ii) Programs leading to an associate degree in nursing shall have an agreement with an Oregon-approved program leading to a baccalaureate or higher degree in nursing.

(b) Following Board receipt and review of the information required in OAR 851-021-0010(3)(a), the Board may grant or deny initial approval;

(c) A site visit may be conducted by a representative(s) of the Board;

(d) Initial approval must be received by a program prior to publication of the program and recruitment or acceptance of students for admission to the first class of nursing students;

(e) If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;

(f) Interim visits and/or progress reports may be requested by the Board at any time during the initial approval phase and/or following initial approval as deemed necessary by the Board; and

(g) If the institution or consortium does not admit a class within twelve months after the date designated for initiating the program the initial approval shall expire.

(4) Approval:

(a) Eligibility for approval occurs after the graduation of the first class of students;

(b) Within six months following graduation of the first class, the program shall submit a self study report addressing compliance with the Standards for Approval (OAR 851-021-0040 through OAR 851-021-0070) and a survey visit shall be made for consideration of approval of the program;

(c) The decision of the Board to grant or deny approval shall be based upon review of a self study report submitted by the program addressing compliance with Board standards, of the success rate of graduates on the national licensure examination, and of a survey report by a representative(s) of the Board; and

(d) If approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Stat. Auth.: ORS 678.150, 678.340 & 678.360
Stats. Implemented: ORS 678.150 & 678.360
Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0021; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03; BN 11-2003, f. & cert. ef. 12-9-03; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

851-021-0045
Standards for Approval: Nursing Faculty

(1) The faculty shall include a sufficient number of qualified nurse educators and nurse educator associates to meet the identified learning outcomes of the nursing education program.

(2) The nurse administrator and each nurse faculty member shall hold a current, unencumbered license to practice as a registered nurse in Oregon and be academically and experientially qualified for the position to which she/he is appointed.

(3) Faculty teaching in clinical settings shall also hold a registered nurse license to practice and meet requirements in the state in which the clinical experience is occurring.

(4) Each non-nurse faculty member shall be academically and experientially qualified for his/her responsibilities.

(5) The nurse administrator and each faculty member shall demonstrate professional competence and continued development in nursing, nursing education, and assigned teaching responsibilities.

(a) The nurse administrator and each faculty member shall periodically review assigned teaching responsibilities, evaluating and revising professional development plans as indicated; and

(b) The institution and nurse administrator shall support faculty in developing and maintaining competence in assigned teaching responsibilities.

(6) Qualifications for practical nurse programs:

(a) The nurse administrator shall:

(A) Hold at least a master's degree in nursing with documentation of preparation and/or experience in curriculum and teaching; and

(B) Have at least four years of nursing experience, of which two years shall have been in a teaching or administrative position in a nursing education program.

(b) Each nurse educator shall:

(A) Hold at least a baccalaureate degree in nursing; and

(B) Have at least three years of nursing experience.

(c) Each nurse educator associate shall:

(A) Hold at least a baccalaureate degree in nursing; and

(B) Have at least two years of nursing experience.

(d) Each clinical lab teaching assistant shall:

(A) Hold a degree or certificate that is, at a minimum, equivalent to that for which students are being prepared; and

(B) Have at least two years of nursing experience.

(e) If the institutional program in practical nursing is embedded within a program in registered nursing, all faculty member appointments shall meet the qualifications required for registered nurse programs.

(7) Qualifications for registered nurse programs:

(a) The nurse administrator shall:

(A) Hold at least a master's degree in nursing with documentation of preparation and/or experience in curriculum and teaching. In addition, for

baccalaureate degree nursing programs, the nurse administrator shall hold an earned doctorate degree; and

(B) Have at least five years of nursing experience, of which three years shall have been in a nurse educator or administrative position in a nursing education program.

(b) Each nurse educator shall:

(A) Hold at least a master's degree in nursing or a baccalaureate degree in nursing, and master's in a related field with a post-master's certificate in nursing from a program that is at least two semesters or three quarters in length; and

(B) Have at least three years of nursing experience.

(c) Each nurse educator associate shall hold at least a bachelor's degree in nursing with no less than two years of nursing experience.

(d) Each clinical lab teaching assistant shall:

(A) Hold at least the educational level of preparation for which students are being taught; and

(B) Have at least two years of nursing experience.

(8) Any exceptions to subsections (6)(a), (b), (c), (d), (e) and (7)(a), (b), (c), (d) of this rule shall be submitted in writing to the Board and shall include rationale for the request. The Board may grant exceptions for any of the following circumstances:

(a) The education and experience qualifications are deemed equivalent to the requirements; or

(b) The individual has a baccalaureate in nursing, a masters or doctorate in a related field, and relevant nursing experience. The background of the individual is related to the teaching assignment and is complementary to the faculty mix, or

(c) Substantial effort has been made to recruit a qualified faculty member, and the appointed individual is pursuing the needed qualifications; or

(d) Substantial effort has been made to recruit a qualified faculty member, and the individual without full qualification is appointed for one year. The exception may be extended for one year with documentation of either continued and unsuccessful recruitment for a qualified replacement, or a plan to establish eligibility under exception (c) above.

(9) Special Provision for Nursing Faculty. Nurse administrators and faculty members employed as such in Oregon during the 1984 85 academic year may be appointed after September 1, 1985 without meeting new requirements under paragraphs 6(a)(A), (6)(b)(A), (7)(a)(A) and (7)(b)(A) of this rule.

(10) Faculty Member/Student Ratio:

(a) The number of faculty members appointed shall be not less than one faculty member to every eight students having experience in one or more practice sites at any given time. A lower ratio shall apply when nursing faculty determine that student/client safety and learning effectiveness warrant.

(b) Factors to be considered in determining the faculty member/student ratio shall be:

(A) Objectives to be achieved;

(B) Preparation and expertise of faculty member;

(C) Use of clinical teaching associates;

(D) Level of students;

(E) Number, type and condition of clients;

(F) Number, type, and location of practice sites; and

(G) Adequacy of the ratio for nurse faculty to:

(i) Assess students' capability to function safely within the practice situation;

(ii) Select and guide student experience; and

(iii) Evaluate student performance.

(c) Clinical teaching associates may be used within the following guidelines:

(A) There shall be a written plan for the clinical learning experience consistent with these rules;

(B) Clinical teaching associates shall be selected according to written criteria developed by faculty, and agreed to by responsible person(s) in the practice site;

(C) A faculty member shall be available to the clinical teaching associate(s) while students are involved in a the clinical learning experience;

(D) The faculty member shall confer with each clinical teaching associate and student (individually or in groups) regularly during the clinical learning experience;

(E) Use of clinical teaching associates does not modify the requirement for faculty member/student ratio, except that the ratio may be modified for final practica.

(11) Principal responsibilities of the faculty shall be to:

(a) Develop, implement and evaluate the organizing framework and learning outcomes of the program;

(b) Construct, implement, evaluate and revise the curriculum;

(c) Develop, implement and evaluate policies and standards for the advising, selection, admission, advanced placement, progression and graduation of nursing students within the framework of the policies of the educational institution;

(d) Develop, integrate and evaluate student learning experiences including selection of learning activities, appropriate use of emerging teaching and learning methodologies, assessment and guidance of the student and evaluation of client and student safety;

(e) Develop, implement and evaluate policies for assessing student achievement in terms of course and program learning outcomes;

(f) Evaluate student learning and performance, assign grades for courses according to policies, determine student progression within the program, and recommend successful candidates for the degree or certificate;

(g) Develop, implement and evaluate policies and procedures necessary for the operation of the program;

(h) Provide for student evaluation of teaching effectiveness;

(i) Provide for evaluation of faculty members within the framework of the educational institution;

(j) Orient and provide on-going guidance for nurse educator associates, clinical teaching associates, and nursing staff in practice sites related to the program goals, learning outcomes and expected competencies of the students;

(k) Participate in review of the total nursing program;

(l) Participate in determining academic policies and procedures of the institution;

(m) Participate cooperatively with other nursing programs and agencies to develop appropriate and equitable access to practice sites; and

(n) Provide mechanisms for student input into and/or participation in decisions related to the nursing program.

(12) Faculty Organization shall be as follows:

(a) The nursing faculty shall participate through faculty meetings or other methods in developing, implementing and evaluating the program and curriculum and other responsibilities of the faculty;

(b) Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference; and

(c) Faculty participation in decisions related to developing, implementing, and evaluating the curriculum, and to establishing or modifying nursing program policies shall be documented.

Stat. Auth.: ORS 678.150, 678.340 & 678.360
Stats. Implemented: ORS 678.150 & 678.360
Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 3-1984, f. & ef. 10-4-84; NER 2-1985, f. & ef. 4-5-85; NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0061; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2001, f. & cert. ef. 7-9-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

851-021-0055
Standards for Approval: Students

The program in nursing is accountable to students by providing that:

(1) Admission, readmission, transfer, progression, retention, dismissal and graduation requirements are available to the students in written form and are consistent with those of the sponsoring institution. Where necessary, policies specific to nursing students may be adopted if justified by the nature and purposes of the nursing program.

(2) Students are admitted without discrimination as to age, race, religion, gender, sexual preference, national origin or marital status.

(3) Facilities and services of the program and its sponsoring institution are documented and available to students.

(4) Distance Nursing education programs are effectively supported through accessible modes of delivery, resources, and student support.

(5) Student rights and responsibilities are available in written form.

(6) Students are required to submit to a criminal background check to identify criminal convictions that may:

(a) Pose a risk to public safety;

(b) Preclude the ability to complete required clinical practica; or

(c) Result in Notice to Deny Licensure on application for initial licensure in Oregon.

(7) There is a signed agreement for the articulation or program graduates into the next level of nursing education as follows:

(a) Programs leading to a certificate or degree in practical nursing shall have an agreement with an Oregon-approved program preparing candidates for licensure as a registered nurse; or

(b) Programs leading to an associate degree in nursing shall have an agreement with an Oregon-approved program leading to a baccalaureate or higher degree in nursing.

Stat. Auth.: ORS 678.150, 678.340& 678.360
Stats. Implemented: ORS 678.150 & 678.360
Hist.: NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0068; NB 4-1996, f. & cert. ef. 9-3-96; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

851-021-0065
Standards for Approval: Facilities and Services

(1) Educational facilities shall include:

(a) Classrooms, laboratories and conference rooms adequate in number, size and type according to the number of students and educational purposes for which the rooms are used;

(b) Offices and conference rooms available and adequate in number and size to meet faculty needs for individual student counseling and faculty meetings;

(c) Space provided for secretarial staff, files, storage and equipment; and

(d) Telephones, computers, equipment and support adequate in number and capacity to conduct program business.

(2) Educational services and resources shall include:

(a) Adequate secretarial services;

(b) Adequate library services, holdings, and electronic learning resources;

(c) Adequate student support services such as academic advising, financial aid advising, and academic bookstore services; and

(d) Adequate technology to support teaching and learning.

(3) Institutions offering distance nursing education programs shall provide ongoing and appropriate technical, design, and production support for faculty members and technical support services for students.

(4) Selection of practice sites shall be based on written criteria established by faculty.

(5) There is a written agreement that is in effect between the authorities responsible for the educational program and the nursing service or other relevant service of the practice site. The agreement shall include but not be limited to provisions that:

(a) Ensure that faculty members have authority and responsibility to select appropriate learning experiences in collaboration with practice site;

(b) Clearly specify whether or not clinical teaching associates will be provided by the site, and how they will be selected and function; and

(c) The practice sites shall be fully approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

Stat. Auth.: ORS 678.150 & 678.360
Stats. Implemented: ORS 678.150, 678.340 & 678.360
Hist.: NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0076; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

851-021-0090
Standards for Out-of-State Student Clinical Experience in Oregon

(1) Out-of-State Nursing Programs who seek to routinely send groups of students for clinical experience in Oregon

(a) The program shall petition the Board for approval to provide clinical experience in Oregon. The petition shall include:

(A) Justification or rationale for use of Oregon facilities;

(B) Documentation of home board approval including time frame and any recommendations which are outstanding;

(C) Evidence of accreditation by a regional accreditation body or national agency recognized by the council on Higher Education Accreditation (CHEA);

(D) Analysis of potential impact on nursing programs in areas where clinical placements are planned;

(E) Analysis of current usage of planned clinical sites in areas where clinical placements are planned;

(F) Anticipated student enrollment and proposed date of enrollment including the estimated number of students to be placed in Oregon clinical site(s);

(G) List of all faculty members with academic and licensure credentials;

(H) Evidence of availability of faculty in areas where clinical placements are planned;

(I) Evidence that faculty providing direct clinical supervision meet standards as established in OAR 851-021-0045(2, 6, 7, and 10);

(J) NCLEX pass rate, number of candidates and number passing for the past two years ending on the most recent September 30.

(K) The Board, after timely review and consideration of the petition and any supplemental information, shall either grant or deny the petition to place students in Oregon-based clinical experiences.

(b) The program shall provide an annual report on a form supplied by the Board to include at least the following information:

(A) Curriculum change that affects the use of Oregon facilities for clinical experience;

(B) Plans for a significant increase in planned enrollment that may impact regional practice sites;

(C) Any change in provisions for client/student safety;

(D) List of all faculty members with academic and licensure credentials;

(E) Any change in approval/ accreditation status during the annum;

(F) Copy of progress reports (if any) to the home board during the annum; and

(G) NCLEX pass rate, number of candidates and number of candidates passing for the year ending September 30.

(c) The OSBN may conduct a complete visit to the program of nursing to determine its eligibility for approval at any time, or may accept all or part of the survey and findings on approval from the home state.

(2) Nursing programs with faculty and facilities located in Oregon and approved by another state as of April 1, 1998

(a) The program shall meet the reporting requirements established in OAR 851-021-0025 for Oregon approved nursing programs.

(b) In addition, the program shall:

(A) Report any change in approval/accreditation status within 30 days of such change;

(B) Report plans for a significant increase in planned enrollment that may impact regional practice sites including plans for provision of clinical placement(s) for additional student(s);

(C) Submit a copy of progress reports (if any) to the home board;

(D) Annually submit the NCLEX pass rate, number of candidates and number of candidates passing for the year ending September 30; and

(E) Demonstrate attainment of OSBN standards for approval through OSBN participation in the regular survey visit conducted by the home board and/or nursing specialty accreditation organization.

(c) The OSBN may conduct a complete visit to the program to determine its eligibility for approval at any time, or may accept all or part of the survey and findings on approval from the home state or nursing specialty accreditation organization.

(3) Nursing programs that do not regularly send clinical sections to Oregon sites, and that seek to place an individual student for precepted experience.

(a) The program shall petition the Board for approval to provide clinical experience in Oregon. The petition shall include:

(A) Justification or rationale for use of Oregon facilities including description of clinical sites and experiences and the provisions that will be used for client/student safety;

(B) Documentation of home board approval including time frame and any currently outstanding recommendations;

(C) Evidence of accreditation by a regional association or national agency recognized by the Council on Higher Education Accreditation (CHEA);

(D) Name and credentials of the contact faculty member;

(E) Name and credentials of a contact person within the Oregon clinical facility; and

(F) Evidence that faculty providing clinical supervision meet standards as established in OAR 851-021-0045(2, 6, 7, and 10).

(b) The program shall have a written agreement with the Oregon clinical facility including but not limited to:

(A) Learning objectives to guide the student experience;

(B) Provisions for client/student safety;

(C) Faculty member of record with provision for availability;

(D) Qualifications for selection of preceptor(s);

(E) Provision that the agency may unilaterally nullify the contract in the event of issues with client safety.

Stat. Auth.: ORS 678.031, 678.150, 678.340, 678.360
Stats. Implemented: ORS 678.031, 678.150, 678.340, 678.360
Hist.: BN 7-1998, f. & cert. ef. 7-16-98; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08; BN 17-2010, f. & cert. ef. 11-29-10

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Rule Caption: Modifications made for establishment of limited license to non-U.S. educated nurses.
Adm. Order No.: BN 18-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 11-29-10

Notice Publication Date: 10-1-2010
Rules Amended: 851-031-0045, 851-031-0070
Subject: These rules cover standards for licensure of registered nurses and licensed practical nurses. These rule amendments make modifications in order to allow for a limited license to be issued to non-U.S. educated nurses enrolled in Board-approved re-rentry programs for instructor-supervised clinical experiences within their program prior to passing NCLEX.
Rules Coordinator: KC Cotton—(971) 673-0638

851-031-0045
Limited License for Certain Students in Oregon Educational Programs

(1) RNs from other countries who enroll for graduate study in Oregon.

(a) Required licensure:

(A) When the nature of the graduate program includes no clinical component or a clinical component which requires no direct patient care, the international nurse is required to hold either a limited or full Oregon RN license.

(B) When the nature of the graduate program includes a clinical component with direct patient care experience (e.g. nurse practitioner programs) an Oregon RN license is required prior to clinical experience.

(b) Limited License Requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees established by the Board.

(B) Graduation from an educational program that is equivalent to nursing education in the United States documented by a Board approved credentials evaluation service.

(C) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii) (iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(D) A passing score on the licensing examination as defined in OAR 851-031-0005(10) or on the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination.

(c) Limited licenses issued under this section shall be valid for a period of two years from the date of issuance. After that period, the limited license may be extended annually for a one year period upon application by licensee, payment of the appropriate fee, and demonstration of continued enrollment in the graduate program.

(d) The limited license issued under this section is to be used only for study in the graduate program.

(2) RNs from other countries who seek short term educational experience in Oregon:

(a) Required licensure:

(A) When the nature of the short-term educational experience includes the practice of nursing, the international nurse is required to hold a limited RN license.

(B) When the nature of the short-term educational experience is observation only, the international nurse does not require an Oregon license. "Observation only" means that the individual is not responsible for nor a participant in any aspect of nursing practice.

(b) Limited license requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees.

(B) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii) (iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(C) Graduation from an educational program that is equivalent to nursing education in the United States documented by a Board approved credentials evaluation service.

(D) A passing score on the licensing examination as defined in OAR 851-031-0005(10) or on the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination.

(E) A contract with an organization or agency in Oregon for a planned learning experience including at least the planned learning outcomes, dates for the experience, and how the outcomes will be achieved.

(c) Limited licenses issued under this section shall be valid for practice only within the contracted learning experience, and shall be issued to the last date of the learning contract up to a maximum of six months.

(3) Students from other countries in established exchange programs with Oregon schools:

(a) When a nursing student from another country engages in clinical experience as part of an established exchange program, a limited license is required.

(b) Limited license requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees established by the Board;

(B) Enrollment in a pre-licensure nursing program in another country;

(C) Acceptance by an approved Oregon nursing program for exchange experience; and

(D) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii) (iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(c) Limited licenses issued under this section shall be valid only for student experience within the exchange program, and shall be valid for the term of the exchange agreement up to a maximum of one year.

(4) RNs from other countries enrolled in Oregon-approved re-entry program for internationally-educated nurses

(a) Required licensure:

(A) When the nature of the educational experience includes the practice of nursing, the international nurse is required to hold an Oregon issued limited license.

(B) When the nature of the educational experience is classroom-based, skills/simulation laboratory-based, or observational only, the international nurse does not require an Oregon issued license.

(b) Limited license requirements:

(A) Completed application using forms and instructions provided by the Board and payment of applicable fees.

(B) Demonstration of English language proficiency as stated in OAR 851-031-0006(3)(f)

(C) Graduation from an educational program that is equivalent to nursing education in the United States documented by a Board approved credentials evaluation service.

(D) Evidence of current enrollment in a Board approved re-entry program for internationally-educated nurses.

(c) Limited licenses issued under this section shall be valid for practice only within the planned curriculum. The limited license expires on successful completion of the re-entry program, on withdrawal from the re-entry program, or in one year, whichever comes first. At the discretion of the Board, an extension of the limited license may be granted upon written request from the limited license holder or re-entry program director and submission of a fee.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.040, 678.050, 678.101, 678.150 & 678.410
Hist.: BN 11-1999. f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2005, f. & cert. ef. 12-21-05; BN 18-2010, f. & cert. ef. 11-29-10

851-031-0070
Re-entry into Nursing

(1) An applicant who has worked as a licensed or credentialed nurse and meets all standards of eligibility established in OAR 851-031-0006(1), (2) & (3) except OAR 851-031-0006(3)(d)(e) must complete an approved re-entry program or individualized plan and provide evidence of successful completion of the licensing examination, prior to issuance of a license to practice. The applicant shall:

(a) Provide documentation of having successfully completed within the two years preceding issuance of the license:

(A) A Board-approved re-entry program (as specified in OAR 851-031-0045, OAR 851-031-0080), or

(B) An individualized re-entry plan as specified in OAR 851-031-0070(4).

(b) Satisfactorily complete required supervised clinical practice as specified in OAR 851-031-0070(2).

(c) Provide documentation of successful completion of the licensing examination as defined in 851-031-0006(3)(d).

(2) Standards for supervised clinical practice. The nurse shall obtain a limited license to practice prior to engaging in supervised clinical practice.

(a) Supervised clinical practice for nursing re-entry shall be in the student role and unpaid.

(b) A nurse who has less than 960 hours of nursing practice in the five-year period immediately preceding application for licensure shall complete a re-entry program or individualized plan that includes a minimum of 160 hours of supervised clinical practice.

(c) Up to 160 additional hours of supervised clinical practice may be required when recommended to the Board by the re-entry program director, nurse preceptor or nurse manager/supervisor. Additional required supervised clinical practice is subject to the availability of a qualified preceptor, willingness of the facility to provide the experience, and availability of the program director to supervise/coordinate the experience.

(3) Standards for the limited license for re-entry.

(a) The limited license may be issued to a nurse who:

(A) Meets all requirements for licensure except for completion of the re-entry requirement;

(B) Submits verification of enrollment in an approved re-entry program; or

(C) Received Board approval of an individualized re-entry plan.

(b) A limited license issued under these rules is to be used only for completion of an approved re-entry program or individualized re-entry plan, and required supervised clinical practice for re-entry.

(c) The limited license expires on successful completion of the re-entry program or individualized plan, on withdrawal from an approved re-entry program or individualized plan, or in one year, whichever comes first. At the discretion of the Board, a one-year extension of the limited license may be granted on written request and submission of a fee.

(d) An applicant who fails to successfully complete the re-entry program or individualized re-entry plan and required supervised clinical experience may reapply for licensure, re-entry, and a limited license. The applicant is required to complete all requirements set forth in OAR 851-031-0070(1), (2).

(4) Standards for individualized re-entry plans. The nurse choosing to complete an individualized plan for re-entry shall submit, in writing, the following for Board approval:

(a) Summary of nursing education and practice with rationale for use of an individualized plan for re-entry into nursing practice;

(b) Anticipated timeframe for completing all required components, including acquisition/demonstration of current knowledge and required supervised clinical practice;

(c) Clinical competencies/outcomes to be achieved and the mechanism for evaluating competence in nursing practice on completion of the plan;

(d) Plan for obtaining and demonstrating knowledge/competence in nursing, as identified in OAR 851-031-0080(2)(c);

(e) Plan for obtaining required hours of supervised clinical practice as specified in OAR 851-031-0070(2). The plan shall identify:

(A) The agency or agencies and contact person(s) where required supervised clinical experience will be obtained. A signed contract/agreement with each agency is required. The contract/agreement shall include but is not limited to:

(i) Learning objectives/outcomes for the re-entry experience;

(ii) Provisions for client and re-entry nurse safety;

(iii) Unit(s) on which the experience is to occur with the name of the preceptor on each unit, if applicable;

(iv) A provision allowing the agency to nullify the contact/agreement in the event of client safety issues.

(B) The name and credentials of the registered nurse preceptor(s). Each nurse preceptor shall:

(i) Hold a current unencumbered registered nursing license in Oregon.

(ii) Agree to directly supervise and evaluate the re-entry nurse;

(iii) Have no less than two years of registered nursing experience, of which at least six months shall be in the setting in which the clinical experience is to occur; and

(iv) Be recommended by the nurse executive or immediate supervisor in that setting.

(f) Documentation of successful completion of the individualized re-entry plan shall be provided in writing, and shall include:

(A) Completion of program objectives/outcomes;

(B) Completion of required supervised clinical practice hours;

(C) Achievement of predetermined competencies;

(D) Recommendation for licensure by clinical preceptor and nurse manager.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.113 & 678.150
Hist.: NER 25, f. 9-22-75, ef. 10-10-75; NER 2-1980, f. & ef. 3-3-80; NER 5-1981, f. & ef. 11-24-81; NER 6, 1983, f. & ef. 12-9-83; NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0187; NB 12-1997, f. & cert. ef. 9-29-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2006, f. & cert. ef. 10-5-06; BN 18-2010, f. & cert. ef. 11-29-10

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Rule Caption: Rules for establishment of "Health Professional' Services Program" as required by HB 2345 (Enrolled 2009 Session).
Adm. Order No.: BN 19-2010
Filed with Sec. of State: 12-2-2010
Certified to be Effective: 12-2-10
Notice Publication Date: 10-1-2010
Rules Adopted: 851-070-0000, 851-070-0005, 851-070-0010, 851-070-0020, 851-070-0030, 851-070-0040, 851-070-0050, 851-070-0060, 851-070-0070, 851-070-0080, 851-070-0090, 851-070-0100
Rules Repealed: 851-046-0000, 851-046-0005, 851-046-0010, 851-046-0020, 851-046-0030, 851-046-0040, 851-070-0000(T), 851-070-0005(T), 851-070-0010(T), 851-070-0020(T), 851-070-0030(T), 851-070-0040(T), 851-070-0050(T), 851-070-0060(T), 851-070-0070(T), 851-070-0080(T), 851-070-0090(T), 851-070-0100(T)
Subject: These rules cover the newly established "Health Professionals' Services Program" (HPSP) and are specific to the Oregon State Board of Nursing. This program is being established by the Addictions & Mental Health (AMH) Division of the Department of Human Services as required by House Bill 2345 (Enrolled, 2009 Session). The Nurse Monitoring Program under the Oregon State Board of Nursing (OAR 851-045) has been eliminated.
Rules Coordinator: KC Cotton—(971) 673-0638

851-070-0000
Purpose, Intent and Scope

The Board believes that licensees who develop substance use disorders, mental health disorders, or both disorders can, with appropriate treatment, be assisted with recovery and return to the practice of nursing. It is the intent of the Board that a licensee with a substance use disorder, a mental health disorder or both types of disorders may have the opportunity to enter the Health Professionals' Services Program (HPSP). Participation in the Health Professionals' Services Program does not shield the licensee from disciplinary action.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0005
Definitions

The following definitions apply to OAR chapter 851, division 070, except as otherwise stated

in the definition:

(1) "Abstinence" means the avoidance of all intoxicating substances, including but not limited to prescription or over-the-counter drugs with a potential for abuse or dependence;

(2) "Assessment or evaluation" means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.

(3) "Board" means the Oregon State Board of Nursing.

(4) "Business day" means Monday through Friday, except legal holidays as defined in ORS 187.010 (or ORS 187.020).

(5) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate reason for services.

(6) "Division" means the Department of Human Services, Addictions and Mental Health Division.

(7) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, commonly referred to as DSM-IV-TR published by the American Psychiatric Association.

(8) "Federal regulations" means:

(a) As used in ORS 676.190(1)(f)(D), a "positive toxicology test result as determined by federal regulations pertaining to drug testing" means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance.

(b) As used in ORS 676.190(4)(i), requiring a "licensee to submit to random drug or alcohol testing in accordance with federal regulations" means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees' unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each time selections are made, as described in 40 CFR § 199.105(c)(5) (2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 40 CFR § 199.105(c)(7) (2009).

(9) "Fitness to practice evaluation" means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee's health practice.

(10) "Final enrollment" means a self-referred licensee has provided all documentation required by OAR 851-070-0040 and has met all eligibility requirements to participate in the HPSP.

(11) "Independent third-party evaluator" means an individual who is approved by a licensee's Board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders or co-occurring disorders.

(12) "Individual service record" means the official permanent HPSP documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the HPSP to demonstrate compliance with these rules.

(13) "Licensee" means a licensed practical nurse, registered nurse, or advanced practice registered nurse who is licensed or certified by the Oregon State Board of Nursing.

(14) "Mental health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. "Mental health disorder" includes gambling disorders.

(15) "Monitoring agreement" means an individualized agreement between a licensee and the vendor that meets the requirements for a diversion agreement set by ORS 676.190.

(16) "Monitoring Entity" means an independent third-party that monitors licensees' HPSP enrollment status and monitoring agreement compliance.

(17) "Non-treatment compliance monitoring" means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee's compliance with the monitoring agreement.

(18) "Nurse Monitoring Program" (NMP) refers to the alternative to the Board of Nursing's discipline program prior to July 1, 2010.

(19) "Self-referred licensee" means a licensee who seeks to participate in the program without a referral from the board

(20) "Peer" means another licensee currently enrolled in the program.

(21) "Provisional enrollment" means temporary enrollment, pending verification that a self-referred licensee meets all HPSP eligibility criteria.

(22) "Substance use disorder" means a disorder related to the taking of a drug of abuse (including alcohol); to the side effects of a medication; and to a toxin exposure, including: substance use disorders (substance dependence and substance abuse) and substance-induced disorders (including but not limited to substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorders and mood disorders), as defined in DSM criteria.

(23) "Substantial non-compliance" means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee's ability or willingness to participate in the HPSP. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(24) "Successful completion" means that for the period of service deemed necessary by the vendor or by the licensee's Board by rule, the licensee has complied with the licensee's monitoring agreement to the satisfaction of the HPSP.

(25) "Toxicology testing" means urine testing or alternative chemical monitoring including blood, saliva, breath or hair as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

(26) "Treatment" means the planned, specific, individualized health and behavioral health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(27) "Vendor" means the entity that has contracted with the Division to conduct the HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0010
Participation in Health Professionals' Services Program

Effective July 1, 2010, the Board shall participate in the Health Professionals' Services Program and may refer eligible nurses to the HPSP in lieu of or in addition to public discipline. Only licensed practical nurses, registered nurses, and advanced practice registered nurses who meet the eligibility criteria may be referred by the Board to the Health Professionals' Services Program.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0020
Eligibility in Health Professionals Services Program

(1) Licensee must be evaluated by an independent, third-party evaluator approved by the Board. The evaluation must include a diagnosis of a substance use disorder, mental health disorder, or both types of disorders with the appropriate diagnostic code from the DSM, and treatment options.

(2) Licensee must provide a written statement agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the Board.

(3) Licensee must enter into the "HPSP Monitoring Agreement."

(4) Licensees who have successfully graduated from either the NMP or HPSP programs and who have had a relapse may be permitted a maximum of one additional admittance into the HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0030
Procedure for Board Referrals

(1) When a complaint is received involving a licensee who may have a substance use disorder, a mental disorder, or both types of disorders, the Board staff will investigate and complete a report to be presented at a Board meeting.

(2) The Board will review the report and determine if the licensee meets the eligibility criteria for the HPSP.

(3) If licensee meets eligibility criteria and the board approves entry into the HPSP, the Board will provide a written referral. The referral must include:

(a) A copy of the report from the independent, third-party evaluator who diagnosed the Licensee;

(b) The treatment options developed by the independent third-party evaluator;

(c) A statement that the Board has investigated the licensee's professional practice and conduct, and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;

(d) A description of any restrictions recommended or imposed by the Board on the licensee's professional practice; including those specific to prescribing and dispensing medications (for licensees with prescriptive authority).

(e) A written statement from the licensee agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the vendor; and

(f) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.

(4) A Board-referred licensee is enrolled in the program effective on the date the licensee signs the consents and the monitoring agreement required by ORS 676.190.

(5) Upon enrollment into the program, the vendor (or monitoring entity) will notify the Board and the Board will dismiss without prejudice the pending complaint at the next Board meeting.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0040
Procedure for Self- Referred Licensees

(1) Self-referred licensees may participate in the HPSP as permitted by ORS 676.190(5).

Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:

(a) Sign a written consent allowing disclosure and exchange of information between the vendor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers, including other health care providers;

(b) Sign a written consent allowing disclosure and exchange of information between the vendor, the Board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement as defined in OAR 851-070-0090. The purpose of the disclosure is to permit the vendor and the monitoring entity to notify the Board if the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;

(c) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her Board; and

(d) Agree to and sign a monitoring agreement.

(2) Upon provisional enrollment, the vendor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section one of this rule.

(3) Final Enrollment: To move from provisional enrollment to final enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the vendor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the vendor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the vendor.

(4) Once a self-referred licensee seeks enrollment in the HPSP, failure to complete final enrollment may constitute substantial non-compliance and may be reported to the Board.

(5) Upon final enrollment of a self-referred licensee, the vendor shall send to the monitoring entity a copy of the written evaluation by the independent third-party evaluator and a copy of the amended monitoring agreement, if any.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0050
Disqualification Criteria

Licensees, either Board-referred or self-referred, may be disqualified from entering the HPSP for factors including, but not limited to:

(1) Licensee's disciplinary history;

(2) Severity and duration of the licensee's impairment;

(3) Extent to which licensee's practice can be limited or managed to eliminate danger to the public;

(4) Likelihood that licensee's impairment can be managed with treatment;

(5) Evidence of criminal history that involves injury or endangerment to others;

(6) A diagnosis requiring treatment because of sexual offenses or sexual misconduct;

(7) Evidence of non-compliance with a monitoring program from other state;

(8) Pending investigations with the Board or boards from other states;

(9) Previous Board investigations with findings of substantiated abuse or neglect; and

(10) Prior enrollment in, but failure to successfully complete, either the Nurse Monitoring Program or HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0060
Approval of Independent Third-Party Evaluators

(1) To be approved by the Board as an independent third-party evaluator, an evaluator must:

(a) Be licensed as required by the jurisdiction in which the evaluator works;

(b) Have a minimum of a Master's Degree in a mental health discipline;

(c) Provide evidence of additional education and experience as shown by one of the following:

(i) Department of Transportation Substance Abuse Professional qualification;

(ii) Certified Alcohol and Drug Counselor II or III;

(iii) Board Certified in Addiction Medicine by either ASAM or American Board of Psychiatry and Neurology.

(d) Provide evidence of assessments at the licensure level of the licensee being evaluated

(e) The Board will not accept an evaluator as independent in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0070
Approval of Treatment Providers

(1) To be approved by the Board as a treatment provider, a provider must be:

(a) Licensed as required by the jurisdiction in which the provider works;

(b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, level of licensure, and treatment options proposed by the independent third-party evaluator; and

(c) Able to obtain a urinalysis of the licensee at intake.

(2) The Board will not accept a provider as a treatment provider in a particular case if, in the Board's judgment, the provider's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0080
Licensee Responsibilities

(1) All licensees must:

(a) Agree to report any arrest for or conviction of a misdemeanor or felony crime to the vendor and the Board within three business days after the licensee is arrested or convicted of the crime; and

(b) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the Board by rule or order;

(c) Abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the HPSP and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(d) Report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;

(e) Participate in a treatment plan approved by a third party;

(f) Limit practice as required by the HPSP;

(g) Cooperate with supervised monitoring of practice;

(h) Participate in a follow-up evaluation, when necessary, of licensee's fitness to practice;

(i) Submit to random drug or alcohol testing;

(j) Report at least weekly to the HPSP regarding the licensee's compliance with the monitoring agreement;

(k) Report at least weekly to the HPSP regarding the licensee's compliance with the agreement;

(l) Report any arrest for or conviction of a misdemeanor or felony crime to the HPSP within three business days after the licensee is arrested or convicted;

(m) Report applications for licensure in other states, changes in employment and changes in practice setting;

(n) Agree to be responsible for the cost of evaluations, toxicology testing and treatment;

(o) Report to the HPSP any investigations or disciplinary action by any state or state agency, including Oregon;

(p) Participate in required meetings according to the treatment plan; and

(q) Maintain current license status.

(2) In addition to the requirements listed in section one of this rule, self-referred licensees must also provide to the HPSP a copy of a report of the licensee's criminal history, at least once per calendar quarter or more often if required by the HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0090
Completion Requirements

(1) To successfully complete the Health Professionals' Services Program, licensees with a substance use disorder, or with a mental health disorder and a substance use disorder, must have worked for at least two years in a monitored practice. Licensees must complete the required two years of monitored practice within four years of entering the Health Professionals' Services Program.

(2) To successfully complete the Health Professionals' Services Program, licensees with a mental health disorder, but no substance use disorder, must have worked for at least one year in a monitored practice. Licensees must complete the required year of monitored practice within two years of entering the Health Professionals' Services Program.

(3) The Board may extend by one year the time within which a licensee must complete the monitored practice if the licensee has remained compliant with the program.

(4) A licensee who does not complete the required term of monitored practice will be discharged from the Health Professionals' Services Program and may be subject to discipline.

(5) The time spent working in a monitored practice before transferring from the Nurse Monitoring Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of monitored practice.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

851-070-0100
Substantial Non-Compliance Criteria

(1) The HPSP or the monitoring entity will report substantial noncompliance with the diversion agreement within one business day after the HPSP learns of non-compliance, including but not limited to information that a licensee:

(a) Engaged in criminal behavior;

(b) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;

(c) Was impaired in a health care setting in the course of the licensee's employment;

(d) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(e) Violated a restriction on the licensee's practice imposed by the HPSP or the licensee's Board;

(f) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

(g) Entered into a diversion agreement, but failed to participate in the HPSP;

(h) Was referred to the HPSP, but failed to enroll in the HPSP;

(i) Forged, tampered with, or modified a prescription;

(j) Violated any rules of prescriptive/dispensing authority;

(k) Violated any provisions of OAR 851-070-0080;

(l) Violated any terms of the diversion agreement; or

(m) Failed to complete the monitored practice requirements as stated in OAR 851-070-0090.

(2) The Board, upon being notified of a licensee's substantial noncompliance will investigate and determine the appropriate sanction, which may include a limitation of licensee's practice and any other sanction, up to and including termination from the HPSP and formal discipline.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10

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Board of Parole and Post-Prison Supervision
Chapter 255

Rule Caption: Amends definitions to update language.
Adm. Order No.: PAR 10-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 255-005-0005
Rules Repealed: 255-005-0005(T)
Subject: Amends definition of a victim to new definition adopted by the Board.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-005-0005
Definitions

(1) "Abscond": Unauthorized absence from parole or post-prison supervision.

(2) "Active Community Supervision": A period of supervision in the community, requiring the supervising officer's regular contact and monitoring to assure that the supervisee complies with the conditions of parole or post-prison supervision, has committed no new crimes and has paid restitution, attorney fees, and compensatory fines, if required.

(3) "Active Supervision": Supervision requiring the supervising officer's regular contact and monitoring to assure continued compliance with the general and special conditions of parole or post-prison supervision. "Active Supervision" shall not include:

(a) The period of confinement in a local, state, or federal correctional facility while serving on parole or post-prison supervision;

(b) The period of time between the suspension of parole or post-prison supervision and the date parole or post-prison supervision is continued;

(c) Inactive parole or inactive post-prison supervision;

(d) Involuntary commitment to a state or federal psychiatric facility.

(4) "Administrative Sanction": Local, structured, or intermediate sanctions as those terms used in OAR 291-058-0010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.

(5) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflect on the character of the offender pursuant to Exhibit E-1 and E-3.

(6) "BAF": A Board order after a decision called a "Board Action Form".

(7) "Base Range": The range for each crime category reflected in Exhibit C under the "excellent" column.

(8) "Board": Board of Parole and Post-Prison Supervision.

(9) "Board Review Packet": The information the Board shall consider at the inmate's hearing. Each of the Divisions which establishes a hearing shall list the contents of the packet.

(10) "Compensatory Fines": A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.

(11) "Correctional Facility": Any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under

a court order. Correctional Facility includes a juvenile facility, if the juvenile is confined for a felony charge or conviction, and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect or after a finding of guilty except for insanity.

(12) "Crime Severity Rating": A classification for crimes committed prior to November 1, 1989, from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibits A-l, A-ll, and A-lll.

(13) "Crime Spree": A set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstances as to be the product of a continuous disposition or intent.

(14) "Date of Return": The date another in-state or out-of-state jurisdiction physically returns the inmate to the Department of Corrections' custody following a hold.

(15) "De Novo Hearing": A new initial prison term hearing, required when a court orders additional consecutive sentences for crimes which occurred prior to the first prison term hearing.

(16) "Escape":

(a) The unlawful or unauthorized departure from custody, a correctional facility or any form of temporary release or transitional leave;

(b) Includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board;

(c) Does not include failure to comply with provisions of a conditional or security release as in ORS 135.245.

(17) "Future Disposition Hearing": A hearing the Board may set at its discretion for purposes of deciding whether to deny or grant re-release for a violation of parole or post-prison supervision when authorized by law.

(18) "Gang Member": A person who associates with a group which identifies itself through the use of a name, unique appearance, language (including hand signs), the claiming of geographical territory, or the espousing of a distinctive belief system and one of the purposes of the group is criminal activity.

(19) "Gang-Related Activity": Crime committed by a gang member:

(a) With other known gang members;

(b) Against other known gang members; or

(c) Against a person who is not a gang member; in order to further the purposes of the gang or impress other gang members.

(20) "History/Risk Score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B, Part l and Part ll.

(21) "Inactive Parole and "Inactive Post-Prison Supervision": The offender remains under supervision however;

(a) There is no direct supervision by a supervising officer and no requirement of regular reporting;

(b) There are no additional supervision fees; and

(c) The offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94; and

(d) (b) and (c) do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active parole or post-prison supervision.

(22) "In Camera Hearing": The inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.

(23) "Initial Parole Release Date": The date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).

(24) "Inmate": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not on parole, post-prison supervision or probation status (also referred to as prisoner).

(25) "Inoperative Time": Time spent on abscond, escape, or unauthorized departure from custody, leave, parole or post-prison supervision, which does not count toward service of the sentence.

(26) "Intensive Supervision": means enhanced level of supervision exceeding a county's high risk level supervision standards. Intensive supervision may include, but not be limited to, electronic monitoring, house arrest, curfew, day reporting, supervised housing, multiple supervising officers, adjunct surveillance by law enforcement or other specialists, increased face-to-face offender contacts in the community, increased collateral contacts (such as with family, therapist and employer), community notification, geographic restrictions, offender mileage logs, medication monitoring (such as depo provera, psychotropics, antabuse), intensive outpatient or residential treatment programming, urinalysis, and polygraph.

(27) "Less Than the Sum of the Terms": An action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.

(28) "Mail Date" or "Mailed on Date": Is the date from which the Board calculates the timelines of receipt of Administrative Review Requests and other time sensitive responses. The date is computer generated and scheduled to insure actual mailing occurred on or before the listed date.

(29) "Matrix Ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.

(30) "The Matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.

(31) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflect on the character of the prisoner pursuant to Exhibit E-2 and E-3.

(32) "Offender": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not presently in the custody of a correctional facility, including persons on probation, parole or post-prison supervision.

(33) "Parole": Applies to offenders whose crime(s) were committed before November 1, 1989. A Board authorized conditional release from a state correctional facility into the community or to a detainer.

(34) "Particularly Violent or Otherwise Dangerous Criminal Conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.

(35) "Parole Board Record": The file the Board maintains for each inmate/offender containing the information listed in ORS 144.185.

(36) "Period Under Review": Under Division 40, the time already served on the prison term, normally the three (3) or (5) year period prior to the personal review hearing.

(37) "Post-Prison Supervision": Applies to crimes committed on or after November 1, 1989. A term, as set by statute or the court under the supervision of the Department of Corrections or a correctional agency designated by the Department or a local supervisory authority.

(38) "Principal Range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, the Board shall designate one range as the principal range.

(39) "Preponderance": Evidence which is of greater weight or more convincing than the evidence offered in opposition to it.

(40) "Probable Cause": A substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.

(41) "Prison Term": The Board established time the inmate must serve before the initial parole release date, in accordance with applicable laws and the Board's Administrative Rules.

(42) "Prison Term Hearing": The hearing at which the Board establishes an inmate's prison term and initial parole release date.

(43) "Revocation": An action by a Sanction Authority to terminate an offender's parole or post-prison supervision. Sanction Authority may resume an offender's parole or post-prison supervision following the act of revocation.

(44) "Revocation Hearing": A hearing to determine whether a violation of conditions of parole or post-prison supervision occurred and whether the Hearings Officer should recommend that the parolee or offender return to custody or continue on parole or post-prison supervision with additional conditions. (Commonly known as a Morrissey Hearing)

(45) "Sanction Authority": Means the Board for felony offenders sentenced by the court for crimes occurring before November 1, 1989, or sentenced to more than 12 months in the custody of the Department of Corrections or sentenced to 12 months or less and have additional sentences of greater than 12 months; and the Local Supervisory Authority for felony offenders sentenced by the court to 12 months or less.

(46) "Sexually Violent Dangerous Offender": means an inmate/offender who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the Board or Local Supervisory Authority finds presents a substantial probability of committing an offense listed in OAR 255-060-0008(6). "History of sexual assault" means that an inmate/offender has engaged in unlawful sexual conduct that is not revealed to the crime for which the inmate/offender is currently on parole or post-prison supervision and seri-

ously endangered the life or safety of another person or involved a victim under twelve (12) years of age.

(47) "Serious Physical Injury": Any physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or protracted loss or impairment of the function of any bodily organ.

(48) "Stranger": A person who is either unknown to a victim or with whom the victim has a superficial acquaintance or acquaintance of short duration or infrequent contact.

(49) "Subcategory": The criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).

(50) "Subordinate Range": Any range less than or equal to the principal range.

(51) "Subpoena Duces Tecum": A subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.

(52) "Summing the Ranges": Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-035-0021.

(53) "Supervising Officer": Parole and post-prison supervision officer.

(54) "Supervisory Authority": The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or County Court to operate correction supervision services, custodial facilities, or both (per ORS 144.087(1)).

(55) "Unauthorized Absence": Time spent outside a state correctional facility without Department of Corrections' or local supervisory authority's authorization, whether it is an escape or an unauthorized departure.

(56) "Unified Range": The total range computed under OAR 255-035-0021 for consecutive sentences.

(57) "Unsum the Ranges": To establish a matrix range at less than the unified range. The effect of unsumming is treatment of one or more ranges as if concurrent.

(58) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.

(59) "Victim": Any person determined by the prosecuting attorney, the court or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime that is the subject of a proceeding conducted by the State Board of Parole and Post Prison Supervision.

[ED. NOTE: Exhibits referenced are available from the Board.]
Stat. Auth.: ORS 144.050 & 144.140
Stats. Implemented:
Hist.: 2PB 2-1986(Temp), f. & ef. 11-13-86; 2PB 3-1986(Temp), f. & ef. 12-2-86; PAR 6-1988, f. & ef. 5-19-88; PAR 7-1988, f. & ef. 7-1-88; PAR 8-1988, f. & ef. 7-1-88; PAR 9-1988(Temp), f. & ef. 7-14-88; PAR 12-1988(Temp), f. & ef. 7-20-88; PAR 13-1988(Temp), f. & ef. 8-5-88; PAR 14-1988(Temp), f. & ef. 9-20-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 5-1990, f. & cert. ef. 10-5-90; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-1-98; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2005, f. & cert. ef. 4-25-05; PAR 4-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11; PAR 10-2010, f. & cert. ef. 12-1-10

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Rule Caption: Amends division 15 to update the fee schedule for obtaining documents from the Board.
Adm. Order No.: PAR 11-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 255-015-0015
Subject: Division 15 establishes the procedures and costs for requesting documents from the Board. These rules are being amended to update the fee schedule.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-015-0015
Fees for Board Records

(1) The fees for documents shall be as follows:

(a) A fee of twenty cents per page will be applied.

(b) The fee for the duplication of oral records shall be $8.00 per CD.

(c) Actual postage cost of method preferred by requestor will be applied.

(2) The Board will charge, in fifteen-minute increments, the actual hourly rate of the Board member or staff person(s) responding to the public records request.

(3) Actual costs may also include the cost of attorney time for reviewing and segregating records at the Board's request.

(4) The Board chairperson, or designee, may, for good cause, waive or reduce all computed costs including staff time for review, reproduction, materials, and mailing costs.

(5) Prior to reproduction of material, the Board shall receive payment, unless the chairperson, or designee, decides that the Board can bill the person or agency.

(6) The Board shall deposit payments in the Miscellaneous Receipts account in accordance with Business Office instructions.

Stat. Auth.: ORS 183.335, 192.410 - 192.505, 144.025(3) & 144.050
Stats. Implemented: ORS 144.120(7), 144.130, 144.185 & 192.410 - 192.505
Hist.: 1PB 4-1985, f. & ef. 5-31-85; 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1998(Temp), f. & cert. ef. 10-14-98 thru 4-11-99; PAR 1-1999, f. & cert. ef. 1-15-99; PAR 11-2010, f. & cert. ef. 12-1-10

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Rule Caption: Amends rule that outlines Board practice for statements made at hearings.
Adm. Order No.: PAR 12-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 255-030-0027
Rules Repealed: 255-030-0027(T)
Subject: Amends rules governing statements made by victims, District Attorney, and inmates at hearings to match current Board practice. Changes the time limit of statements from three minutes to fifteen minutes.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-030-0027
Victim, District Attorney and Inmate Statements

(1) During the hearing, the victim(s), personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction may make statements not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

(2) Following the victim(s) and the District Attorney statements, one person selected by the inmate may make a statement not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

Stat. Auth.: ORS 144.120(7)
Stats. Implemented: ORS 144.120(7)
Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 5-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11; PAR 12-2010, f. & cert. ef. 12-1-10

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Rule Caption: Amends division 80 to clarify timeliness rules and add administrative review request preparation requirements.
Adm. Order No.: PAR 13-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Adopted: 255-080-0008
Rules Amended: 255-080-0001, 255-080-0005, 255-080-0011
Subject: ORS 144.335 specifies the requirements that must be complied with before a person under the jurisdiction of the Board of Parole and Post-Prison Supervision may seek judicial review of a final order of the Boar,d including that the person must exhaust administrative review as provided by Board rule. Division 80 identifies the process for requesting administrative review from the Board. The rules are being amended and a new section is added to: (1) clarify how timeliness is determined; and (2) specify the requirements for the appearance and content of an administrative review request.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-080-0001
Exhaustion of Remedies

(1) A Board order is final and effective the date it is signed, however it is not final for purposes of the time period within which to appeal to the Court of Appeals until the inmate/offender exhausts his or her administrative review remedies.

(2) An inmate/offender has exhausted his or her administrative remedies after complying with OAR 255-080-0005, and after the Board denies review, or grants review and either denies or grants relief. The Board shall notify the inmate/offender that exhaustion has occurred and the time for judicial appeal of appealable orders shall run from the mailing date of the notice.

Stat. Auth.: ORS 144.335
Stats. Implemented: ORS 144.335
Hist.: PAR 2-1991, f. & cert. ef. 2-20-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 13-2010, f. & cert. ef. 12-1-10

255-080-0005
Procedure for Administrative Review

(1) An offender may obtain administrative review of a final Board action by sending a request for review to the Board within forty-five (45) days after the mailing date on the Board's final action on the issue to be reviewed.

(2) The Board will reject an untimely request for administrative review. Timeliness will be determined as follows for all Board actions except Orders of Supervision:

(a) The request is physically received by the Board on or before the 45th day after the mailing date on the Board's final action on the reviewed issue; or

(b) The request is delivered to the Board:

(A) by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp, a USPS postage meter electronic imprint, sticker, or stamp, a postage meter sticker or stamp from a "postage evidencing system" that is regulated and approved for use by the United States Postal Service pursuant to 39 CFRs. 501, *et seq*., that is dated on or before the 45th day after the mailing date on the Board's final action: a postage evidencing system refers to postage by any method other than postage stamps and includes (but is not limited to) postage meters; or

(B) by a parcel delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, that indicates the date on which the parcel delivery service received material for delivery to the Board, which date is on or before the 45th day after the mailing date on the Board's final action.

(C) If the Board finds that the administrative review request was not: (a) placed in the mail on the date indicated on the postage meter sticker or stamp or (b) delivered to the parcel delivery service on the date indicated on the parcel delivery service receipt, the delivery rules in OAR 255-080-005(2)(b)(i) and (ii) shall not apply.

(c) In the case of an inmate, if there is no legible USPS cancellation stamp or other postal mailing verification as defined in paragraph (2)(b) above, the request will be treated as timely if the inmate signed and dated the request and placed it in the institutional mailing system, following all applicable Department of Corrections rules, on or before the 45th day after the mailing date on the Board's final action.

(3)(a) For Orders of Supervision (including Orders to Continue/Amend Supervision), an offender must request administrative review within forty-five (45) days after the date he or she received the order. The Board will reject a request for administrative review of an Order of Supervision as untimely unless:

(A) The request is physically received by the Board on or before the 45th day after the date the offender received the order as determined by offender's signature on the order or other proof as stated in paragraph (3)(b); or

(B) The request is delivered to the Board by mail in an envelope bearing a United States Postal Service (USPS) cancellation stamp or other postal mailing verification as defined in paragraph (2)(b) above, dated on or before the 45th day after the date the offender received the order as determined by offender's signature on the order or other proof as stated in paragraph (3)(b).

(b) The offender's date of receipt may be established by:

(A) The date the order was signed by the offender, or

(B) If the offender did not sign the order, the Board will accept an electronic chronological entry or a note made by an employee of the Department of Corrections or of the supervisory authority as evidence of the date the offender received the Order of Supervision.

(4) If the Board or its designee finds that the request is timely, and that it is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will respond to the request using the procedures outlined in OAR 255-080-0012.

(5) When the Board or its designee grants review, the Board shall send the offender a written response.

(a) If relief is denied, the response will explain the reasons for the decision. When relief is denied, the prior decision stands.

(b) If relief is granted, the response will either implement the relief, or specify the Board action to be taken implementing relief.

(6) When the Board or its designee denies review, the Board shall send the offender written notice of the specific reasons for denial.

(a) When review is denied, the prior decision stands.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 144.335
Stats. Implemented: ORS 144.335
Hist.: 2PB 1979, f. & ef. 2-1-79; 2PB 11-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 17-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 2-1991, f. & cert. ef. 2-20-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2000, f. & cert. ef. 6-9-00; PAR 8-2004, f. & cert. ef. 6-14-04; PAR 9-2004(Temp), f. & cert. ef. 9-3-04 thru 3-1-05; PAR 12-2004, f. & cert. ef. 11-2-04; PAR 13-2010, f. & cert. ef. 12-1-10

255-080-0008
Specifications for Administrative Review Request

(1) The request for administrative review shall be substantially in the same format as in Exhibit O, Administrative Review Request Form, and shall contain:

(a) The name and SID # of the person requesting review.

(b) The heading "Request for Administrative Review"

(c) Identification of the Board action or order for which review is requested, by name of action (i.e., BAF #3, Order of Supervision, etc.) and date of action.

(d) A plain and concise statement of the points for which the offender wants review, specifically identifying how the challenged Board action is alleged to be in violation of statutes or Board rules, or how it is alleged that the decision was not supported by evidence in the record, or in what other way the offender believes the Board's action to be in error. A request for administrative review must concisely explain how the case fits the criteria for review listed in OAR 255-080-0010.

(e) The request must state, where applicable, what statute, administrative rule, or constitutional provision is alleged to have been violated, including the effective date of the law or rule.

(2) The administrative review request shall be created by any process that makes a clear, legible, black or dark blue image; the Board will not accept text written in pencil, carbon copies, copies on slick paper, or copies darkened by the duplicating process.

(a) All writing shall be legible and capable of being read without difficulty.

(b) The request must be written on standard 8 ½ " x 11" white or light blue paper.

(c) Each page shall have margins of at least 1" on all sides.

(d) Any attachments to the review request shall be duplicated on standard 8 ½ " x 11" white paper and must be clear and legible.

(e) Pages shall be consecutively numbered on the right side at either the top or bottom of the page.

(3)(a) The request shall not exceed 8 pages. That limitation does not include additional documentation necessary to support the request. (Under most circumstances, no additional documentation will be necessary.)

(b) Additional documentation in support of the request shall not exceed 10 pages.

(4)(a) An offender may request an exception to the limits in these rules, stating a specific reason for exceeding the prescribed limit(s). The request must reach the Board no fewer than fourteen days before the administrative review request is due. The Board, at its discretion, may permit the filing of a review request, and/or additional documentation that exceeds the page limits prescribed in subsection (2) of this rule. The Board may deny an untimely motion under this paragraph on the ground that the offender failed to make a reasonable effort to file the motion on time.

(b) If the Board grants permission for a longer review request, or additional documentation in support of the request, the documents shall conform to the rules set forth above in section (1).

(c) This rule does not create an exception to the timeliness requirements of OAR 255-080-0005. The offender is responsible for requesting an exception and filing his review request within 45 days as required by OAR 255-080-0005

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 144.335
Stats. Implemented: ORS 144.335
Hist.: PAR 13-2010, f. & cert. ef. 12-1-10

255-080-0011
Limitations on Requests for Administrative Review

All administrative review requests will be screened by a Board member or a Board designee who may deny further review of the following:

(1) Administrative review requests determined to be untimely pursuant to rule 255-080-0005;

(2) Requests in which the subject matter relates to a hearing or review and/or Board order other than the Board order being appealed;

(3) Board orders that are not final;

(4) Requests that substantially fail to comply with the requirements of OAR 255-080-0008.

Stat. Auth.: ORS 144.335
Stats. Implemented: ORS 144.335
Hist.: PAR 2-1991, f. & cert. ef. 2-20-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2000, f. & cert. ef. 6-9-00; PAR 9-2004(Temp), f. & cert. ef. 9-3-04 thru 3-1-05; PAR 12-2004, f. & cert. ef. 11-2-04; PAR 13-2010, f. & cert. ef. 12-1-10

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Rule Caption: Amends Exhibit O, which is the form used to submit administrative review requests.
Adm. Order No.: PAR 14-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 255-080-0008
Subject: ORS 144-335 specifies the requirements that must be complied with before a person under the jurisdiction of the Board of Parole and Post-Prison Supervision may seek judicial review of a final order of the Board, including that the person must exhaust administrative review as provided by Board rule. Division 80 specifies the requirements for the appearance and content of an administrative review request. Exhibit O is being amended to reflect current specifications for review requests and to add information that will assist the person filing the request.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-080-0008
Specifications for Administrative Review Request

(1) The request for administrative review shall be substantially in the form specified by the Board in Exhibit O, Administrative Review Request Form, and shall contain:

(a) The name and SID # of the person requesting review.

(b) The heading "Request for Administrative Review"

(c) Identification of the Board action or order for which review is requested, by name of action (i.e., BAF #3, Order of Supervision, etc.) and date of action.

(d) A plain and concise statement of the points for which the offender wants review, specifically identifying how the challenged Board action is alleged to be in violation of statutes or Board rules, or how it is alleged that the decision was not supported by evidence in the record, or in what other way the offender believes the Board's action to be in error. A request for administrative review must concisely explain how the case fits the criteria for review listed in OAR 255-080-0010.

(e) The request must state, where applicable, what statute, administrative rule, or constitutional provision is alleged to have been violated, including the effective date of the law or rule.

(2) The administrative review request shall be created by any process that makes a clear, legible, black or dark blue image; the Board will not accept text written in pencil, carbon copies, copies on slick paper, or copies darkened by the duplicating process.

(a) All writing shall be legible and capable of being read without difficulty.

(b) The request must be written on standard 8 ½ " x 11" white or light blue paper.

(c) Each page shall have margins of at least 1" on all sides.

(d) Any attachments to the review request shall be duplicated on standard 8 ½ " x 11" white paper and must be clear and legible.

(e) Pages shall be consecutively numbered on the right side at either the top or bottom of the page.

(3)(a) The request shall not exceed 8 pages. That limitation does not include additional documentation necessary to support the request. (Under most circumstances, no additional documentation will be necessary.)

(b) Additional documentation in support of the request shall not exceed 10 pages.

(4)(a) An offender may request an exception to the limits in these rules, stating a specific reason for exceeding the prescribed limit(s). The request must reach the Board no fewer than fourteen days before the administrative review request is due. The Board, at its discretion, may permit the filing of a review request, and/or additional documentation that exceeds the page limits prescribed in subsection (2) of this rule. The Board may deny an untimely motion under this paragraph on the ground that the offender failed to make a reasonable effort to file the motion on time.

(b) If the Board grants permission for a longer review request, or additional documentation in support of the request, the documents shall conform to the rules set forth above in section (1).

(c) This rule does not create an exception to the timeliness requirements of OAR 255-080-0005. The offender is responsible for requesting an exception and filing his review request within 45 days as required by OAR 255-080-0005

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 144.335
Stats. Implemented: ORS 144.335
Hist.: PAR 13-2010, f. & cert. ef. 12-1-10; PAR 14-2010, f. & cert. ef. 12-1-10

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Construction Contractors Board
Chapter 812

Rule Caption: Revised Homebuyer Protection Act (HPA) Form.
Adm. Order No.: CCB 16-2010(Temp)
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10 thru 5-27-11
Notice Publication Date:
Rules Amended: 812-001-0200
Subject: OAR 812-001-0200 is amended to update the form used by contractors to comply with the Homebuyers Protection Act (HPA). Consistent with the new law that takes effect January 1, 2011 (Chapter 77 OR Laws 2010 (HB 3689)); the homebuyer will no longer be able to waive the HPA's protections. CCB adopted a new revised form dated December 1, 2010, to comply with the notice requirement of the law. This rule, as amended, will incorporate the new revised form.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0200
Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised January 1, 2010. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form "Consumer Protection Notice" as revised February 20, 2009.

(3) In order to comply with the requirement to adopt an "Information Notice to Property Owners About Construction Responsibilities" form under ORS 701.325(3), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 1, 2010.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

(7) The board adopts the form "Home Inspection Consumer Notice" dated October 27, 2009.

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.325, 701.330 & 701.530
Stats. Implemented: ORS 87.007, 87.093, 701.235, 701.325, 701.330 & 701.530
Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020,

CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 1-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 7-2008, f. 4-28-08, cert. ef. 5-1-08; CCB 16-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 2-2009(Temp), f. & cert. ef. 2-23-09 thru 8-22-09; CCB 3-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10; CCB 1-2010, f. & cert. ef. 2-1-10; CCB 16-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11

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Department of Administrative Services,
Human Resource Services Division
Chapter 105

Rule Caption: Establishes processes for individuals to apply for state employment and agencies to fill positions.
Adm. Order No.: HRSD 3-2010
Filed with Sec. of State: 11-24-2010
Certified to be Effective: 11-28-10
Notice Publication Date: 11-1-2010
Rules Amended: 105-040-0010, 105-040-0020, 105-040-0030, 105-040-0060
Subject: These rules describe how individuals apply for positions in the classified and management service of the state. The rules establish how state agencies conduct the process to fill positions.

Background: On April 1, 2010, the state adopted a web-based job posting and applicant management system. This system allows applicants to apply for positions on-line and more quickly. The system allows agencies to select applicants for interviews in rank order based on desired attributes rather than a "score" generated by a traditional civil service "test." Additionally, the current rules outline the process to use random lists of qualified applicants.

On June 1, 2010, the temporary rules were effective to accomplish the following:

OAR 105-040-0010, requires applicants to submit the state application form (PD 100) to seek employment with the state. The E-Recruit system makes the form PD 100 obsolete. Individuals can no longer use the PD 100 to apply for positions. They must use the E-Recruit system. The rule requires hiring agencies give a minimum of two weeks notice when filling vacancies. With E-Recruit, individuals may apply quickly to positions on-line without faxing, mailing or hand-delivering applications. Consequently, hiring agencies can generate applicant pools quickly and efficiently. Agencies in need to quickly fill positions and individuals needing to start employment as soon as possible are benefited by a shorter recruitment/selection cycle.

OAR 105-040-0200 is unclear on the appropriate order of priority lists. The temporary rule ensures injured workers and employees on lay off recall lists obtain first consideration. The temporary rule removes a requirement that current employees of the state must hold regular status before applying to an open competitive job posting. This requirement prevents current employees from obtaining other employment. Such restrictions are not placed on the general public.

OAR 105-040-0030 uses terms and procedures such as "certificate of eligibles"; "random certificate" and; "disposition code" which are no longer relevant in the new E-Recruit system. The permanent rule describes obsolete processes to include random selection of qualified applicants, consolidation of new and existing applicant lists. The temporary rule defines terms and describes procedures applicable to the E-Recruit system. Doing so will avoid applicant and agency confusion, ensure use of consistent terminology, and reduce technical and procedural errors.

OAR 105-040-0060 lists obsolete classifications and fails to list other appropriate and active classifications. The temporary rule updates the list with currently active position classifications.

The permanent rules codify the language in the temporary rules that expire on November 27, 2010 in addition to the following changes:

OAR 105-040-0010

Section (1) – sentence restructured – non-substantive change.

Section (1)(a) – the word 'selection' changed to 'application screening' to accurately reflect information in job posting.

Section (4)(b) – clarified applicant review request process.

Section (4)(c) – clarified when an applicant may reapply for a posting.

OAR 105-040-00020

Section (1)(a) – more descriptive intent of priority list added.

Section (1)(a)(A) – added statutory reference for rights and benefits to injured workers in the employment process.

Section (1)(a)(B) – added clarity on the exhaustion of the Agency layoff list.

Section (1)(a)(C)(i) – added back original language omitted during temporary rule process on the eligibility of applicants on the Statewide Layoff lists.

Section (1)(a)(C)(ii) – sentence restructured – non-substantive change.

Section (1)(b) – reorganized existing language from other section for better flow of process and information.

OAR 105-040-0030

Updated the term 'list of eligibles' to 'eligible list' throughout the rule.

Section (1)(c) – updated definition to reflect new process.

Section (2)(c) – added reminder of compliance with other OAR's when filing positions.

OAR 105-040-0060

Section (1)(b) – removed redundancy to provide job information.

Section (3) – updated reference.

Section (4) – added an additional classification and corrected an existing classification title.

Rules Coordinator: Jeffery Kohlleppel—(503) 378-2349, ext. 325

105-040-0010
Recruitment and Selection Process

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. It is the policy of the State of Oregon to base hiring and promotion decisions on an applicant's relative knowledge, experience, and skills, determined by competition without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, disability, sexual orientation or other non-job-related factors, with proper regard for an individual's privacy.

(1) An applicant shall follow the instructions to apply by submitting an official State of Oregon application within the designated time-period.

(2) Hiring agencies provide a minimum seven calendar days notice of employment opportunities when filling vacancies, other than agency promotions, by using the State's Jobs page on the internet. Accordingly:

(a) Job postings shall include job requirements, minimum qualifications from classification specifications, any special qualifications, salary, application screening process to be used, application deadline, and any supplemental questions or additional application requirements.

(b) Any recruitment and selection process shall be competitive, unbiased and of such content as to assist in determining an applicant's qualifications to perform the work.

(3) Hiring agencies have the authority to verify a statement contained in an application or a statement made in an interview and secure further information concerning the applicant's qualifications. An adjustment may be made to the applicant's rating if information obtained materially affects the applicant's rating of experience, education, training, or suitability.

(4) Applicants may:

(a) Obtain information regarding employment opportunities by accessing the State's Jobs page on the internet;

(b) Request a review of disqualification within 10 calendar days from the date of disqualification notice for not meeting minimum qualifications as stated in the job posting. The review shall be limited to the disqualification decision. Any changes due to a disqualification review shall not affect the previous selection decision(s) concerning other applicants;

(c) Reapply to a specific job posting if the job posting is still open for application, unless a hiring agency has determined a time period for reapplication. The most recent application submitted determines a qualified applicant's placement on the eligible list.

(5) Documentation retention requirements are outlined under State Human Resources Policy 40.010.01 Recruitment and Selection Records Retention.

Stat. Auth.: ORS 184.340 & 240.145(3)
Stats. Implemented: ORS 240.250, 240.306, 240.321 & 240.391
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-1999, f. & cert. ef. 9-1-99; HRSD 12-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0020
Types and Order of Applicant Lists

Applicability: Classified unrepresented, management service, and classified positions, except, where in conflict with a collective bargaining agreement.

(1) The State of Oregon uses the following eligible lists (some of which have an established order of use) to facilitate the recruitment and selection process:

(a) Priority Lists: Priority lists shall be used in the order listed below or as prescribed by the applicable collective bargaining agreement. Priority lists shall be used when making any appointment, except for appointments made as part of workforce adjustments to prevent layoff.

(A) First priority: Injured Worker List. This list shall consist of employees with compensable work-related injuries or illnesses that occurred while employed in accordance with ORS 659A.052. The employee must not have waived reemployment rights in accordance with state workers' compensation laws, an applicable collective bargaining agreement or, state HR policy.

(B) Second priority: Agency Layoff Lists. The use of this list shall follow the exhaustion of the first priority list. These lists shall consist of permanent (full or part-time) and seasonal employees who completed initial trial service with the State and separated from the service in good standing due to layoff or demotion in lieu of layoff.

(i) Agency Layoff Lists are established by individual agencies. Eligible employees are placed on the list by the classification at separation or demotion within the category of service specified in ORS 240.195. The term of eligibility on the list is two years from date of layoff or demotion. An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from which laid off (other than temporary or limited duration work).

(ii) Agency Layoff Lists shall be used when no qualified injured worker is available to fill the vacant position. An employee, on the agency layoff list of the same classification and category of service of the position to be filled, shall be appointed if the employee meets the special qualifications, if any, for the position. Appointments from the list shall be made consistent with the agency's layoff plan.

(C) Third priority: Statewide Layoff List: The use of this list shall follow the exhaustion of first and second priority lists. An employee may request placement on the list via his or her agency's human resource office for classifications for which qualified and are the same classification, or same, equal, or lower salary range number.

(i) The Statewide Layoff List shall consist of permanent (full or part-time) employees in either the management or classified unrepresented service who separated due to a layoff or unclassified executive service employees terminated from state service due to reduction in force. Employees on the Statewide Layoff List must have completed initial trial service. The term of eligibility on the list is two years from the date of layoff. An individual shall be removed from the statewide layoff list upon the second refusal of a job offer or when a person accepts a position and is returned to work (other than temporary or limited duration).

(ii) A hiring agency shall consider and interview those employees who meet the special qualifications, if any, for the position. A hiring agency may supplement the candidate pool using other eligible lists in expanding order: Agency Transfer, Agency Promotion, Statewide Promotion, and Open Competitive.

(b) Other eligible lists may be used when making an appointment after fulfillment of the requirements in (1)(a):

(A) At their option, agencies may create and maintain an agency transfer list. Transfer Lists shall include eligible state employees who apply for and meet the qualifications of a position of the same classification, or same, equal, or lower salary range number. Employees may request placement on transfer lists via his or her agency's human resources office. If an employee wishes to transfer to another agency, he or she must contact that agency's human resources office to request placement on the list, if possible. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide transfer list.

(B) Agency Promotion Lists shall consist of agency employees who apply for and meet the qualifications of the position.

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the agency promotion list.

(C) Statewide Promotion Lists shall consist of eligible state employees who apply for and meet the qualifications of the position. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide promotion list.

(D) Open Competitive Lists shall include persons seeking employment with the state who meet the qualifications of the position.

(2) Documentation retention requirements are outlined under State HR Policy 40.010.01 Recruitment and Selection Record Retention.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.340, 240.145 & 240.250
Stats. Implemented: ORS 240.306, 659A.052, 659A.043 & 659A.046
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 13-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 2-2010(Temp), f. & cert. ef. 10-5-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0030
Use of Applicant Lists

Definitions:

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

(1) Definitions: (see also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies).

(a) Inactivation Reason: An inactivation reason is a standardized code assigned by a hiring agency to indicate an applicant is no longer active on a list of eligibles or a referral list.

(b) Eligible List: A list of applicants who meet minimum and special qualifications.

(c) Referral List: A list of applicants referred from an eligible list.

(d) Special Qualifications: Qualifications added to minimum qualifications necessary at the time of appointment based on specific duties of the position to be filled. Special qualifications may include, but are not limited to bilingual skills or, licenses, permits and certifications required by law.

(2) The State of Oregon establishes and maintains lists of qualified applicants to facilitate selection processes based upon required knowledge, skills, training and, education.

(a) The order in which applicant lists are to be used shall be in accordance with Administrative Rule 105-040-0020, Types and Order of Applicant Lists, or as specified in collective bargaining agreements.

(b) An eligible list shall be established and maintained on the state's recruitment system.

(c) When a vacant position is to be filled, an agency, when appropriate, shall create an eligible list and a referral list prior to conducting interviews. The hiring agency must comply with OAR 105-040-0020, Types and Order of Applicant Lists.

(d) The referral list shall be one of the following, whichever is applicable:

(A) All applicants who meet the minimum qualifications for the position; or

(B) All applicants listed in order from the highest to lowest score based on selection criteria; or

(C) A limited number of applicants on the eligible list for the position selected in ranked order based on selection criteria.

(e) Selection of applicants for interview from the referral list formats listed in (2)(d)(A-C) shall include all qualified applicants unless the hiring agency develops and documents a valid screening process to select only the most qualified applicants.

(f) When a referral list contains tied rankings, all applicants with that ranking shall be offered an interview if any of the applicants with that score are offered an interview, unless the hiring agency develops and documents a valid screening process to select only the most qualified applicants for interview.

(g) Regardless of the selection process being used to evaluate applicants, veterans' preference shall be given in accordance with OAR 105-040-0015.

(h) After exhaustion of the priority lists specified in OAR 105-040-0020, a related eligible list of a classification having the same minimum and special qualifications and salary may be used.

(i) When an applicant is appointed to a position from a referral list, the applicant is inactivated from that referral or eligible list, except when an applicant retains rights to remain on specific priority lists such as the Injured Worker List and Agency Layoff List.

(j) Except for the expiration of the term of eligibility on an eligible list, any person whose name is removed from a list shall be promptly notified by the hiring agency. The hiring agency may remove an applicant from an eligible list for reasons including, but not limited to the following:

(A) Failure to respond within a reasonable time-period to any inquiry regarding availability for appointment;

(B) Expiration of the term of eligibility on the list;

(C) Willful violation of relevant rules, or policies, or provisions of the law;

(D) Falsifying statements on the application;

(E) Failure to pass required pre-employment checks or tests including but not limited to criminal record, drug test, or driving record checks;

(F) Cancellation of a list;

(G) Appointment made from a lay-off list to any classification

(k) An inactivation reason shall be reported for each candidate appearing on the referral list invited to interview and not appointed to a position.

Stat. Auth.: ORS 184.340 & 240.145
Stats. Implemented: ORS 240.010 & 240.306
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-2000, f. 1-28-00 cert. ef. 2-1-00; HRSD 14-2003, f. 7-15-03, cert. ef. 7-21-03; HSRD 21-2003(Temp), f. & cert. ef. 9-23-03 thru 12-19-03; HRSD 23-2003(Temp), f. 12-19-03, cert. ef. 12-20-03 thru 3-20-04; HRSD 1-2004, f. & cert. ef. 3-5-04; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0060
Limited-Competitive and Noncompetitive Appointments

Applicability: Classified unrepresented and management service positions and initial appointment to all classified positions.

(1) It is the policy of the State of Oregon to facilitate the employment of persons who are disabled (as defined by ORS 174.107), economically disadvantaged or unskilled or semi-skilled through a limited-competitive or non-competitive appointment process:

(a) Recruitment for positions using employment programs serving people with disabilities administered by hiring agencies is not limited to the Limited-Competitive and Non-Competitive Classification list. A limited-competitive selection process through such employment programs administered by hiring agencies may be used to facilitate employment of persons with a disability;

(b) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this rule (Limited-Competitive and Non-Competitive Appointment Classifications List) unless otherwise authorized by the Division. When a hiring agency chooses to make an appointment using limited-competitive or non-competitive selection and appointment procedures, the hiring agency shall:

(A) Open a job listing with the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public; and

(B) Make affirmative efforts to supplement referrals to create a diverse pool of candidates.

(c) A limited-competitive selection process may be used for economically disadvantaged persons who meet the following criteria:

(A) Clients of the Department of Human Services programs;

(B) Clients of the Juvenile Justice Division programs funded by the state.

(d) The Division shall use the following criteria when reviewing appointing authority or designee requests for additions to the Limited-Competitive and Non-competitive Appointment Classifications List:

(A) The classification requires minimal or no requisite knowledge or skills;

(B) It is impractical to develop an examination; and

(C) It is impractical to follow the normal recruiting process.

(2) A non-competitive appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening and no ranking. Where more than one candidate is referred, the hiring manager may use a limited-competitive process to select the most qualified.

(3) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria outlined in (1)(a)–(d) above.

(4) Following is a list of Limited-Competitive and Non-competitive Appointment Classifications:

(a) 0001, Supported Employment Worker;
(b) 0100, Student Office Worker;
(c) 0101, Office Assistant 1;
(d) 0150, Student Professional/Technical Worker;
(e) 0321, Public Service Representative 1;
(f) 0405, Mail Services Assistant;
(g) 1105, Traffic Survey Interviewer;
(h) 3769, Experimental Biology Aide;
(i) 4101, Custodian;
(j) 4116 Laborer/Student Worker;
(k) 4125, Litter Patrol Worker;
(l) 4137, Liquor Distribution Worker 1;
(m) 4403, Transporter;
(n) 6605, Human Service Assistant 1;
(o) 6701, Student Human Services Worker;
(p) 6725, Habilitative Training Technician 1;
(q) 6750, Group Life Coordinator 1;
(r) 8125, Agricultural Worker;
(s) 8201, Forest Nursery Worker 1;
(t) 8202, Forest Nursery Worker 2;
(u) 8235, Student/Professional Forester Worker;
(v) 8253, Forest Lookout;
(w) 8254, Wildland Fire Suppression Specialist Entry;
(x) 8263 Wildland Fire Dispatcher Entry;
(y) 8340 Fish & Wildlife Technician (Entry);
(z) 9100, Food Service Worker 1.

Stat. Auth.: ORS 184.340, 240.145(3) & 240.250
Stats Implemented: ORS 240.306, 240.321 & 657.710
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 17-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

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Department of Administrative Services, Oregon Educators Benefit Board
Chapter 111

Rule Caption: Establishes the Oregon Educators Benefit Board policy for eligibility violations and policy term violations.
Adm. Order No.: OEBB 16-2010
Filed with Sec. of State: 12-10-2010
Certified to be Effective: 12-10-10
Notice Publication Date: 8-1-2010
Rules Adopted: 111-080-0040, 111-080-0045, 111-080-0050
Subject: OARs 111-080-0040, 111-080-0045 and 111-080-0050 establish OEBB's policy for eligibility violations and policy term violations which pertain to and affect OEBB members.
Rules Coordinator: April Kelly—(503) 378-6588

111-080-0040
Eligibility and Policy Term Violations - Definitions

For the purposes of OAR 111-080-0045 and 111-080-0050, the following definitions will apply:

(1) "Eligibility or Enrollment Violations" means and includes a violation of the Oregon Educators Benefit Board's eligibility or enrollment rules or policies including fraud or material misrepresentation. Misstatements, misrepresentations, omissions or concealments on the part of the OEBB member are not fraudulent unless they are made with intent to knowingly defraud. OEBB has primary responsibly in investigating such violations.

(2) "Policy Term Violations" means and includes a violation of the insurance carrier's policy terms. The insurance carrier has primary responsibility in investigating such violations.

Stat. Auth: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10

111-080-0045
Eligibility Violations

OEBB will remove from coverage an OEBB member due to eligibility or enrollment violations. Removal from all benefit plans will be retroactive to the date the individual person is determined to have no longer been eligible, or the effective date of coverage if eligibility criteria was never met.

(1) Enrollment in another plan offered by OEBB is restricted for at least three plan years, including the current Plan Year.

(2) When an eligibility or enrollment violation has been discovered and investigated, OEBB will notify the member and the Educational Entity with the outcome. If the outcome includes rescission of coverage, OEBB

will give a 30 day notice of such rescission prior to terminating coverage retroactively to the date the member was no longer eligible for benefits.

(3) The member may be responsible for any claims paid during the period of time the member was enrolled inappropriately.

Stat. Auth: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10

111-080-0050
Policy Term Violations

(1) An OEBB-contracted insurance carrier may remove from coverage and/or deny the claims of an OEBB member due to policy term violations. Removal from coverage for policy term violations is at the discretion of the insurance carrier.

(a) If a policy term violation results in a termination from the plan or carrier that the violation was committed, it will not prevent the member from continuing enrollment in other OEBB types of coverages (e.g., medical, dental, vision, life, etc.), as long as they remain an employee and eligible for these benefits.

(b) If an eligible employee commits a policy term violation and loses coverage, OEBB will remove the entire family from the insurance plan since the benefits are extended to his or her dependents through the eligible employee. If the eligible employee chooses to, and it is offered, they can enroll in a different carrier plan (if applicable) during open enrollment and cover themselves and dependents during the upcoming plan year.

(c) If a dependent commits a policy term violation, OEBB will remove only the dependent from the insurance plan. If the eligible employee chooses to and it is offered, they can enroll in a different carrier plan (if applicable) during open enrollment and cover the dependent during the upcoming plan year, or as defined by the carrier.

(d) The OEBB member who is removed from an OEBB sponsored insurance plan may appeal the decision through the entity that terminated coverage. Once the appeal process is completed the OEBB member can request an Administrative Review.

(e) When a policy term violation has been discovered and investigated, the applicable insurance carrier will notify OEBB and the member with the outcome.

(2) The insurance carrier may do the following when a member has violated a provision of the policy the OEBB member has enrolled in, committed fraudulent activity or misrepresentation:

(a) The insurance carrier may retain the value of any expenditure it made related to the member who committed the fraudulent activity or misrepresentation.

(b) The insurance carrier may deny future enrollments of the individual in accordance with the carrier's policies.

Stat. Auth: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 16-2010, f. & cert. ef. 12-10-10

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Rule Caption: Amended to update and incorporate policies and By-laws into rule.
Adm. Order No.: OEBB 17-2010(Temp)
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10 thru 6-10-11
Notice Publication Date:
Rules Amended: 111-002-0005
Subject: The amendments to 111-002-0005 include early retirees and dependent as well as the educational entities that we provide services to and ultimately impact. Other amendments to this rule also include statements about what authority may be delegated to staff. Previously, this was in the OEBB By-laws but did not exist in rule. These amendments incorporate into rule several statements that are written n policy or the Board by-laws. Based upon this new knowledge and review of our rules, it was determined that it is very important to include several statements that guide our administrative processes into rule. All amendments have been reviewed by DOJ.
Rules Coordinator: April Kelly—(503) 378-6588

111-002-0005
Powers and Duties of the Board

(1) Pursuant to ORS 243.864, it will be within the powers and duties of the Board to study all matters connected with providing adequate benefit plan coverage for Eligible Employees, Early Retirees and their Dependents, with concern for the welfare of the Employees, Early Retirees and their Dependents and affordability for the Educational Entities.

(2) The board will design benefit plans, devise specifications, invite proposals, analyze responses to requests for proposals, and decide on the award of contracts for benefit plan coverage of Eligible Employees, Early Retirees and their Dependents.

(3) The Board will work collaboratively with Educational Entities, members, carriers and providers to offer value-added benefit plans that support improvement in members' health status, hold carriers and providers accountable for outcomes, and provide affordable benefits and services. The board will place emphasis on:

(a) Employee choice among high-quality benefit plans;
(b) A competitive marketplace;
(c) Benefit plan performance and information;
(d) Educational Entity flexibility in benefit plan design and contracting;
(e) Quality customer services;
(f) Creativity and innovation;
(g) Benefit plans as part of total employee compensation;
(h) Improvement of employee health;
(i) An innovative delivery system;
(j) A focus on improving quality and outcomes;
(k) Promotion of health and wellness;
(l) Appropriate provider, health plan, and consumer incentives;
(m) Accessible and understandable information about costs, outcomes, and other health data; and
(n) Benefits that are affordable to the Educational Entities and Employees, Early Retirees and their Dependents.

(4) The Board may retain consultants, brokers, or other advisory personnel as it determines necessary and will employ such personnel as are required to perform the functions of the Board.

(5) The Board may delegate authority to the Administrator and Staff to complete duties described in (2)-(4) above.

Stat. Auth: ORS 243.864 - 243.886
Stats. Implemented: ORS 243.864
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 17-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

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Rule Caption: Amendments to procurement and contracting rules per DOJ review.
Adm. Order No.: OEBB 18-2010(Temp)
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10 thru 6-10-11
Notice Publication Date:
Rules Adopted: 111-005-0047, 111-005-0055, 111-005-0080
Rules Amended: 111-005-0010, 111-005-0015, 111-005-0020, 111-005-0040, 111-005-0042, 111-005-0044, 111-005-0046, 111-005-0050, 111-005-00070
Rules Suspended: 111-005-0060
Subject: All amendments made to OEBB's division 5 are change that were reviewed by DOJ. These amendments clarify that the DOJ Model Public Contract Rules apply to when OEBB's and DAS' procurement and contracting rules do not. In addition, amendments made to division 5 have been updated to reflect the more detailed standards now found in the state public contracting and procurement rules and statutes.
Rules Coordinator: April Kelly—(503) 378-6588

111-005-0010
Policy

The policy of the Oregon Educators Benefit Board (OEBB) is to select contractors and consultants in an expeditious, fair, and efficient manner that is consistent with the goal of delivering high-quality benefits and other services at a cost that is affordable to the Employees, Early Retirees and their Dependents and Educational Entities, and meets the requirements of ORS 243.866. The Board may enter into more than one contract for each type of benefit plan or other service sought.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0015
Renewal, Screening and Selection for Benefits, Vendor and Personal Services Contracts

(1) The Board is charged with the obligation of obtaining Benefit Plans to provide Benefits to Eligible Employees, Early Retirees and their

Dependents. OARs 111-005-0040 through 111-005-0080 set forth the screening, selection and renewal process to be used for all such Benefit Plan contracts. The Board has sole authority for procuring all benefits and services contemplated by ORS 243.860 through ORS 243.886.

(2) Except as provided in OARs 111-005-0040 through 111-005-0080, the Board adopts the DOJ model public contract rules in OAR 137, division 46 (General Provisions Related to Public Contracting) and division 47 (Public Procurements for Goods or Services), effective June 15, 2010, as the contracting rules that shall apply to its procurements for Benefit Plan contracts.

(3) The Board adopts the DOJ model public contract rules in OAR 137, division 46 (General Provisions Related to Public Contracting) and division 47 (Public Procurements for Goods or Services), effective June 15, 2010, as the contracting rules that shall apply to its procurements for vendor and personal service contracts within the Board's contracting authority.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0020
Definitions

For the purposes of OARs 111-005-0010, 111-005-0015 and 111-005-0040 through 111-005-0080 the following definitions will apply:

(1) "Apparent successful proposer" or "ASP" means the organization selected as a result of a competitive and completed procurement process.

(2) "Consultant" means brokers or other advisory personnel hired by the Board to:

(a) Assist in acquiring adequate benefit plan coverage for eligible Educational Entity Employees, Early Retirees and their Dependents;

(b) Assist in the study of all matters connected with the provision of adequate benefit plan coverage for eligible Educational Entity Employees, Early Retirees and their Dependents;

(c) Assist in the development and implementation of decision-making processes;

(d) Design and implement additional programs to review, monitor and assist in the improvement of eligible Educational Entity Employees, Early Retirees and their Dependents health; and

(e) Provide other services as required by the Board.

(3) "Contractor" means an individual or firm who provides services to the Board under a public contract.

(4) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of Benefits or other services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a contract to remedy the condition.

(5) "Extensive procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to $150,000 and over.

(6) "Intermediate procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to under $150,000 but over $5,000.

(7) "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays procurements and contracts issued by the state of Oregon's agencies.

(8) "Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

(9) "Proposal" means a competitive document, binding on the proposer and submitted in response to a Request for Proposal.

(10) "Proposer" means a Person submitting a proposal in response to a Request for Proposal.

(11) "Renewal contractor" means a contractor or consultant who provided the same or similar employee benefit plan or other services under a contract with the Board in the plan year immediately prior.

(12) "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(13) "Responsible proposer" means a person who meets the standards of responsibility described in OAR 111-005-0055.

(14) "Responsive proposal" means a proposal that substantially complies with the request for proposals and all prescribed procurement procedures and requirements.

(15) "Selection committee" means the group of individuals appointed and approved by the Board to review, evaluate and score proposals received as part of an intermediate or extensive procurement.

(16) "Small procurement" means the process of securing contractors or consultants for services amounting to $5,000 or less.

(17) "Sole source" means the only contractor or consultant of a particular product or service reasonably available.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0040
Extensive Procurement Process

The Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The solicitation notice will include a description of the benefits or services sought, the scope of the services required, evaluation and selection criteria, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP, where to return the proposal, the method of submission, and the closing date.

(2) No remuneration will be offered to prospective proposers for attendance, travel, document preparation, etc. Unless otherwise specified in the RFP, the pre-proposal conference will:

(a) Be voluntary; and

(b) Be held in Salem, Oregon.

(3) RFP protest; request for change or request for clarification.

(a) Protest.

(A) A proposer may deliver a protest to the Board not less than ten calendar days prior to closing, unless otherwise specified in the RFP.

(B) Proposer protests must be in writing and must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the proposer; and

(iii) A statement of the desired changes to the RFP.

(C) The Board will not consider a proposer's protest after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's protest, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under 137-030-0115.

(ii) If the Board receives a written protest from a proposer according to this rule, the closing may be extended if the Board determines an extension is necessary to consider the protest and to issue any addendum to the RFP.

(b) Request for change.

(A) A proposer may request in writing a change to the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for changes and does not specify otherwise, proposer must deliver the written request for change to the Board not less than ten calendar days prior to closing.

(B) A proposer's written request for change must include a statement of the requested changes to the RFP specifications, including the reason for the requested change.

(C) The Board will not consider a proposer's request for change after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a change. If the Board agrees with the entity's request for change, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under OAR 137-030-0115.

(ii) If the Board receives a written request for a change from a proposer according to this rule, closing may be extended if the Board determines an extension is necessary to consider the request and to issue any addendum to the RFP.

(c) Request for clarification.

(A) A proposer may request in writing clarification of the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for clarification and does not specify otherwise, a proposer must deliver the written request for clarification to the Board not less than ten calendar days prior to closing.

(B) A proposer may request that the Board clarify any provision of the RFP.

(C) The Board will not consider a proposer's request for clarification after the submission deadline. The Board's clarification to a proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

(4) Addenda to an RFP following an appeal or request for change or clarification.

(a) Issuance; receipt. The Board may change an RFP only by written addenda. A proposer must provide written acknowledgement of receipt of all issued addenda with its proposal, unless the Board otherwise specifies in the addenda.

(b) Notice and distribution. The RFP must specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(c) Timelines; extensions. The Board will issue addenda within a reasonable time to allow prospective proposers to consider the addenda in preparing their proposals. The Board may extend the closing if the Board determines prospective proposers need additional time to review and respond to addenda. The Board will not issue addenda less than 72 hours before the closing unless an addendum also extends the closing, except to the extent required by public interest.

(d) Request for change or protest. A proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum, unless a different deadline is set forth in an addendum.

(5) Submission. All proposals submitted must comply with the procurement's specifications.

(a) If portions of the proposal to any solicitation are deemed unacceptable or non-responsive portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(b) Submission of proposals must be in written hard copy or electronic format and delivered, as required by the specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBB recipient by the closing date and time stated in the RFP.

(6) Evaluation. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(7) Rejection of proposal. The Board may reject any proposal for good cause and deem it as non-responsive upon written finding that it is in the states', Educational Entities', or Employees, Early Retirees and their Dependents ' interest to do so or acceptance of the proposal may impair the integrity of the procurement process. The Board will notify the proposer of its rejection of the proposal in writing and provide the good cause justification and finding. OEBB is not liable to any Proposer for any loss or expense caused by or resulting from any rejection, cancellation, delay or suspension. Without limiting the generality of the foregoing, the Board may reject any Proposal upon OEBB's finding that the Proposal:

(a) Is contingent upon OEBB's acceptance of terms and conditions (including Specifications) that differ from the RFP;

(b) Takes exception to terms and conditions set forth in the RFP;

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the RFP or in contravention of applicable law;

(d) Offers services that fail to meet the specifications of the RFP;

(e) Is late;

(f) Is not in substantial compliance with the RFP;

(g) Is not in substantial compliance with all prescribed procurement procedures;

(h) Is from a Proposer that has been debarred as set forth in ORS 279B.130;

(i) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(j) Is from a Proposer found non-responsible as described in OAR 111-005-0055.

(8) Intent to award, discuss or negotiate. After the protest period provided in subsection (3)(a) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with proposers in the competitive range.

(9) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board will proceed as follows:

(a) Initiating discussions. The Board must initiate oral or written discussions and negotiations with all of the proposers in the competitive range regarding their proposals.

(b) Conducting discussions. The Board may conduct discussions and negotiations with each proposer in the competitive range as necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each proposer. The Board may terminate discussions and negotiations with any proposer in the competitive range at any time. All proposers in the competitive range will be offered the opportunity to discuss their proposals with the Board before the Board notifies proposers of the award decisions. In conducting discussions, the Board and any designated representatives:

(A) Will treat all proposers fairly and will not favor any proposer over another.

(B) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents to the extent permitted by the Public Records Law.

(C) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete or an apparent successful proposer has been announced.

(D) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to determine the apparent successful proposer, if a tie between proposers occurs.

(c) At any time during the period allowed for discussions and negotiations, the Board may:

(A) Continue discussions and negotiations with a particular proposer or proposers; or

(B) Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range.

(d) The Board may continue discussions and negotiations with proposers until determining who will be awarded contracts.

(10) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(11) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if the Proposer would be eligible to be awarded the contract in the event that the protest were successful, and the reason for the protest is that:

(A) All higher ranked Proposals are nonresponsive;

(B) OEBB has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the RFP;

(C) OEBB has abused its discretion in rejecting the protestor's Proposal as nonresponsive; or

(D) OEBB's evaluation of Proposals or OEBB's subsequent determination of award is otherwise in violation of OEBB's rules or ORS 243.860 to 243.886.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(12) Award of contracts. The Board will make final selections based on the evaluation criteria included in OAR 111-002-0005(3) and the RFP.

(13) Confidentiality: Until after the notice of intent to award a contract is issued, Proposals are not required to be open for public inspection, and OEBB shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. After the notice of intent to award a contract is issued, OEBB may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(14) Contract. The successful proposer must promptly execute the contract after the award is final and all contractual terms and conditions have been negotiated and agreed upon. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0042
Intermediate Procurement Process

For an intermediate procurement, the Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The notice will include a description of the benefits or services sought, the scope of the services required, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP and return the proposal and the closing date.

(2) Submission. All submitted proposals must comply with the RFP's specifications. If portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(a) Submission of proposals must be in written hard copy or electronic format and delivered as required by the specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBB recipient by the closing date and time stated in the RFP.

(b) The proposal from the prospective proposer will describe the proposer's credentials, performance data and other information sufficient to establish proposer's qualifications for providing the benefits sought and all other information requested in the RFP.

(3) Evaluation. The Board may appoint a Selection Committee to evaluate proposals in accordance with criteria set forth in the RFP and applicable law. The Board will not divulge the names of the selection committee until completion of the cost negotiations or the apparent successful proposer has been announced. The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(4) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the proposers, the Board:

(a) Will treat all proposers fairly and will not favor any proposer over another.

(b) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents.

(c) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete.

(d) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to award the contract.

(5) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(6) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if:

(A) the proposer is eligible for award of the contract as a responsible proposer; and

(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(7) Award of contracts. The Board will make final selections based on the evaluation criteria included in OAR 111-002-0005(3) and the RFP.

(8) Confidentiality: Until after the notice of intent to award a contract is issued, Proposals are not required to be open for public inspection, and OEBB shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. After the notice of intent to award a contract is issued, OEBB may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(9) Contract. The successful proposer must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

(10) An amendment for additional services shall not increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0044
Small Procurement Process

For a small procurement, OEBB may procure contractor services in any manner it deems practical, including by direct selection, negotiation and award.

(1) The Board Chair delegates authority to the Public Employees' Benefit Board Administrator and the OEBB Deputy Administrator to enter into contracts on behalf of the Board.

(2) Award of contracts. The PEBB Administrator or OEBB Deputy Administrator will base selections on evaluation criteria which may include, but is not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. Emphasis will be placed on quality customer service, creativity and innovation and the improvement of employee health.

(3) Contract. The selected contractor must promptly execute the contract. The PEBB Administrator or OEBB Deputy Administrator will execute the contract only after obtaining all applicable required documents and contractor signatures.

(4) An amendment for additional services shall not increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0046
Sole Source Procurement Process

The Board may award a contract for Benefits without competition when the Administrator of OEBB determines in writing that the services are available from only one source, or the contractor is defined as a Qualified Rehabilitation Facility as defined in Oregon's public contracting code.

(1) The determination of a sole source must be based on written findings that may include:

(a) That the efficient utilization of existing services requires the acquisition of compatible services;

(b) That the services required for the exchange of software or data with other public or private agencies are available from only one source;

(c) That the services are for use in a pilot or an experimental project; or

(d) Other findings that support the conclusion that the goods or services are available from only one source.

(2) To the extent reasonably practical, OEBB shall negotiate with the sole source to obtain contract terms advantageous to OEBB.

(3) Contract. The single source provider must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0047
Renewal Procedure

(1) If the Board does not issue an RFP or Single Source procurements to solicit formal proposals from qualified potential Contractors or Vendors, the Board may directly negotiate and enter into renewal contracts each plan year with renewal contractors to provide Benefits and other services without following the procedures set forth in sections 111-005-0040.

(2) The Board may renew contracts with renewal contractors for as many years as the Board determines is in the best interest of the state, Educational Entities and Employees, Early Retirees and their Dependents.

(3) The Board may invite renewal Proposals from those Contractors or Vendors who provided the same or similar employee Benefit Plan or other services in the year immediately prior. An employee Benefit Plan or other services contract is similar if it is reasonable related to the scope of work described in the procurement under which such a contract was awarded.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864
Hist.: OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0050
Mistakes

(1) Treatment of mistakes. If the OEBB discovers certain mistakes in a proposal before award of the contract, and the mistakes are not identified as those qualifying as non-responsive to the specifications of the procurement, the OEBB may take the following action:

(a) Waive or permit a proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the proposal, or an insignificant mistake that can be waived or corrected without prejudice to other proposers. Mistakes including, but not limited to, signatures not affixed to the proposal document, proposals sent to the incorrect address, insufficient number of proposals submitted, or incorrect format will not be considered minor.

(b) Correct a clerical error if the intended proposal and the error are evident on the face of the proposal, or other documents submitted with the proposal, and the proposer confirms the correction in writing. A clerical error includes, but is not limited to, a proposer's error in transcribing its proposal.

(2) Rejection for mistakes. OEBB may reject any proposal in which a mistake is evident on the face of the proposal and the intended correct proposal is not evident or cannot be substantiated from documents accompanying the proposal. In order to ensure integrity of the competitive procurement process and to assure fair treatment of proposers, mistakes discovered that are contrary to the specifications of the procurement will be carefully reviewed and will be determined, under sole authority of the OEBB, to be waived or not be waived.

(3) If the OEBB discovers mistakes in the proposal after award, and the mistakes are not considered minor, the Board reserves the right to determine if the award will be revoked. The Board will then re-evaluate proposals deemed to be in second, third, fourth, etc., in the standings.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0055
Responsible Proposer

(1) Before awarding a Contract, the Board must have information that indicates the Proposer meets the applicable standards of responsibility. OEBB shall prepare a written determination of non-responsibility for a Proposer if OEBB determines that the Proposer does not meet the standards of responsibility.

(2) In determining whether a Proposer has met the standards of responsibility, OEBB shall consider whether a Proposer:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(b) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Proposer's control, the Proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. OEBB shall document the Proposer's record of performance if OEBB finds under this paragraph that the Proposer is not responsible.

(c) Has a satisfactory record of integrity. OEBB in evaluating the Proposer's record of integrity may consider, among other things, whether the Proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Proposer's performance of a contract or subcontract. OEBB shall document the Proposer's record of integrity if OEBB finds under this paragraph that the Proposer is not responsible.

(d) Is legally qualified to contract with OEBB.

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a Proposer fails to promptly supply information concerning responsibility that OEBB requests, OEBB shall determine the Proposer's responsibility based on available information or may find that the Proposer is not responsible.

(f) Was not debarred by OEBB in accordance with ORS 279B.130.

(3) OEBB may refuse to disclose outside of OEBB confidential information furnished by a Proposer under this section when the Proposer has clearly identified in writing the information the Proposer seeks to have treated as confidential and OEBB has authority under ORS 192.410 to 192.505 to withhold the identified information from disclosure.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864
Hist.: OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0060
Records Maintenance

OEBB will maintain all files pertaining to the selection process for all benefits and other service contracts entered on behalf of the state for six years. Files include, but are not limited to:

(1) The method and copy of announcement.

(2) The names of firms or individuals and cost estimates considered.

(3) The basis for selection.

(4) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; Suspended by OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0070
Renewal Process for Contractor Contracts

(1) Renewal procedure. If the Board does not issue a procurement to solicit formal proposals for benefit plans and other services, the Board may invite renewal proposals, directly negotiate and enter into renewal contracts with renewal contractors to provide benefit plans without following the procedures set forth in OAR 111-005-0040.

(2) The Board may renew contracts with renewal contractors for as many years as the Board determines is in the best interest of the state, Educational Entities, and Employees, Early Retirees and their Dependents.

(3) The Board will negotiate with renewal contractors and enter into contracts with them after giving full consideration to factors which include, but are not limited to, contractor capability, experience, approach, compensation requirements and references.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08; OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

111-005-0080
Contract Amendments

OEBB may amend a contract without additional competition in any of the following circumstances:

(1) The amendment is within the scope of the procurement as described in RFP, the sole source determination, or special procurement (the "Procurement Document"). An amendment is not within the scope of the procurement if the Agency determines that if it had described the changes to be made by the amendment in the Procurement Document, it would likely have increased competition or affected award of the contract.

(2) These rules otherwise permit OEBB to award a contract without competition for the goods or services to be procured under the amendment.

(3) The amendment is necessary to comply with a change in law that affects performance of the contract.

(4) The amendment results from renegotiation of the terms and conditions, including the contract price, of a contract and the amendment is advantageous to OEBB, subject to all of the following conditions:

(a) The Services to be provided under the amended contract are the same as the Services to be provided under the unamended contract.

(b) OEBB determines that, with all things considered, the amended contract is at least as favorable to OEBB as the unamended contract.

(c) The amended contract does not have a total term greater than allowed in the Procurement Document after combining the initial and extended terms.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864
Hist.: OEBB 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-10-11

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Department of Administrative Services, Public Employees' Benefit Board
Chapter 101

Rule Caption: Adopts/suspends within Division 15, Eligibility, Dependent.
Adm. Order No.: PEBB 6-2010(Temp)
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 11-29-10 thru 12-31-10
Notice Publication Date:
Rules Adopted: 101-015-0014
Rules Suspended: 101-015-0012(T), 101-015-0013(T)
Subject: Suspends current Temporary OAR 101-015-0013 and continues suspense of current Temporary OAR 101-015-0012(T). Current Temporary OAR 101-015-0013 expired effective Nov. 28, 2010, while Temporary OAR 101-015-0012(T) was suspended effective Sept. 23, 2010 (when it was replaced with Temporary OAR 101-015-0013). This Temporary OAR 101-015-0014 bridges the remainder of the health plan year and terminates effective Dec. 31, 2010, at which time it is replaced with Permanent OAR 101-015-0011, as filed amended Oct. 12, 2010, and in process for an effective date of Jan 1, 2011.
Rules Coordinator: Cherie M. Taylor—(503) 378-5473, ext. 325

101-015-0012
Dependent Child

(1) Beginning June 1, 2010 and extending through December 31, 2010,

(a) Dependent children that are enrolled and receiving PEBB health plan coverage that would otherwise lose coverage under OAR 101-015-0011 during this period will continue to receive coverage, provided the child meets the following requirements:

(A) The child is an eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legallyplaced child, and;

(B) The child will not have attained age 27 by December 31, 2010, except as provided in section (4) of this rule.

(b) Newly eligible employees or eligible employees with a qualified mid-year plan change event may enroll only those children who meet the dependent eligibility conditions of OAR 101-015-0011 during this period.

(2) Beginning January 1, 2011 a dependent child must meet the following eligibility conditions to receive PEBB health plan coverage:

(a) The child is:

(A) An eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally placed child, or;

(B) The biological child of an eligible dependent child and meets one of the following criteria:

(i) The child's parent will not be older than age 26 on the last day of the plan year, is unmarried and without a domestic partner, both the parent and the child live in the household of the eligible employee, and both receive over half of their financial support from the employee; or;

(ii) The child lives with the eligible employee and the employee is legally responsible for the welfare of the grandchild. The employee must be able to provide legal documentation of guardianship, conservatorship, or other custody documents.

(b) The child will not have attained age 27 as of December 31 of the plan year. The exception is a child who meets all the requirements of section (4) of this rule.

(3) An employee must complete and submit the appropriate PEBB affidavit and any required legal documents in order to provide coverage to the following children: a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or an eligible grandchild. The employee must complete and return to the agency the notarized affidavit and any required evidence of legal responsibility within five business days of the child's electronic enrollment date or the date the agency receives the enrollment forms. PEBB or the agency will terminate the child's coverage retroactive to the effective date if the affidavit or required documents are not received within the specified time.

(4) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(a) The disability must have existed before attaining age 26.

(b) The employee must provide evidence to the agency or PEBB that the child had continuous health plan coverage, group or individual, prior to attaining age 26, which continued until the PEBB health plan effective date.

(c) The child's attending physician must submit documentation of the disability to the eligible employee's PEBB health plan insurance plan for review and approval. If the child receives health plan approval, the health plan may review the child's health status at any time to determine continued PEBB coverage eligibility.

(d) If the child terminates from PEBB health plan coverage after the age of 26, the child is ineligible for future enrollment as a dependent child under PEBB coverage.

(5) PEBB terminates all health plan coverage at midnight on December 31 for dependent children who have reached age 26 during the calendar year. PEBB will not terminate coverage for children age 26 or older when approved by the health plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability pursuant to section (4) of this rule.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 183, 192, 243, 292, 302, 659 & 743
Hist.: PEBB 1-2010(Temp), f. & cert. ef. 6-1-10 thru 11-28-10; PEBB 2-2010(Temp), f. & cert. ef. 6-3-10 thru 11-28-10; Suspended by PEBB 4-2010(Temp), f. 9-23-10, cert. ef. 10-1-10 thru 11-28-10; Suspended by PEBB 6-2010(T), f. & cert. ef. 11-29-10 thru 12-31-10

101-015-0013
Dependent Child

(1) Beginning January 1, 2011, a dependent child must meet the following eligibility conditions to receive PEBB health plan coverage:

(a) The child is:

(A) An eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally placed child, or;

(B) The biological child of an eligible dependent child of an eligible employee, spouse, or domestic partner (a grandchild) and meets one of the following criteria:

(i) The child's parent will not be older than age 26 on the last day of the plan year, is unmarried and without a domestic partner, both the child's parent and the child live in the household of the eligible employee, and both receive over half of their financial support from the employee; or

(ii) The child lives with the eligible employee and the employee is legally responsible for the welfare of the grandchild. The employee must provide legal documentation of guardianship, conservatorship, or other custody documents upon enrollment.

(b) The child will not have attained age 27 as of December 31 of the plan year. The exception is a child who meets all the requirements of section (4) of this rule.

(2) During Open Enrollment the employee may electronically enroll a foster child, child placed for adoption, a ward of the court, a child under legal guardianship or other court order if the notarized affidavit and required legal documentation are submitted within five business days fol-

lowing close date of the period. The exception is for an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit the required legal documentation, as listed in (3) of this rule, to the agency before the start of the new plan year. If the employee does not submit the documentation as required, the child's enrollment will not activate.

(3) Beginning November 1, 2010, newly eligible employees or employee's with a midyear change request to enroll a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or an eligible grandchild must be received by the agency on the appropriate forms with the required documentation within the allowable enrollments allowable time, before enrollment will occur. The agency will not process the employee's enrollments until the employee submits all of the following:

(a) Completed and signed enrollment form;

(b) Completed and notarized affidavit; and

(c) Legal documentation.

(4) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability, when the child is enrolled in PEBB coverage and continues to meet the criteria. The eligible employee's health plan may review a disabled dependent child's health status at any time to determine continued disability and PEBB coverage.

(a) All the following requirements must be met when a newly eligible employee requests, or an employee submits a midyear change request, to add a disabled dependent child to coverage who is 26 years of age or older:

(A) The child's attending physician must submit to the employee's health plan documentation of the disability and verify the disability existed before the child attained age 26.

(B) In addition to the enrollment forms, the employee must provide evidence to PEBB that the child has had continuous health plan coverage, group or individual, prior to attaining age 26 and the coverage remains in effect. The other coverage must continue until the employee's medical plan approves the child's health status as disabled and the PEBB plan is effective.

(b) If a disabled dependent child's coverage terminates for any reason after the age of 26, the child is ineligible for future enrollment as a dependent child under PEBB coverage.

(5) PEBB terminates all plan coverage for dependent children who reach age 26 during a calendar year at midnight December 31. PEBB will not terminate coverage for children age 26 or older when approved by the health plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability pursuant to section (4) of this rule.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 183, 192, 243, 292, 302, 659 & 743
Hist.: PEBB 4-2010(Temp), f. 9-23-10, cert. ef. 10-1-10 thru 11-28-10; Suspended by PEBB 6-2010(T), f. & cert. ef. 11-29-10 thru 12-31-10

101-015-0014
Dependent Child

(1) Beginning June 1, 2010 and extending through December 31, 2010,

(a) Dependent children that are enrolled and receiving PEBB health plan coverage that would otherwise lose coverage under OAR 101-015-0011 during this period will continue to receive coverage, provided the child meets the following requirements:

(A) The child is an eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally placed child, and;

(B) The child will not have attained age 27 by December 31, 2010, except as provided in section (5) of this rule.

(b) Newly eligible employees or eligible employees with a qualified mid-year plan change event may enroll only those children who meet the dependent eligibility conditions of OAR 101-015-0011 during this period.

(2) Beginning January 1, 2011, a dependent child must meet the following eligibility conditions to receive PEBB health plan coverage:

(a) The child is:

(A) An eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally-placed child, or;

(B) The biological child of an eligible dependent child of an eligible employee, spouse, or domestic partner (a grandchild) and meets one of the following criteria:

(i) The child's parent will not be older than age 26 on the last day of the plan year, is unmarried and without a domestic partner, both the child's parent and the child live in the household of the eligible employee, and both receive over half of their financial support from the employee; or

(ii) The child lives with the eligible employee and the employee is legally responsible for the welfare of the grandchild. The employee must provide legal documentation of guardianship, conservatorship, or other custody documents upon enrollment.

(b) The child will not have attained age 27 as of December 31 of the plan year. The exception is a child who meets all the requirements of section (5) of this rule.

(3) During Open Enrollment the employee may electronically enroll a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order if the notarized affidavit and required legal documentation are submitted within five business days following close date of the open enrollment period. The exception is for an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit the required legal documentation, as listed in (4) of this rule, to the agency before the start of the new plan year. If the employee does not submit the documentation as required, the child's enrollment will not activate.

(4) Beginning November 1, 2010, newly eligible employees or employees with a midyear change request to enroll a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or an eligible grandchild must submit to the agency the appropriate forms with the required documentation within the allowable time, before enrollment will occur. The agency will not process the employee's enrollments until the employee submits all of the following:

(a) Completed and signed enrollment form;

(b) Completed and notarized affidavit, and;

(c) Legal documentation.

(5) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability when the child is enrolled in PEBB coverage and continues to meet the eligibility criteria. PEBB must receive all enrollment forms or requests for enrollment of a disabled child. The child's attending physician must submit documentation of the disability and verify the disability to the employee's health plan for review and potential approval as disabled to PEBB.

(a) All of the following requirements must be met when a newly eligible employee requests, or an employee submits a midyear change request to add a disabled dependent child to coverage who is 26 years of age or older:

(A) A disabled child over the age of 26 must be a qualifying tax dependent of the employee, spouse, or domestic partner.

(B) The child's attending physician must submit documentation of the disability, and verify the disability existed before the child attained age 26, to the employee's health plan for review and approval.

(C) The employee must provide evidence to PEBB that the child has had continuous health plan coverage, group or individual, prior to attaining age 26 and that the coverage remains in effect. The child's other coverage must continue until the employee's medical plan approves the child's health status as disabled and the PEBB plan is in effect.

(b) An eligible employee's health plan can review and request physician documentation of a disabled dependent child's health status at any time to determine continued disability and PEBB coverage.

(c) If a disabled dependent child's coverage terminates for any reason after the age of 26, the child is ineligible for future enrollment as a dependent child under PEBB coverage.

(6) PEBB terminates all plan coverage for dependent children who reach age 26 during a calendar year at midnight December 31. PEBB will not terminate coverage for children age 26 or older when approved by the health plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability pursuant to section (5) of this rule.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 183, 192, 243, 292, 302, 659 & 743
Hist: PEBB 6-2010(Temp) f. & cert. ef. 11-29-10 thru 12-31-10

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Rule Caption: Adopted/amended rules for compliance with recent federal healthcare form.
Adm. Order No.: PEBB 7-2010
Filed with Sec. of State: 12-10-2010
Certified to be Effective: 1-1-11

Notice Publication Date: 11-1-2010
Rules Adopted: 101-015-0026
Rules Amended: 101-010-0005, 101-015-0005, 101-015-0011, 101-020-0002, 101-020-0005, 101-020-0015, 101-020-0018, 101-020-0025, 101-020-0032, 101-020-0037, 101-020-0045, 101-020-0050, 101-030-0010, 101-030-0015, 101-030-0022
Rules Repealed: 101-015-0014(T), 101-015-0026(T)
Rules Ren. & Amend: 101-020-0070 to 101-030-0070
Subject: Adoption/amendments herein result from recent federal healthcare reform, promulgating compliance in PEBB's OARs regarding eligibilities, dependent child(ren), domestic partnerships, and opting out, rescissions and continuations of coverage.
Rules Coordinator: Cherie M. Taylor—(503) 378-5473, ext. 325

101-010-0005
Definitions

Unless the context indicates otherwise, as used in OAR Chapter 101, Divisions 1 through 60, the following definitions will apply:

(1) "Actively at work" for medical and dental insurance coverage means an active eligible employee at work, in paid status and scheduled for work during the month. Optional plan policies or plan certificates contain "actively at work" criteria specific to the individual plan.

(2) "Active Participation" in reference to a Flexible Spending Account (FSA) means an eligible employee currently enrolled in the plan and who each month deposits the required dollar contribution in the account.

(3) "Affidavit of Dependency" means a notarized document that attests a dependent child meets the criteria for a dependent child under OAR 101-015-0011.

(4) "Affidavit of Domestic Partnership" means a notarized document that attests the eligible employee and one other individual meet the criteria in OAR 101-015-0025(2).

(5) "Agency" means a PEBB participating organization such as an individual state of Oregon public agency, semi-independent agency, and individual OUS university.

(6) "Benefit amount" means the amount of money paid by a PEBB participating organization for the purchase of core benefit plans on behalf of active eligible employees PEBB does not determine the benefit amount.

(7) "CBIW" means Continuation of Benefits for Injured Workers.

(8) "Certificate of Registered Domestic Partnership" means the certificate issued by an Oregon county clerk to two individuals of the same sex after they file a Declaration of Domestic Partnership with the county clerk.

(9) "COBRA" means the federal Consolidated Omnibus Reconciliation Act of 1985.

(10) "Core Benefits" means the specific benefit plans that a PEBB employer pays a benefit amount for plan coverage of active eligible employees (e.g., medical, dental and employee basic term life coverage).

(11) "Dependent Care Flexible Spending Account" or "Dependent Care FSA" means the dependent care assistance program that PEBB has adopted in accordance with section 129 of the Internal Revenue Code.

(12) "Dependent child" means a child that satisfies the conditions of OAR 101-015-0011, as applicable.

(13) "Domestic partner" means an eligible employee's partner in a registered domestic partnership under Chapter 99 Oregon Laws 2007 or unmarried partner of the same or opposite sex that meets the requirements as outlined in OAR 101-015-0025(2).

(14) "Eligible employee" means an individual eligible to enroll in PEBB plan benefits and includes:

(a) "Active eligible employee" means an employee of a PEBB participating organization, including state officials, in exempt, unclassified, classified and management service positions who are expected to work at least 90 days; and who work at least half-time or are in a position classified as job share. These employees are eligible for PEBB core benefits and some optional plans depending on their job classification.

(b) "Retired eligible employee" means a previously active eligible employee, who meets retiree eligibility as defined in OAR 101-050-0005. A retired eligible employee is eligible to self-pay for only the benefit plans established in Division 50 of this chapter.

(c) "Other eligible employee" means an individual of a specific self-pay group as established by ORS 243.140 and 243.200. These groups are eligible only for medical or dental benefits as approved by PEBB.

(15) "Family member" means a spouse or dependent child.

(16) "FMLA" means the federal Family Medical Leave Act.

(17) "FTE" means full time equivalent job position.

(18) "Grandchild Affidavit" means a notarized document that attests a grandchild of an eligible employee, spouse, or domestic partner meets the eligibility criteria for PEBB grandchild coverage as defined in OAR 101-015-0011(1)(B).

(19) "Half-time" means an eligible employee who works less than full time but at least:

(a) Eighty paid regular hours per month; or

(b) 0.5 FTE for unclassified OUS employees; or

(c) Eighty paid regular hours per month and is in a position with written documentation of .5 FTE for Oregon Judicial Department employees; or

(d) As defined by collective bargaining.

(20) "Health Flexible Spending Account" or "Health FSA" means the health flexible spending arrangement that PEBB has adopted in accordance with the Internal Revenue Code.

(21) "Imputed value" means a dollar amount established yearly for an insurance premium at fair market value. The IRS or the Oregon Department of Revenue may view the imputed value as taxable income. The imputed value dollar amount is added to the eligible employee's taxable wages.

(22) "Ineligible individual" means an individual who does not meet the definition of an eligible employee, spouse, domestic partner, or dependent child as defined in PEBB administrative rules.

(23) "Job share" means two eligible employees sharing one full time equivalent position. Each eligible employee's percentage of the total position determines the benefit amount the employee receives. The monthly benefit percentage amount remains the same regardless of individual hours worked per month. Job share employees may not donate their portion of the benefit amount to the job share co-worker.

Example 1: John and Jill share one full time equivalent position. When they were hired into the position in July, John's percentage of the total position was 40 percent; Jill's percentage was 60 percent. John worked 70 percent of the available hours in September. John's benefit amount percentage for September remains at 40 percent. Jill's benefit amount percentage remains at 60 percent.

(24) "Mid year plan change event" means an event that provides an eligible employee an exception to the general plan year irrevocability rule that applies to PEBB plan elections. Permissible mid year events fall into three broad groups: (1) change in status (QSC), (2) cost or coverage changes, or (3) other laws or court orders.

(25) "OFLA" means the Oregon Family Leave Act.

(26) "OSPS" means the Oregon State Payroll System.

(27) "OUS" means the Oregon University System.

(28) "Open enrollment period" means an annual period chosen by PEBB when both active and other eligible employees and COBRA participants can make benefit plan changes or elections for the next plan year.

(29) "Optional plans" means, but is not limited to:

(a) Dependent life insurance;

(b) Employee, spouse, or domestic partner optional life insurance;

(c) Accidental Death & Dismemberment (AD&D) insurance;

(d) Short Term Disability insurance;

(e) Long Term Disability insurance;

(f) Flexible Spending Accounts (Health and Dependent Care); and

(g) Long Term Care insurance.

(30) "Paid regular status" means in current payroll status, and receiving payment for work time. Paid regular status includes the use of vacation, sick, holiday, or personal leave accruals, compensatory time, or other employer approved paid status such as furlough.

(31) "Pebb.benefits" means the electronic benefit management system sponsored by PEBB. The system allows electronic enrollment and termination of the eligible individual's benefit plans, personal information updates, and the transmittal of data to plans, payroll centers, and third party administrators.

(32) "PEBB participating organization" means a state agency, board, commission, university, or other entity that receives approval to participate in PEBB benefit plans.

(33) "Plan change period" means a period chosen by PEBB when retirees can make limited benefit plan changes.

(34) "Plan year" means a period of twelve consecutive months.

(35) "Qualified status change" (QSC) means a change in family or work status that allows or requires limited mid-year changes to benefit plans consistent with the individual event.

(36) "Rescission" means a cancellation or discontinuance of coverage that has a retroactive effect. A cancellation or discontinuation of coverage that is prospective only, or one that is effective retroactively but is attributable to nonpayment of premiums or contributions, is not a rescission.

(37) "Reinstate" means to reactivate previous benefits and enrollments, if available, to an eligible employee returning to eligible status with-

in a specific time frame. Reinstated enrollment does not include FSA or Long Term Care.

(38) "Spouse" means a person of the opposite sex who is a husband or wife. A relationship recognized as a marriage in another state between two opposite sex partners will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061–302, 659A.060–069, 743.600–602, 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2006(Temp), f. & cert. ef. 12-14-06 thru 6-12-07; PEBB 1-2007(Temp), f. & cert. ef. 6-11-07 thru 12-8-07; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 1-2008(Temp), f. & cert. ef. 2-4-08 thru 8-1-08; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; HLA 4-2010, f. & cert. ef. 5-18-10; PEBB 1-2010(Temp), f. & cert. ef. 6-1-10 thru 11-28-10; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-015-0005
Eligible Individuals

(1) The following individuals are eligible to participate in PEBB-sponsored benefit plans:

(a) An eligible employee as defined in OAR 101-010-0005(14).

(b) A seasonal or intermittent employee described as follows:

(A) An individual hired for the first time is eligible for PEBB-sponsored benefit plans if expected to work at least a 90-day continual period and work at least half-time or in a position classified as job share. The eligible employee must enroll within 30 days of his or her hire date or eligibility.

(B) An individual hired for the first time, working at least half-time or in a position classified as job share and not expected to work a 90-day or more continual period is eligible for PEBB-sponsored benefit plans if they work more than a 90-day continual period. When the eligible employee submits enrollment forms, the benefits are retroactive to the first of the month following 30 days from the individual's hire date.

(C) A previously ineligible employee returning to work is eligible for benefit plans once they accumulate a total of 60 calendar days of employment within the current or immediately previous plan year. The 60 calendar days of employment need not be consecutive.

(c) A current spouse, domestic partner, or an eligible dependent child listed by the eligible employee on the required enrollment form or the electronic equivalent. An ex-spouse or ex-domestic partner is not eligible for active, or retired, employee PEBB plan coverage.

(d) An appointed and elected official. Eligibility for benefit plans begins on the first day of the month following the date the official takes the oath of office.

(2) The eligible employee is responsible to maintain a valid PEBB enrollment for all eligible individuals receiving coverage. See OAR 101-020-0025.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 659A.060-066, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-015-0011
Dependent Child

(1) A dependent child must meet the following eligibility conditions to receive PEBB health plan coverage:

(a) The child is:

(A) An eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally placed child; or

(B) The biological child of an eligible dependent child of an eligible employee, spouse, or domestic partner (a grandchild) and meets one of the following criteria:

(i) The child's parent will not be older than age 26 on the last day of the plan year, is unmarried and without a domestic partner, both the child's parent and the child live in the household of the eligible employee, and both receive over half of their financial support from the employee; or

(ii) The child lives with the eligible employee and the employee is legally responsible for the welfare of the grandchild. The employee must provide legal documentation of guardianship, conservatorship, or other custody documents upon enrollment. An employee who (1) gains legal responsibility and continues to have responsibility for a grandchild before the child reaches age 18, and (2) has provided continuous PEBB coverage since gaining legal responsibility for the child, can continue to provide PEBB coverage to the grandchild the same as if the child were a biological son or daughter beyond the age of 18. An eligible employee may not add a grandchild age 19 or older to their PEBB coverage unless they can provide legal documentation for responsibility of the child beyond the age of 18.

(b) The child will not have attained age 27 as of December 31 of the plan year. The exception is a child who meets all the requirements of section (4) of this rule.

(2) During Open Enrollment, the employee may electronically enroll a foster child, child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or grandchild if the appropriate notarized affidavit and required legal documentation are submitted within five business days following close date of the period. The exception is for an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit the required legal documentation, as listed in (3) of this rule, to the agency before the start of the new plan year. If the employee does not submit the documentation as required, the child's enrollment will not activate. PEBB coverage for a child by affidavit will not extend beyond the last day of the month of the end date of responsibility stipulated in the legal document.

Example: Jack's foster child Joe is receiving PEBB coverage. Jack's legal documentation used at the time of Joe's enrollment stated that Jack will no longer be responsible for Joe when Joe turns 18. Joe's birth date is November 11, if there is no change to the legal responsibility or the documented responsibility end date, Joe's PEBB coverage will terminate November 30 the year he turns 18.

(3) Newly eligible employees or employee's with a midyear change requesting to enroll a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or an eligible grandchild must submit the appropriate forms and any legal documentation to the agency within the allowable enrollment time. The agency will not process the employee's enrollments until the employee submits all of the following:

(a) Completed and signed appropriate forms;

(b) Completed and notarized affidavit; and

(c) Legal documentation as required.

(4) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability, when all the criteria in this section are met.

(a) The employee must submit to PEBB any appeal and enrollment forms to enroll a disabled child age 26 or older, or to indicate the child disabled in the PEBB benefit record when the child is already receiving coverage.

(b) The child's attending physician must submit documentation of the child's disability to the employee's health plan. The health plan provides a medical review of the physician's medical documentation and provides PEBB a disability determination based on the review.

(c) When the employee requests to enroll a disabled child over the age of 26:

(A) The child must be the employee's qualifying tax dependent.

(B) The physician must verify to the health plan that the disability existed before the child attained age 26.

(C) The child must be unable to engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(D) The employee must provide evidence to PEBB that the child has had continuous health plan coverage, group or individual, prior to attaining age 26 and the coverage remains in effect. The other coverage must continue until the employee's medical plan approves the child's health status as disabled and the PEBB plan is effective. If the child has not had continuous coverage, the child is not eligible for PEBB coverage.

(d) When a disabled child is receiving coverage beyond the age of 26, the employee's health plan can review the child's health status at any time and determine if the child continues to meet the criteria for a disabled child.

(e) If a disabled dependent child's PEBB coverage terminates for any reason after the age of 26, the child is ineligible for future enrollment as a dependent child under PEBB coverage. The exception is termination of the child's coverage due to the employee's termination of employment when the employee is rehired later into a PEBB benefit eligible position. In this situation, to enroll the child again as disabled all PEBB criteria for disabled child within (4) of this rule must be met.

(5) PEBB terminates all plan coverage for dependent children who reach age 26 during a calendar year at midnight December 31. PEBB will not terminate coverage for children age 26 or older when approved by the health plan as incapable of self-sustaining employment because of a devel-

opmental disability, mental illness, or physical disability pursuant to section (4) of this rule.

Stat. Auth.: ORS 243.125
Stats. Implemented: ORS 183, 192 & 243
Hist.: PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 1-2010(Temp), f. & cert. ef. 6-1-10 thru 11-28-10; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-015-0026
Domestic Partnership

(1) Certificate of Registered Domestic Partnership. When a Registered Domestic Partnership exists and the eligible employee wants to enroll the domestic partner or the domestic partner's eligible children in benefit plans, the employee may electronically enroll or submit enrollment update forms to the agency at the appropriate time as defined by PEBB enrollment rules.

(2) PEBB Affidavit of Domestic Partnership. An eligible employee and an individual of the opposite sex, or of the same sex without a Certificate of Registered Domestic Partnership, who want enrollment in PEBB plans as Domestic Partners must meet all of the following criteria:

(a) Are both at least 18 years of age;

(b) Are responsible for each other's welfare and are each other's sole domestic partners;

(c) Are not married to anyone;

(d) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(e) Currently share the same regular permanent residence;

(f) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter, and any other expenses of maintaining a household. Financial information must be provided if requested, and;

(g) Eligible employees must submit enrollment forms and a notarized affidavit to enroll domestic partners and children. To enroll eligible dependent children of a domestic partnership by affidavit in benefit plans, whether or not the enrollment includes the domestic partner, the employee must submit an Affidavit of Domestic Partnership.

(A) For open enrollment, the agency must receive the notarized affidavit within five business days following close date of the open enrollment period. The exception is for an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit the notarized affidavit to their agency before the start of the new plan year. The agency or PEBB will not process an employee's domestic partner or partner's children until the enrollment documentation submission is complete.

(B) Newly eligible employees or employees with qualified mid-year changes may only enroll a domestic partner or partner's children by submitting the correct enrollment forms and notarized affidavit within the allowable time for the enrollment type. Agencies will not process a domestic partner or a partner's children's enrollment until the enrollment documentation submission is complete.

(3) An imputed value for the fair market value of the domestic partner and domestic partner's dependent children's insurance premium will be added to the eligible employee's taxable wages.

(4) An eligible employee ending a domestic partnership established under the PEBB Affidavit of Domestic Partnership must complete and submit a Termination of Domestic Partnership form and enrollment update forms to the agency within 30 days of the event. If the domestic partnership was established under the Certificate of Registered Domestic Partnership, only enrollment update forms must be submitted to the agency within 30 days of the event. Insurance coverage for the domestic partner and domestic partner's dependent children ends the last day of the month that eligibility is lost.

Stat. Auth.: ORS 243.061-302
Stats. Implemented: ORS 243.061-302, Ch. 99, OL 2007
Hist.: PEBB 5-2010(Temp), f. 9-23-10, cert. ef. 10-1-10 thru 3-29-11; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0002
Eligible Employee Plan Effective and Termination Dates

(1) Irrevocability Rule. Except as otherwise provided in OAR Chapter 101, all eligible employee benefit plan elections or mid-year plan changes are irrevocable for the plan year and must have a prospective effective date.

(2) The active plan coverage effective date for newly eligible employees or for employees who have qualified mid year change events is the first of the month following the later of the agency's receipt of all appropriate forms as required by the employee's enrollment elections or electronic equivalent, or the actual event date.

(a) The employee must be actively at work as specified in OAR 101-010-0005(1) for medical and dental coverage to become effective and as specified by optional plans in optional plan policies or certificates.

(b) When an optional plan requires a medical underwriting prior to coverage approval, coverage will be effective the first of the month following plan approval.

(3) Open enrollment elections are effective on the first day of the new plan year. When an optional plan requires a medical underwriting prior to coverage approval, coverage will be effective the first of the month following plan approval in the new plan year.

(4) Coverage effective date for special enrollment rights. An eligible employee, family member, domestic partner, or domestic partner's dependent child losing other group medical coverage may enroll in PEBB plans within 30 days of the date of the loss of other group coverage. PEBB coverage will be effective from the date of the loss of the other group coverage.

Example 1: Joe loses coverage under his spouse's plan Oct. 15. Joe submits enrollment update forms Oct. 16. Joe's coverage effective date is October 1.

Example 2: Joe loses coverage under his spouse's plan October 31. Joe submits enrollment update forms November 16. Joe's coverage effective date is November 1.

(5) Active eligible employee core benefit termination dates:

(a) If an active eligible employee accumulates less than 80 paid regular hours in a month and is not within an employer's approved leave with core benefit continuation, or terminates employment, benefit coverage in effect that month will end the last day of the month.

(b) If an active eligible employee accumulates 80 or more paid regular hours in a month, and is in a leave without pay status that is not within an employer's approved leave with core benefit continuation, or terminates employment, the core benefit coverage in effect that month ends the last day of the following month.

(6) Self-pay individuals and retired employees' benefits terminate the last day of the last period for which the required premium contribution is paid.

(7) Optional plan coverages end according to the individual optional plan's policy or certificate directives. Refer to OAR 101-020-0060 and 101-020-0065 for FSA termination dates.

Stat. Auth.: ORS 243.061-302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707
Hist.: PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0005
Newly Hired and Newly Eligible Employee

(1) A newly hired or newly eligible employee has 30 days from the date of hire or date of eligibility to enroll in PEBB core and optional benefit plans. Benefit plan elections are irrevocable for the plan year except as specified in OAR 101-020-0050. A newly eligible employee:

(a) May enroll in benefit plans for the following month regardless of the number of hours worked in the month of eligibility; however, the employee must meet the requirement of a minimum of 80 hours in paid regular status in the following months to continue to receive coverage.

(b) Must be actively at work, as specified in OAR 101-010-0005(1), on the effective date of the insurance coverage.

Example: Sarah was hired and she enrolled in benefit plans on June 25. Sarah was in paid regular status on July 1; her coverage is effective July 1. Sarah will need to be in paid regular status for 80 hours in July in order to receive August coverage.

(c) Who enrolls in benefit plans and terminates employment before the effective date of insurance coverage will not receive active employee benefits or COBRA.

Example 1: Sarah was hired and enrolled in benefit plans on June 25. Sarah was in paid regular status on July 1; on July 2, she terminated employment. Sarah's coverage was effective July 1 and will remain in place through July 31. Sarah will not receive PEBB coverage in August, but will receive a COBRA notice.

Example 2: Ron was hired and enrolled in benefit plans on June 25. He terminated employment on June 30. Ron is not eligible for insurance coverage because he was not in paid regular status on July 1. He will not receive a COBRA notice because he did not receive active coverage.

(2) An employee that becomes eligible for benefits during or after the open enrollment period but before the start of the new plan year must receive the opportunity to complete open enrollment elections before the start of the plan year.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0015
Opting Out of Medical Insurance Coverage

(1) An eligible employee opting out of medical coverage may receive cash, as determined by PEBB, in lieu of medical insurance coverage. To opt out an eligible employee must have medical insurance provided by another employer-sponsored group medical plan. Benefit eligible employees may opt out of PEBB-sponsored:

(a) Medical insurance only, or;

(b) Beginning in plan year 2011, both medical and dental insurance.An employee may not opt out of dental coverage only.

(2) PEBB requires eligible employees electing to only opt out of a medical plan to enroll in other core benefits, such as dental and employee basic life coverage.

(3) The eligible employee opting out of PEBB coverage must provide documentation to their agency of current other employer group-sponsored medical, or medical and dental, coverage. Examples of documentation include, but are not limited to, plan identification cards or an employer letter of coverage. Eligible employees that are receiving health coverage under another PEBB eligible employee may request their agency to verify the other PEBB coverage electronically or contact PEBB for verification.

(4) Employees must submit documentation of other employer-sponsored coverage to their agency for an opt out enrollment to become effective. The agency or PEBB will void an employee's open enrollment opt out election if the required documentation is not received within the required time. When an opt out election becomes void, PEBB enrolls the employee only in a medical plan and a dental plan that provides service statewide. All other employee optional plan elections will.

(a) Employees enrolling in opt out during open enrollment must submit proof of other coverage within five business days following the close date of the open enrollment period. The exception is an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit proof of other group sponsored coverage to their agency before the start of the new plan year.

Example: John electronically enrolls in medical and dental opt out during Oct. open enrollment. On Nov. 2, (within five business days of the close of the open enrollment period) John provides his agency with a copy of both his medical and dental ID cards from his wife's employer sponsored coverage. John's opt out election will start effective Jan. 1, the start of his new plan year.

(b) Newly eligible employees or employees with qualified mid-year plan changes may only enroll in opt out by submitting the correct enrollment forms and proof of other employer sponsored coverage to the agency within the allowable time for the enrollment type. Agencies will not enroll eligible employees in an opt out choice or any other PEBB plan until the enrollment forms and documentation submission are complete.

Example: Mary is a newly eligible employee on March 15. Mary cannot electronically enroll because she wants to opt out of medical only coverage. On March 25, she submits her paper enrollment form electing to opt out of medical to her agency; however, she does not include documentation of other employer group medical coverage. Mary's agency cannot enroll her in any of her elections until she submits all required documentation. If Mary resubmits her enrollment and documentation before April 1, Mary's elections will be effective on April 1. If Mary does not resubmit her enrollment and documentation until April, the elections will be effective May 1.

(5) An eligible employee enrolled in Medicare, Medicaid, Veterans' Administration Health Benefit Programs, TRICARE or Student Health Insurance may not opt out in lieu of enrollment in a PEBB medical insurance plan. Beginning in plan year 2011, eligible employees may opt out of PEBB medical coverage if their employer sponsored group medical plan is TRICARE.

(6) A PEBB plan retiree receiving a state premium subsidy (e.g., early retirement premium subsidy) that returns to active employee status as benefit eligible but chooses to continue coverage under a PEBB retiree or COBRA plan is not eligible to opt out and receive cash in lieu of active employee medical benefits

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 3-2010, f. 9-23-10, cert. ef. 10-1-10; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0018
Declining Benefits

(1) An active eligible employee who declines PEBB core benefits waives the employee's right to the benefit amount and enrollment in any PEBB- sponsored plans.

(2) An eligible employee may decline benefits at the time of hire or meeting eligibility, consistent with a qualifying midyear plan change event, or during the open enrollment period.

(3) An eligible employee who previously declined benefits may enroll in benefit plans consistent with a qualifying midyear plan change event or during the open enrollment period.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0025
Terminating Coverage due to a Midyear Plan Change Event, Rescissions, Agency Premium Refunds

(1) An employee can experience a qualified midyear change event that will permit or require the employee to request a termination of coverage for other individuals on their healthcare coverage. The employee's request for any coverage termination for an individual must be submitted within 30 days of the qualifying midyear change event, and submitted to the employee's agency on the appropriate forms.

(a) When an employee experiences a qualifying midyear change that permits the employee to remove an individual from coverage, but does not require the employee to terminate the coverage due to a loss of eligibility agencies must terminate the coverage prospectively. Coverage ends prospectively, the last day of the month following receipt of the appropriate forms. Submission of the forms beyond 30 days will result in a denial of the termination. The employee must wait until open enrollment and move the individual at that time.

Example: Bill currently provides PEBB coverage for his 22-year-old son, Mark. On May 5th Mark starts a new job that provides him with health care coverage. Bill can continue Mark's PEBB coverage, or based on the qualified midyear event of "Gain of Coverage Eligibility under Another Employer's Plans" Bill can terminate the coverage. Bill decides to terminate coverage for Mark and submits a midyear change form to his agency on June 1. (Within 30 days of the event date) The agency will terminate Mark's coverage effective June 30.

(b) An employee must request termination of coverage for an individual receiving PEBB coverage under their enrollments that becomes ineligible for the coverage. Examples of individuals who no longer meet eligibility and require termination from coverage include, but are not limited to, an ex- spouse, ex- domestic partner, a child by affidavit no longer eligible due to age limitation within the legal responsibility document, and a disabled child who no longer meets criteria. Agencies will terminate an ineligible individual's coverage prospectively, coverage ends the last day of the month following receipt of the appropriate forms from the employee. The exception to prospective termination is termination of coverage for an ex spouse, ex domestic partner, and their children who are not biological children or adopted children of the employee, in which case PEBB coverage must terminate retroactively to the last day of the month that the eligibility is lost. PEBB must process and complete all retroactive terminations.

Example 1: Ann's divorce is final on June 6. On June 22, she submits the correct change form to her agency to remove her ex spouse from coverage. The agency can process Ann's former spouse's termination from PEBB coverage effective June 30.
Example 2: Mary's divorce is final on June 15. On July 1, Mary submits the correct change forms to her agency to remove her ex spouse from coverage. The notification to the agency is in the month following the date of divorce however it is within the allowable 30 days of the event date. The ex-spouse coverage must terminate retroactively. The agency will send Mary's forms to PEBB to process, coverage will terminate June 30.

(c) An ineligible individual will receive a COBRA availability notice when the coverage terminates within 60 days from eligibility loss.

(2) PEBB must receive all employee requests for termination of coverage of ineligible individuals beyond the allowable 30 days. PEBB will follow 1(b) of this rule in determining the correct termination date for the ineligible individual.

(a) When the coverage termination for the ineligible individual is prospective, the employee must pay an imputed value tax for each month of coverage that the ineligible individual received coverage. PEBB will communicate to the agency the imputed value to add to the employee's taxable wages.

(b) When coverage must terminate retroactively:

(A) The agency will receive the following months of premium refunds for the most recent months of coverage received by the ineligible individual, (i) from PEBB up to six months for self-funded plans, (ii) from fully funded plans, up to one year.

(B) An eligible employee may be responsible to repay claims paid by benefit plans for an ineligible individual during any period of ineligibility for which premiums are refunded.

(3) An employee's failure to report a family member's or domestic partner's loss of eligibility during the 12-month period before the start of each annual open enrollment period can result in civil or criminal charges against the employee for fraud or the intent to misrepresent the material facts of enrollment. To the extent allowed by law, PEBB may rescind cov-

erage back to the last day of the month of the plan year when eligibility was lost. Rescission of coverage can occur to an employee, or an individual for whom the employee provides coverage. The following actions will occur during a rescission of coverage action taken by PEBB:

(a) PEBB will provide at least 30 calendar days' advance notice of the rescission date to the ineligible individual. Coverage will rescind to last day of the month and plan year in which the individual lost eligibility.

(b) PEBB will include a notice of appeal rights with the rescission notice to the individual losing coverage.

(c) The agency may request premium refunds as described in (2)(b)(A) of this rule.

(d) An agency may determine that an employee must repay to the agency the premiums paid for coverage during the ineligible period.

(e) As contractually agreed to, a plan may determine that an employee must repay insurance claims paid by a plan for the ineligible individual during the ineligible period.

(f) An employee's agency can take disciplinary action against the employee for the employee's failure to remove an ineligible individual from coverage.

(g) The employee may have imputed value added to their taxable income for premiums not refunded by the plans or repaid by the employee to the agency.

Example: Ann's divorce is final on June 6, 2010. Ann submits her update form to her agency a year later on June 1, 2011, after she certified during the October 2010 open enrollment period that all individuals receiving coverage in the new plan year were eligible for coverage. The agency sends Ann's update forms to PEBB. PEBB sends a notice to Ann's ex-spouse at the last known address informing the individual that on July 1, 2011 PEBB will rescind the individual's coverage to June 30, 2010 (the month that eligibility was lost). PEBB includes a notice of appeal rights. The ex-spouse will receive a COBRA unavailability notice due to the employee's late notice of loss of eligibility. Ann's agency can receive premium refunds for the most recent months of allowable premium according to this rule. When premiums are refunded to the agency, Ann will be responsible for any claims paid by the plans for the ex-spouse during the refund period. For months of non-refunded premium paid by the agency and according to her agency's policy, Ann may be responsible to repay the premium cost for her ex-spouse or responsible to pay an imposed imputed value tax for the months of coverage not refunded.

(4) When PEBB discovers an ineligible individual receiving coverage, PEBB can terminate coverage according to this rule whether requested by the employee or not.

(5) A benefit plan may remove from coverage or deny the claims of an eligible employee, a family member, domestic partner, or domestic partner's dependent child because of fraud, intentional misrepresentation of a material fact as prohibited by the terms of the plan, eligibility violations, or policy term violations. When a plan removes an employee from coverage for violations:

(a) The employee may choose, as a midyear plan change, an alternative PEBB plan to replace the terminated plan. If no alternative PEBB plan is available in the employee's service area, there is no coverage.

(b) The plan may retain all premiums paid and has the right to recover from the employee, the benefits paid because of such wrongful activity that are in excess of the premiums.

(c) The plan may deny future enrollments of the individual.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0032
Open Enrollment

(1) Active and other eligible employees may make benefit plan changes, new plan elections, enroll eligible individuals, or terminate only certain individuals during the annual open enrollment period. All plan elections or enrollments are subject to paragraph (6) of this rule. Eligible employees must submit plan elections, enrollments, or enrollment terminations as instructed during the designated period.

(2) Open enrollment coverage begins the first day of the new plan year. When coverage must receive plan-underwriting approval, the effective date of the coverage will be the first day of the month after approval in the new plan year.

(3) During the open enrollment period, the eligible employee is accountable for enrolling and providing coverage to only those individuals who will meet PEBB eligibility criteria for coverage the first day in the new plan year. The eligible employee is accountable during open enrollment for ensuring that only those individuals who meet PEBB eligibility are enrolled in the new plan year.

(a) Employees can terminate an individual currently receiving coverage, electronically or by using a form, if they know the individual will be ineligible for coverage the first day of the plan year or the employee no longer wants to provide coverage to the individual even though the individual will continue to meet eligibility. When terminated by an employee as part of the open enrollment period the individual's coverage ends the last day of the last month of the current plan year. PEBB can audit an employee's benefit record and investigate the reason why an individual will no longer receive coverage in the new plan year. When necessary PEBB can correct the coverage termination date of a terminated individual and take the appropriate termination of coverage action as provided by OAR 101-020-0025.

(b) Employees are not to use the open enrollment period to remove individuals who have lost eligibility or will lose eligibility. Employees must remove individuals who lose eligibility from their coverage and benefit record by submitting the correct midyear change forms to the agency or to PEBB. See OAR 101-020-0025.

(4) The agency must provide an eligible employee who becomes newly eligible or hired after the open enrollment period but before the start of the new plan year an opportunity for open enrollment elections.

(5) The agency must provide eligible employees away from work due to FMLA, CBIW, active military duty, or other approved employer leave status where the employer continues the employee's core benefits, an opportunity for open enrollment elections before the start of the new plan year.

(6) Benefit plan elections are irrevocable for the new plan year except as specified in OAR 101-020-0050 or 101-020-0037.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0037
Correcting Enrollment and Processing Errors

(1) Employee enrollment errors occur when an eligible employee provides incorrect information or fails to make correct selections when making benefit plan elections. An employee's failure to take an enrollment action is not considered an employee enrollment error. For the purpose of this rule, an enrollment action means that the employee during the allowable enrollment times must take an action to enroll, add to, save, or change benefit plan enrollment elections, or enroll, add to, save, or change coverage of individuals. The eligible employee is responsible for identifying enrollment errors.

(a) PEBB authorizes the agency to correct employee enrollment errors when reported by the employee within 30 days of the original eligibility date or midyear plan change date. Corrections are retroactive to the first of the month following the date the agency received the original paper form or electronic equivalent. The exception is a correction to core benefit enrollments once the enrollment is effective, the enrollments may terminate prospectively only.

(A) PEBB must review all employee requests to correct enrollment errors received after 30 days of the original eligibility date or the midyear plan change date. If the correction is approved, the effective date is the first of the month following the receipt of the employee's correction request.

(B) Enrollment error correction requests considered beyond 60 days of the eligibility date or the midyear plan change date must demonstrate facts and circumstances that clearly establish an employee error occurred.

Example: As a new employee, Anne enrolled in the Dependent Care Flexible Spending Account. Anne does not have any eligible dependents. Six months later Anne realizes the error after her first Health FSA claim is rejected. Anne may request an enrollment correction from PEBB.

(b) PEBB authorizes the agency to correct an employee's open enrollment error. The agency may receive employee correction request after the open enrollment end date but no later than 30 days from receipt of the first paycheck of the new plan year. PEBB must review all employee correction requests received beyond 30 days from receipt of the first paycheck of the new plan year. Open Enrollment employee error corrections are effective the first day of the new plan year. The exception is a correction to core benefit enrollments once the enrollment is effective, the enrollments may terminate prospectively only.

(2) Administrative processing errors occur when benefit plan elections are processed incorrectly in the payroll and benefit system by the agency, PEBB, or third party administrative staff, or when a newly eligible employee does not receive correct enrollment information or materials within 30 days of the eligibility date.

(a) PEBB authorizes the agency to correct processing errors identified within 30 days of the eligibility date or the midyear plan change date. Corrections are retroactive to the first of the month following the date the

agency received the paper form or electronic equivalent. The exception is a correction to core benefit enrollments once the enrollment is effective, the enrollments may terminate prospectively only. The agency must reconcile all premium discrepancies as described by contract with the insurer.

(b) PEBB must review all processing error correction requests identified after 30 days of the eligibility date or the midyear plan change date. If approved, corrections are retroactive to the first of the month following the date the paper form or electronic equivalent was first received by the agency. The exception is a correction to core benefit enrollments once the enrollment is effective, the enrollments may terminate prospectively only. The agency must reconcile all premium discrepancies as described by contract with the insurer.

(c) PEBB authorizes the agency to correct open enrollment processing errors. The agency must receive requests for correction after the open enrollment end date but no later than 30 days from receipt of the first paycheck of the new plan year. PEBB must review all open enrollment correction requests received beyond the 30 days from receipt of the first paycheck of the new plan year. All processing error corrections are effective the first day of the new plan year. The exception is a correction to core benefit enrollments once the enrollment is effective, the enrollments may terminate prospectively only.

(d) When a newly eligible employee fails to receive enrollment information within 30 days of the eligibility date or receives incorrect information, benefit plan elections will be effective retroactive to the first of the month following the eligibility date.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 1-2006, f. & cert. ef. 11-28-06; Renumbered from 101-040-0080, PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0045
Returning to Work

(1) Refer to the following rules for an employee returning to active or paid regular status from the following leave status:

(a) Continuation of Benefits for Injured Workers (CBIW). See OAR 101-030-0010.

(b) Federal Family Medical Leave Act (FMLA). See OAR 101-030-0015.

(c) Oregon Family Leave Act (OFLA). See OAR 101-030-0020.

(d) Active Military Duty Leave (USERRA). See OAR 101-030-0022.

(2) An eligible employee returning from a (i) leave without pay not in (1) of this rule, or a (ii) reduction in hours below benefit eligibility criteria must work at least half-time in the month of return to be eligible for core benefits and optional plan coverages the following month. The exception is eligible employees in job share positions.

(3) An eligible employee returning to paid regular status within 30 days without a break in core benefit plan coverage will have all the employee's previous coverage reinstated and cannot make benefit plan changes.

Example: Gary begins leave without pay on May 20 and is not planning to return until the fall. Gary worked more than 80 hours in May, and the agency correctly schedules his coverage end date as June 30. However, Gary returns to work on May 25 (within 30 days and with no break in core plan coverages). The agency will reinstate Gary's coverage with an effective date of July 1. Gary cannot make any election changes to his enrollments. Gary will need to work at least 80 hours in June for coverage continuation in July.

(4) An eligible employee returning to paid regular status within 12 months of the core benefit coverage termination date following a layoff or termination of employment is not required to work at least half-time in the month they return to be eligible for benefits the following month. The agency will reinstate the previous plan enrollments, if available, effective the first of the month following the employee's return to work. This excludes Health and Dependent Care Flexible Spending Accounts and Long Term Care. The employee may make midyear plan changes within 30 days of the date they return to work.

(5) An eligible employee returning to active or paid regular status after 12 months from the core benefit coverage termination date must enroll as a newly eligible employee.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061-302 & 659A.060-069
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-020-0050
Midyear Benefit Plan Changes

(1) Eligible employee plan elections are irrevocable for the plan year. There are limited exceptions to the irrevocability rule if certain conditions or events are met. These events fall into three broad groups:

(a) Qualified Status Changes (QSC), which include:

(A) Changes in the eligible employee's legal marital status, such as marriage or divorce;

(B) Changes in the eligible employee's number of dependents, such as birth or adoption of a child;

(C) Changes in the employment status of the eligible employee or family member, such as the start or end of employment, or a change from part-time to full time;

(D) Changes in the eligibility of a dependent, such as attaining a certain age;

(E) Changes in the residence of the eligible employee or family member, or;

(F) Changes in the eligible employee's domestic partnership.

(b) Cost or coverage changes. For example:

(A) An increase in out-of-pocket premium cost imposed by the employer;

(B) A reduction or a loss in the spouse's or domestic partner's group plan benefits, or;

(C) A reduction or a loss of plan coverage.

(c) Other laws or court orders. For example: National Medical Support Notice, Medicare, or HIPAA related special enrollments.

(2) The eligible employee may request only those midyear plan change elections that are consistent with the event.

Example: In the middle of the plan year, John moves from his current medical plan's service area and can no longer access the plan's closed panel of providers. However, all of John's other coverages (dental, life, etc.) remain active for his new address. John may request to change his medical plan, because it is consistent with the event--due to a move from his current medical plan's service area. John may not request to change or add any other elections at this time because that would not be consistent with the allowable midyear event occurrence.

(3) Eligible employees experiencing a qualified midyear event, and who request a change of enrollment elections must complete and submit to their agency the correct update forms and all required documentation within 30 days of the event. Agencies receiving employee midyear change requests can make only those changes that are consistent with the event. All election changes are effective the later of the first of the month after receiving all required update forms and documents or the event date. Agencies will not process enrollment request changes when enrollment and change request information is incomplete or missing required documentation.

(4) The tag-a-long rule applies when the eligible employee experiences a QSC addition of a new family member, domestic partner, or domestic partner's child. The rule allows the employee to add another eligible family member, domestic partner, or domestic partner's child who was previously eligible for PEBB plan coverage but never added to coverage, to be added to coverage at the same time as the new QSC individual.

Stat. Auth.: ORS 243.061-302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707
Hist.: PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-030-0010
Continuation of Group Health Benefit Coverage for Injured Workers (CBIW)

(1) The state is required by ORS 659A.060-069 to continue to pay the benefit amount for PEBB health benefit coverage in effect at the time an eligible employee has a work-related injury or illness. The benefit amount may continue for up to 12 consecutive months or until one of the events listed in ORS 659A.063 occurs, whichever occurs first. Health benefit coverage for this purpose includes the medical, dental, vision, and prescription drug coverage of the employee, family members, and domestic partner.

(2) An eligible employee may continue coverage for life, short term and long -term disability, and accidental death and dismemberment insurance plans for up to 12 months if they self-pay the premiums to the agency.

(3) When an employee returns to work within 12 months, they will have their previous enrollment for medical, dental, life, and disability insurance reinstated the first of the month following their return to work. The employee may make midyear plan changes within 30 days of the date they return to work.

(4) An employee returning to work will not be reinstated in any pretax Flexible Spending Accounts. They may reenroll within 30 days of the date they return to work.

(5) An employee returning to work immediately following CBIW is not required to work at least half-time in the month they return to be eligible for benefits the following month.

(6) A COBRA qualifying event occurs at the end of the CBIW continuation period if the employee has not returned to work.

Stat. Auth.: ORS 243.061-302 & 659A.060-069
Stats. Implemented: ORS 243.061-302 & 659A.060-069
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04, PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-030-0015
Continuation of Core Benefit Coverage for Employees Covered under the Federal Family Medical Leave Act (FMLA)

(1) The state will continue to pay the benefit amount for core benefits in effect at the time the eligible employee begins an approved FMLA leave.

(2) An eligible employee may continue the following optional plans during the approved FMLA leave by self-paying premiums or contributions to the agency:

(a) Optional Life Insurances,

(b) Short Term and Long Term Disability,

(c) Accidental Death and Dismemberment Insurance, and,

(d) Healthcare Flexible Spending Account (FSA) — The total contribution amount for the complete expected leave duration must be prepaid prior to the start of the leave.

(3) An eligible employee on FMLA leave during open enrollment may make open enrollment benefit elections.

(4) An eligible employee returning to work or paid regular status the first day following the end of approved FMLA leave will have previous enrollments reinstated retroactive to the first day of the month the employee returns. The returning employee is not required to work at least half-time in the month they return to be eligible for benefits the following month.

(a) The employee must self-pay premiums for optional insurance plan reinstatements for the month in which they return.

(b) An employee returning to work will not be reinstated in Long Term Care and FSA unless they continued contributions to a Healthcare FSA while on approved FMLA leave. In this case, the employee will be reinstated in the Healthcare FSA.

(c) The employee may make midyear plan changes within 30 days of the date they return to work.

(5) An employee who does not return to work or to paid regular status the first work day immediately following the end of approved FMLA leave is considered the same as if returning from leave without pay. See OAR 101-020-0045(2).

(6) A COBRA qualifying event occurs when the employee does not return to work and is not in paid regular status the first day after the qualified FMLA leave ends or the employee terminates employment.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-030-0022
Continuation of Benefit Coverage for Employees on Active Military Leave

(1) The state will continue to pay the benefit amount for core benefit coverage in effect at the time an eligible employee begins active military duty. This benefit coverage will continue for the duration of the active military leave, up to 24 consecutive months. The agency may end this coverage before or during the 24 months of active duty only if the member submits a signed written request to end the coverage.

(2) An eligible employee may continue the following optional plans during active military duty up to 12 months by self-paying premiums or contributions to the agency:

(a) Optional Life Insurances,

(b) Accidental Death and Dismemberment Insurance, and,

(c) Health Flexible Spending Account (FSA).

(3) An eligible employee on active military leave during open enrollment may make open enrollment benefit elections. The employee may allow another individual to make plan elections in the employee's absence by providing documentation of a power of attorney to the agency. Enrollment in a Health FSA must occur during open enrollment in order to participate in the new plan year.

(4) An eligible employee who returns to work within 24 months will have available previous optional plan enrollments reinstated retroactive to the first day of the month the employee returns. A returning employee is not required to work at least half-time in the month they return to be eligible for benefits the following month.

(a) The employee must self-pay premiums for optional insurance plan reinstatements for the month in which they return.

(b) An employee returning to work will not be reinstated in Long Term Care or any FSA, unless contributions to their Health FSA while on military leave continued.

(c) The employee may make midyear plan changes within 30 days of the date they return to work.

(5) A COBRA qualifying event occurs when an eligible employee:

(a) Is no longer in active duty status or paid regular status, and does not return to work following the allowed decompression time;

(b) Remains in active duty status after 24 months of active duty, or;

(c) Terminates employment.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061-302 & 408.240
Hist.: PEBB 1-2003, f. & cert. ef 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

101-030-0070
Life, Disability, and Accidental Death and Dismemberment Insurance — Continuation of Coverage

(1) When an eligible employee separates from state service optional life insurance coverage may continue through the plan, not PEBB, as follows:

(a) Portability. An eligible employee terminating employment, other than for disability or retirement, may continue the employee's optional employee, spouse, and domestic partner life insurance coverage at the group rate, plus billing fees. The policy remains a term life insurance policy. The employee must apply directly to the plan within 60 days of the date coverage ends. Portability is not available for basic life or dependent life coverage. A survivor of a covered eligible employee may continue optional life insurance through the carrier upon the death of the employee.

(b) Conversion Rights. An eligible employee terminating employment for any reason, including disability or retirement, or experiencing a reduction in hours to less than 80 paid regular hours in the month, may be eligible to convert the employee's life insurance coverage to an individual whole life insurance policy. The employee must apply directly to the plan within 60 days of the date insurance coverage ends. A survivor of a covered eligible employee may convert life insurance coverage to a whole life insurance policy through the plan upon the death of the employee.

(c) Retiree Life Insurance Option. An eligible employee who retires may purchase the Retiree Life Insurance Option without submitting evidence of insurability. The employee must apply directly to the insurance plan within 60 days of the date insurance coverage ends.

(d) Transfer of Premium Payment for Optional Employee Life Insurance. When two active eligible employees are married or in a domestic partnership and both are state employees, one employee can transfer their optional life insurance coverage to the other employee's life insurance coverage or to themselves upon:

(A) Terminating employment for any reason;

(B) Beginning an active military leave;

(C) Divorce;

(D) Termination of their domestic partnership, or;

(E) Retirement. The remaining employed eligible employee must submit the completed applicable form to the employee's agency within 60 days of the date of the above events.

(2) There are no portability, conversion, or rollover continuation options for short term or long term disability or accidental death and dismemberment insurance coverage.

Stat. Auth.: ORS 243.061–302
Stats. Implemented: ORS 243.061–302
Hist.: PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; Renumbered from 101-020-0070, PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11

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Department of Agriculture
Chapter 603

Rule Caption: Clarifies species eligible for import and commercial propagation; adds a review committee for Director's Exemptions.
Adm. Order No.: DOA 20-2010
Filed with Sec. of State: 11-23-2010
Certified to be Effective: 11-23-10
Notice Publication Date: 9-1-2010
Rules Amended: 603-052-0347

Subject: The proposed amendments do the following.

(1) Clarify that only onion bulbs, sets, or seedlings are eligible for import from Maricopa County, Arizona;

(2) Clarify that garlic may only be grown for personal use within the control area;

(3) Establish an industry-based committee to assist in the review of and provide input to the Director about applications for Director's Exemptions.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0347

Control Area and Procedures in Malheur County

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the onion industry in the following described area through the eradication or control of Allium white-rot disease caused by Sclerotium cepivorum. Such control area includes all of Malheur County.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of Allium white-rot disease into the area:

(a) No person shall import into the control area for the purpose of propagation any bulbs, sets, or seedlings of onion, garlic, leek, chive, shallots, or other *Allium spp*. with the following exceptions:

(A) The bulbs, sets, or seedlings were produced in adjacent Idaho counties covered by the Idaho Rules Governing White-Rot Disease of Onion (IDAPA 02.06.07) in Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington counties;

(B) The onion (*Allium cepa*) bulbs, sets, or seedlings were produced in Maricopa County, Arizona and were shipped in new single-use containers. Each shipment must be accompanied by a state phytosanitary certificate declaring the bulbs, sets, or seedlings were produced in Maricopa County and were officially inspected and found free of Allium white rot;

(b) Commercial onion propagation within the control area shall be limited to production from seed, or if vegetative propagative material is used, that material must be produced within the control area or within the counties described in subsection (a) of this section;

(c) Garlic (*Allium sativum*) propagation within the control area shall be limited to production in home gardens for personal use;

(d) Except as provided in subsections (d) and (e) of this section, no person shall in any manner import or move machinery, tools, or equipment into the control area, which have previously been used in any manner on fields outside the control area where the host plants named in subsection (a) of this section have been cultivated. Machinery, tools, or equipment may be imported or moved into the control area if they are first cleaned and sterilized to the satisfaction of and with the prior approval of the Department. The cleaning shall include the thorough removal of all dirt by the use of steam under pressure. Sterilization shall be accomplished by the use of steam. For the purposes of this subsection, "machinery, tools, or equipment" includes, but is not limited to, farm trucks, harvesters, and tillage equipment;

(e) Machinery, tools, or equipment utilized in the adjacent Idaho Counties covered by the Idaho Rules Governing White-Rot Disease of Onion in Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington counties are exempt from the prohibitions in subsection (d) of this section;

(f) The Department may stop the movement into or within the control area of any machinery, tools, or equipment, which have not been cleaned and sterilized as provided in this subsection, until such machinery, tools, or equipment are so cleaned and sterilized.

(3) Culls and waste from onions imported from outside of the control area must be disposed of in an approved landfill or must be treated in a manner that the Department has determined will render S. cepivorum sclerotia non-viable.

(4)(a) The Department may inspect any onions or onion planting areas within the control area during any time of the year to determine whether the disease organism is present therein. If the Department finds that any onions, whether or not being transported, or any fields are infested with the disease organism, it shall by written order, delivered or mailed to the onion grower or field owner, direct the control and eradication of the infestation, and may prior to issuance of the order, seize any infected onions which are separated from the land on which grown;

(b) Movement of such onions within the control area or removal of such from the control area may be carried out only with the Department's prior approval and under its supervision.

(5) Control and eradication methods used shall only be those approved by the Department and will be based on the best available science. These methods may include:

(a) The destruction of any infected onions;

(b) A directive specifying implementation of Departmentally approved mitigation measures to prevent the spread of S. cepivorum;

(c) Prohibit the pasturing of animals on any infested area;

(d) A directive that equipment, tools, and machinery used on an infested area be cleaned and sterilized as described in section (3) of this rule prior to removal from said area.

(6) The Department may, with the consent of the owner, allow use of an infested growing area as an experimental plot by Oregon State University for onion white-rot research. Such use shall be subject to the prior approval of, and supervised by the Department.

(7) The Department, upon receipt of an application in writing, may issue a Director's Exemption allowing movement into or within this control area of regulated commodities not otherwise eligible for movement under the provisions of this control area order. An advisory committee consisting of Malheur County onion growers, packers, and processors shall review each application and provide input to the Director of the Department of Agriculture. Membership on the advisory committee shall be approved by the Department and the committee shall consist of three growers, two packers, and one processor. The committee must provide input to the Director within thirty (30) days of receipt of the application for review. The Director retains the final authority to approve or deny Director's Exemption requests. Movement of such commodities will be subject to any conditions or restrictions stipulated in the Director's Exemption, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of S. cepivorum.

(8) The Department and other interested parties shall review the control area requirements biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 2-1977, f. 2-9-77, ef. 3-1-77; DOA 4-2008, f. & cert. ef. 1-11-08; DOA 12-2009, f. & cert. ef. 8-21-09; DOA 20-2010, f. & cert. ef. 11-23-10

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Department of Agriculture, Oregon Sheep Commission Chapter 644

Rule Caption: To increase the wool assessment rate by one half cent per pound effective January 1, 2011.

Adm. Order No.: SHEEP 1-2010(Temp)

Filed with Sec. of State: 12-15-2010

Certified to be Effective: 1-1-11 thru 3-31-11

Notice Publication Date:

Rules Amended: 644-010-0010

Subject: The temporary rule will implement the proposal adopted by the Oregon Sheep Commission on Dec. 15, 2010, to increase the assessment on the sale of wool sold through commercial channels by one-half cent in accordance with ORS 576.325(f). The wool assessment will increase from $0.025 cents to $0.03 cents per pound of wool in the grease basis for all Oregon sheep producers effective January 1, 2011.

Rules Coordinator: Richard Kosesan—(503) 370-7024

644-010-0010

Assessments

(1) Any first purchaser shall deduct and withhold an assessment of three cents ($.03) per pound from the price paid to the producer thereof, after January 1, 2011, for all wool produced in Oregon.

(2) All casual sales of wool made by the producer direct to the consumer and in an amount less than 200 pounds in any calendar year shall be exempt from the assessment.

(3) Any person (including producers eligible for exemption from assessment as casual sales) may donate to the Commission. Such authorization may be made by so indicating and signing such donation on the payment slips prepared by the first handler (who will include such donations in the quarterly report).

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.304(2) & 576.325

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SC 1-1985, f. & ef. 11-20-85; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2005, f. 12-15-05 cert. ef. 1-1-06; SHEEP 1-2006, f. 12-12-06, cert.ef. 1-1-07; SHEEP 1-2010(Temp), 12-15-10, cert. ef. 1-1-11 thru 3-31-11

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Department of Agriculture, Oregon Wheat Commission Chapter 678

Rule Caption: The amendments add two handlers as voting members to the Commission.
Adm. Order No.: WHEAT 2-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 11-19-10
Notice Publication Date: 10-1-2010
Rules Amended: 678-030-0027
Subject: The amendments to OAR 678 Section 30 add two handler positions to the Commission as voting members.
Rules Coordinator: Tana Simpson—(503) 229-6665

678-030-0027
Number and Qualifications of Voting Commissioners

(1) The Oregon Wheat Commission will include eight voting commissioners appointed by the Director of the Oregon Department of Agriculture.

(2) Voting commissioners will have the following qualifications throughout their terms of office:

(a) All voting commissioners must be United States citizens.

(b) Five voting commissioners must be grower members.

(A) Not fewer than three of the five grower members must be engaged in growing wheat in the area comprised of Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson Counties.

(B) Not fewer than one of the five grower members must be engaged in growing wheat in the area of the state of Oregon that lies east of the summit of the Cascade Mountains and that is not within Umatilla, Morrow, Gilliam, Sherman, Wasco or Jefferson Counties.

(C) Not fewer than one of the five grower members must be engaged in growing wheat in the area of the state of Oregon lying west of the summit of the Cascade Mountains.

(D) One voting commissioner must be a public member.

(E) Two of the eight voting commissioners must be handler members.

(a) One of the handler members will be appointed to a first term that will begin July 1, 2010. Future full term appointments to this position will occur in even-numbered years.

(b) The second hander member will be appointed to a first term that will begin July 1, 2011. Future full term appointments to this position will occur in odd-numbered years.

Stat. Auth.: ORS 578
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2010, f. & cert. ef. 7-15-10; WHEAT 2-2010, f. & cert. ef. 11-19-10

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Department of Consumer and Business Services, Building Codes Division Chapter 918

Rule Caption: Reconcile elevator permit fees with inspection intervals and adopt standards for escalator "clean down" inspections.
Adm. Order No.: BCD 17-2010
Filed with Sec. of State: 11-30-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Adopted: 918-400-0645
Rules Amended: 918-400-0660, 918-400-0800
Subject: These rules reconcile elevator operating permit fees under 918-400-0800 with corresponding inspection intervals; revise 918-400-0660 to adjust the inspection interval for all elevator equipment to two years; and adopt 918-400-0645 establishing administrative requirements for bi-annual escalator "clean down" inspections.

Elevator operating permits are currently issued every year, while inspections occur on one-, two-, and three-year cycles. These rules align operating permit cycles and inspection cycles by converting both cycles to two years. As a result of these rules, elevator operators will be able to purchase operating permits for one up-front fee that covers a full 2-year inspection cycle. The rules will also revise 918-400-0660 to adjust the inspection interval for all elevator equipment to two years and add 918-400-0645 to clarify the administrative process for escalator periodic inspections and "clean down" inspections.
Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-400-0645
Escalator and Moving Walk Clean Down Inspections

(1) Escalators and moving walks must receive bi-annual clean down inspections during each year of an inspection cycle in which a periodic inspections under ORS 460.125 is not performed.

(2) Bi-Annual escalator and moving walk clean down inspections are not covered by an owner's operating permit fee. Inspection hours, inspector portal-to-portal travel time, and other fees for these inspections are billable as special inspections under 918-400-0800 to the equipment owner or equipment owner's representative.

(3) Bi-annual escalator and moving walk clean down inspections must include inspection verification of the interior of an escalator and moving walk, and cleaning to prevent an accumulation of oil, grease, lint, dirt, and refuse.

Stat. Auth.: ORS 455.117, 460.085 & 460.125
Stats. Implemented: ORS 455.117, 460.085 & 460.125
Hist.: BCD 14-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 11-30-10; BCD 17-2010, f. 11-30-10, cert. ef. 12-1-10

918-400-0660
Operating Permits

(1) Operating permits are issued periodically based on two-year inspection intervals.

(2) Clean down inspections of escalators and moving walks performed according to 918-400-0645 are additional inspections under section (3) of this rule for which special inspection fees under 918-400-0800 apply.

(3) The division reserves the right to perform additional inspections outside the two-year inspection interval established by this rule with prior notice to the responsible party according to criteria, which may include but are not limited to the following:

(a) Accidents and injuries;
(b) Commercial and public assembly structures;
(c) Special residency occupancies, schools, hospitals;
(d) Type of elevator;
(e) Passenger or freight conveyances;
(f) Construction only purpose elevators; and
(g) Environmental conditions.

(4) The division may refuse to issue an operating permit if:

(a) Inspections are not satisfactorily completed; or
(b) Permit fees have not been received.

(5) The elevator-operating permit, or copy of the permit, must be posted in clear view in the elevator. A sign may be substituted providing the sign indicates the on-site location where the actual operating permit may be inspected during normal business hours.

Stat. Auth.: ORS 460.085
Stats. Implemented: ORS 460.055, 460.065, 460.085 & 460.125
Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0040; BCA 41-1991(Temp), f. 12-13-91, cert. ef. 12-15-91; BCA 7-1992, f. & cert. ef. 4-10-92; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0065; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0420; BCD 8-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 8-2007, f. 7-13-07, cert. ef. 10-1-07; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 14-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 11-30-10; BCD 17-2010, f. 11-30-10, cert. ef. 12-1-10

918-400-0800
Fees

(1) Subject to section (6) of this rule, the following elevator fees are effective under ORS 460.165:

(a) Elevator contractor's license, $585 for application or renewal;
(b) Plan reviews, when required, $78;

(2) The total operating permit fee for a specific type of equipment is calculated by multiplying its base operating permit fee under ORS 460.165 by its inspection interval in 918-400-0660. Effective October 1, 2010, an initial operating permit and an installation permit must be obtained prior to installation. A 12 percent surcharge will be added to the following total operating permit fees at the time of sale:

(a) Inclined Elevator — $196
(b) Belt Manlift — $196
(c) Moving Walk — $196
(d) Escalator — $196
(e) Rack & Pinion — $196
(f) Sidewalk Elevator — $120
(g) Sidewalk Material Lift — $120

(h) Special Purpose — $196

(i) Fees for the following elevators are determined by the rise of each unit: Special Purpose Personnel Elevator, Freight-Hydraulic, Freight-Electric, Passenger-Hydraulic, Passenger-Electric.

(A) Four floor rise or under — $176

(B) Over a four floor rise, but under a ten floor rise — $216

(C) Ten floor rise or over, but under a twenty floor rise — $268

(D) Twenty floor rise or over — $314

(j) Stairway Chairlift — $120

(k) Dumbwaiter — $120

(l) Limited-Use Limited Application — $196

(m) Material Lift — $196

(n) Vertical Reciprocating Lift — $196

(o) Vertical Wheelchair Lift — $176

(p) Inclined Wheelchair Lift — $176

(q) Stage Lift — $196

(3) Reinspections on a mechanism in section (2) of this rule made by request or in continued existence of a defect, $75;

(4) For special inspections, testing, consultations, site visits, or other services for which no fee is otherwise specified, $75 per hour for travel and inspection time;

(5) For the installation or alteration of an elevator, if the total cost of the installation or alteration other than the inspection fee, is:

(a) $1,000 or under — $98;

(b) $1,001 to $14,999 — $98, plus $13 for each $1,000 or fraction of $1,000 by which the cost exceeds $1,000;

(c) $15,000 to $49,999 — $280, plus $8 for each $1,000 or fraction of $1,000 by which the cost exceeds $15,000;

(d) $50,000 or over — $553, plus $3 for each $1,000 or fraction of $1,000 by which the cost exceeds $50,000.

(6) Elevator alterations.

(a) No fee shall be charged when an alteration is limited to fixture upgrades to meet state-adopted accessibility standards;

(b) No fee shall be charged where the alteration is limited to the car interior upgrades that do not alter the gross weight of the car more than five percent;

(c) When a group of elevators under common group control is proposed for an upgrade, and the same upgrade is proposed for all cars in the group, the inspection fee shall be the contract valuation for the entire elevator upgrade project rather than the higher separate inspection fee for each elevator in the group; and

(d) Where the upgrade for a group of elevators is not identical for each elevator, the fees shall be calculated separately based on the contract valuation for each elevator.

(7) Plan Review Fees. Where a complete set of drawings shows all elevators affected by the proposed installation or alteration, only one plan review fee shall be required rather than a separate fee for each elevator.

(8) Limited Elevator Mechanic's License. The following fee applies to the license issued under OAR 918-400-0380(1): $60 for application or renewal.

(9) Reciprocating Conveyor Mechanic's Licenses. The following fees apply to licenses issued under OAR 918-400-0380(2) and (3):

(a) Reciprocating Conveyor Mechanic's license, $300 for application or renewal;

(b) Restricted Reciprocating Conveyor Mechanic's license, $50 for application or renewal.

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.061 & 460.165

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0030; BCA 21-1991(Temp), f. 6-14-91, cert. ef. 7-1-91 thru 12-27-91; BCA 29-1991, f. & cert. ef. 8-30-91; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0050; BCD 11-1996(Temp), f. & cert. ef. 7-1-96; BCD 27-1996, f. & cert. ef. 12-4-96; BCD 10-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 25-1998, f. 12-22-98, cert. ef. 12-27-98; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 14-2000(Temp), f. 7-20-00, cert. ef. 8-1-00 thru 1-27-01; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10; BCD 14-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 11-30-10; BCD 17-2010, f. 11-30-10, cert. ef. 12-1-10

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Department of Consumer and Business Services, Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Clarification of When Five Percent Charge-Off Occurs Under ORS 708.590(2).
Adm. Order No.: FCS 11-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 9-1-2010
Rules Adopted: 441-505-1135
Subject: The proposed rule clarifies when the first and subsequent minimum five percent charge-offs under ORS 708A.590(2) must occur. Under ORS 708A.590(2), the bank must reduce the book value of real property acquired under ORS 708A.175(3) or (4) by five percent of its original book value annually beginning in the year title is vested and continuing until the earlier of when the bank disposes of the real estate, or the expiration of 15 years unless the DCBS director extends the 15-year time period, ORS 708A.195(2) states that title is deemed "vested" on "the date the institution is first entitled to receive a deed to the real estate."
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-505-1135
Charging Off Real Estate Assets

Effective December 1, 2010, an institution that owns or holds real estate pursuant to ORS 708A.175(3) or (4) shall reduce the real estate's book value pursuant to ORS 708.590(2) by not less than five percent of its original book value within 12 months from the date title to the real estate is vested and by not less than an additional five percent of the original book value during every 12-month period thereafter. ORS 708.195(2) states that title is deemed vested on "the date the institution is first entitled to receive a deed to the real estate."

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.590(2); 708A.175(3), (4); 708.195(2)

Hist.: FCS 11-2010, f. 11-29-10, cert. ef. 12-1-10

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Rule Caption: Adopting Rules for Community Charter Applications to Serve Former Group.
Adm. Order No.: FCS 12-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 9-1-2010
Rules Adopted: 441-710-0071
Rules Amended: 441-710-0035
Subject: The proposed rules allow a credit union that converts to a community charter to offer credit union services to individuals located outside the credit union's community boundaries even if these individuals were not credit union members of record at the time of the conversion and did not live or work within the community boundaries
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-710-0035
Community Charter Applications

A credit union applying for a community charter must complete an application to include at least the following information:

(1) Written authorization for the application signed by the Board of Directors.

(2) Bylaws or amendment to bylaws showing current and revised field of membership.

(3) Identification of the area the credit union wishes to serve and the total population of the proposed community. Quote source for the population figures.

(4) If the area to be served consists of more than one precinct, district, city, county, or other defined boundaries, a detailed description of how the persons in the area interact or share interests.

(5) Map of proposed well-defined local community, neighborhood or rural district.

(6) Most recent monthly financial statement, including income and expense statement; and

(7) Business plan showing how credit union will provide service to proposed community, pro forma financial statements for the first three years of operation including assumptions used, and facility locations. The plan should include information on services and products offered by the institution.

(8) If the credit union applying for a community charter wishes to continue credit union services to a former group or former groups in accordance with ORS 723.172, the credit union must comply with the application requirements set forth in OAR 441-710-0071.

Stat. Auth.: ORS 723.102

Stats Implemented: ORS 723.172(2) & 723.172(5)
Hist.: FCS 6-2000; f. & cert. ef. 3-31-00; FCS 12-2010, f. 11-29-10, cert. ef. 12-1-10

441-710-0071
Application to Serve Former Occupational Groups and Associational Members

(1) In accordance with ORS 723.172, all community credit unions that wish to continue credit union services to an occupational or associational group or groups shall file an application to serve the these groups on a form provided by the director. The application form shall require the community credit union to supply the following information:

(a) The credit union's name; the date of conversion; and the communities it serves.

(b) The names of the former occupational or associational group or groups that the credit union wishes to serve and information showing that the occupational or associational group or groups have offices within the credit union's community boundaries.

(c) Information showing that the occupational or associational group or groups were within the credit union's field of membership before it converted to a community charter and the date when the by-laws were amended to include the occupational or associational group or groups in the credit union's field of membership.

(d) Information showing the number of individuals within the occupational group or groups or association or associations that do not live or work within the credit union's geographic boundaries, and the basis for credit union membership such as whether the individuals are directors, officers, employees, members, partners, personal representatives, trustees or volunteers of the corporation, limited liability company, partnership or association, trust, estate or other entity.

(e) Information showing that the credit union has the ability to serve the new credit union members who do not live or work within the community boundaries without sacrificing safety and soundness requirements including addressing the implications of how increased credit union membership, deposits, and responsibilities may effect the credit union's capital or net worth ratio.

Stat. Auth.: ORS 723.172
Stats. Implemented: 2009 SB 438 §3
Hist.: FCS 12-2010, f. 11-29-10, cert. ef. 12-1-10

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Changes to Risk Based Capital Trend Test for Health Care Service Contractors.
Adm. Order No.: ID 21-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 12-15-10
Notice Publication Date: 11-1-2010
Rules Amended: 836-011-0515
Subject: This rule amends Oregon's risk based capital reporting requirements for health care service contractors to add a recent change to the National Association of Insurance Commissioners (NAIC) Risk-Based Capital (RBC) for Health Organizations Model Act #315. The rule allows a company action level event to be triggered if the risk based capital ratio of a health care service contractor falls between 200% and 300% and has a combined ratio (underwriting deductions /total revenue) above 105%. This provides an additional tool for determining whether a company is maintaining adequate capital and surplus to meet statutory requirements and policyholder obligations.
Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0515
Company Action Level Event

(1) "Company Action Level Event" means any of the following events:

(a)(A) The filing of an RBC report by a health care service contractor that indicates that the health care service contractor's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

(B) If a health care service contractor has total adjusted capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions;

(b) Notification by the Director to the health care service contractor of an adjusted RBC report that indicates an event in subsection (a) of this subsection, if the health care service contractor does not challenge the adjusted RBC report under OAR 836-011-0535; or

(c) If, pursuant to OAR 836-011-0535, a health care service contractor challenges an adjusted RBC report that indicates the event in subsection (a) of this section, the notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(2) In the event of a Company Action Level Event, the health care service contractor shall prepare and submit to the Director an RBC plan that shall:

(a) Identify the conditions that contribute to the Company Action Level Event;

(b) Contain proposals of corrective actions that the health care service contractor intends to take and that would be expected to result in the elimination of the Company Action Level Event;

(c) Provide projections of the health care service contractor's financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the health care service contractor's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the health care service contractor's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted

(a) Within 45 days of the Company Action Level Event; or

(b) If the health care service contractor challenges an adjusted RBC report pursuant to OAR 836-011-0535, within 45 days after notification to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(4) Within 60 days after the submission by a health care service contractor of an RBC plan to the Director, the Director shall notify the health care service contractor whether the RBC plan shall be implemented or is, in the judgment of the Director, unsatisfactory. If the Director determines the RBC plan is unsatisfactory, the notification to the health care service contractor shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory, in the judgment of the Director. Upon notification from the Director, the health care service contractor shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the Director, and shall submit the revised RBC plan to the Director:

(a) Within 45 days after the notification from the Director; or

(b) If the health care service contractor challenges the notification from the Director under OAR 836-011-0535, within 45 days after a notification to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(5) In the event of a notification by the Director to a health care service contractor that the health care service contractor's RBC plan or revised RBC plan is unsatisfactory, the Director may at the Director's discretion, subject to the health care service contractor's right to a hearing under OAR 836-011-0535, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(6) Every domestic health care service contractor that files an RBC plan or revised RBC plan with the Director shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health care service contractor is authorized to do business if:

(a) The state has an RBC provision substantially similar to ORS 731.752; and

(b) The insurance commissioner of that state has notified the health care service contractor of its request for the filing in writing, in which case the health care service contractor shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(B) The date on which the RBC plan or revised RBC plan is filed under sections (3) and (4) of this rule.

Stat. Auth.: ORS 731.244 & 750.045
Stats. Implemented: ORS 731.574, 733.210 & 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02; ID 21-2010, f. & cert. ef. 12-15-10

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Department of Corrections
Chapter 291

Rule Caption: Volunteers and Student Interns for the Department of Corrections.
Adm. Order No.: DOC 15-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 11-19-10
Notice Publication Date: 7-1-2010
Rules Amended: 291-015-0100, 291-015-0105, 291-015-0110, 291-015-0115, 291-015-0120, 291-015-0125, 291-015-0135
Rules Repealed: 291-015-0130, 291-015-0140, 291-015-0145, 291-015-0150, 291-015-0100(T), 291-015-0105(T), 291-015-0110(T), 291-015-0115(T), 291-015-0120(T), 291-015-0125(T), 291-015-0135(T)
Subject: These rule modifications are necessary to update the organizational and structural changes within the department's volunteer program, and place the procedural detail in a department policy. The operational procedures are better placed in department policy rather than administrative rule because they direct the internal management of the program.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-015-0100
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075

(2) Purpose: The purpose of this rule is to establish policy that will help the department fulfill its volunteer goals:

(a) To foster a respected and recognized volunteer community of appropriate size and quality that is capable of serving the rehabilitative, religious/spiritual, and other correctional needs of inmates from incarceration to reentry back to the community; and

(b) Provide support to staff in furtherance of the mission of the department.

(3) Policy:

(a) It is the policy of the Department of Corrections to utilize volunteers and student interns with appropriate training, guidance, and supervision as a means to enhance programs and further the mission of the department.

(b) Volunteers serve at the pleasure of the department and are not considered employees.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0105
Definitions

(1) Affiliation: An organization; such as a school, college, university, agency, faith group, spiritual group, 12-step program, non-profit corporation or foundation, or similar type organizations, that has defined structure and recognition as a legitimate organization in the community.

(2) Department Supervisor: A Department of Corrections employee who is responsible for the activities and programs provided by volunteers.

(3) Endorser: An official of the volunteer's affiliation who has the authority to certify that the volunteer is endorsed by that group to provide services for inmates. If the volunteer is the endorser for his/her affiliation, another official of the affiliation must provide the endorsement.

(4) Functional Unit: Any organizational component within the department responsible for the delivery of services or coordination of programs.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to the Director, Deputy Director, an Assistant Director, or administrator and has responsibility for the delivery of services or coordination of program operations.

(6) LEDS: Law Enforcement Data System.

(7) Local State Director: A person with the Department of Corrections who reports to the Chief of Community Corrections and has responsibility for managing a state community corrections office with a particular county.

(8) Programs: Activities such as religious services, education classes, self-help meetings, treatment programs, and clubs (if any) that are established solely at the discretion of the department to meet its needs and those of the inmates.

(9) Program Manager: A Religious Services management employee assigned to oversee, manage, and conduct the volunteer program of the department.

(10) Student Intern/Practicum: An approved student in a college or university who, as part of an academic program, donates time and effort to enhance the mission, activities and programs of the department and to further his/her professional development. Student interns may be stipend or non-stipend. For purposes of these rules, wherever the term "volunteer" is used, it shall also apply to student interns.

(11) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities and programs of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0110
Program Supervision

(1) Religious Services is responsible for the establishment, development and management of the overall structure and operation of the volunteer program for volunteers working inside department facilities or assisting with transition from prison to the community.

(2) The local state director or designee will designate a volunteer coordinator to oversee volunteers and student interns for Community Corrections.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0115
Recruitment

(1) Prospective volunteers who best meet program needs will be recruited from all ethnic, cultural, gender and economic segments of the community.

(2) Recruitment will be based on the needs of inmates, offenders, functional units, and the availability of staff to supervise volunteers.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0120
Selection

(1) A prospective volunteer must complete an application and undergo a background check. The department holds the ultimate authority to approve or deny a volunteer application. A volunteer must be:

(a) A USA citizen, legal resident, or in the country on a valid visa.

(b) At least 18 years old, unless there will be no interaction between the volunteer and inmates.

(2) Security Clearance: The purpose of clearance is to ensure not only the safety and security of department facilities, but also to ensure that volunteers are appropriate role models for inmates and offenders. To become a volunteer, an individual must clear the following criteria:

(a) LEDS: To clear LEDS, the volunteer must have:

(A) No outstanding warrants or pending criminal charges.

(B) No misdemeanor convictions in the past two years. No felony convictions or incarcerations in the past five years, or two years for certain volunteer programs. The functional unit manager may on a case-by-case basis approve an individual with no felony convictions or incarcerations in the past three years.

(C) No convictions for introduction or supplying contraband as defined in ORS 162.185; or possession, control or delivery of an explosive device or substance; or assisting an inmate to escape or unlawful departure from a correctional facility, including attempt or conspiracy of any of the above.

(D) Current (less than a year old) LEDS clearance is required for all volunteers.

(b) Driving record: The volunteer may not have been convicted of Driving Under the Influence of Intoxicants (DUII) in the past two years or Driving While Suspended (DWS) in the last year. The number and type of

other driving offenses or convictions may be considered in determining if the volunteer is a good role model for inmates and offenders.

(c) Persons with Prior Criminal Convictions: Prospective volunteers with prior felony or misdemeanor convictions who meet the above listed criteria may be approved when the following additional criteria have been met:

(A) May be under supervision, but must have no parole or probation violations in the past two years, or one year for certain volunteer programs, and approval of his/her parole officer.

(B) A prospective volunteer with a prior criminal conviction who performs services inside a correctional facility must have the approval of the facility functional unit manager at each facility where the service will be provided.

(d) Additional requirements may be established by department policy.

(3) Prospective volunteers must disclose on their volunteer application any connection to department inmates such as friends, neighbors, co-defendant, and relatives. If the prospective volunteer is a crime victim, he/she must disclose the name of the inmate or offender who committed the crime.

(4) A prospective volunteer must complete a volunteer/intern application. Failure to provide all requested information or sign all forms included in the application will result in volunteer status being denied.

(5) Employees, ex-employees not terminated for cause, retired employees, other agency staff, and contractors may serve as volunteers with the concurrence of the facility functional unit manager where the volunteer is to provide services. The employee's volunteer activities must be substantially different from the employee's job responsibilities. The differentiation must be noted in the position description.

(6) A prospective volunteer recommended to the department from an endorser will be interviewed by the department supervisor. A prospective volunteer who does not have an affiliation or endorser may be granted volunteer status with the approval of the program manager or designee.

(7) A student intern shall be recommended to the department by the appropriate official of the school, training program, mentorship, apprenticeship, college, or university where the intern is enrolled.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0125
Training and Orientation

(1) Approved volunteer training is required for all volunteers.

(2) Functional unit orientation will be provided by the department supervisor or designee to whom the carded-volunteer has been assigned.

(3) Facility orientation will be provided for those volunteering inside a correctional facility.

(4) In-service training and other training may be offered periodically.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

291-015-0135
Utilization

(1) Volunteers shall not be placed in positions of authority over department employees or contractors.

(2) Volunteers shall not perform professional services requiring certification or licensing unless the volunteer program manager or designee verifies the validity of the license.

(3) Volunteers shall be treated with the same respect as staff and recognized as having unique roles that differ from, but are complimentary to staff roles.

(4) Volunteers shall follow department rules and policies.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11; DOC 15-2010, f. & cert. ef. 11-19-10

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Rule Caption: Health Services for Inmates in State Prisons.
Adm. Order No.: DOC 16-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 11-19-10
Notice Publication Date: 3-1-2010
Rules Adopted: 291-124-0016, 291-124-0017, 291-124-0090
Rules Amended: 291-124-0005, 291-124-0010, 291-124-0020, 291-124-0030, 291-124-0035, 291-124-0041, 291-124-0055, 291-124-0060, 291-124-0065, 291-124-0070, 291-124-0075, 291-124-0080, 291-124-0085
Rules Repealed: 291-124-0015, 291-124-0025, 291-124-0095
Subject: Modification and adoption of these rules is necessary to update and clarify policies and procedures for the administration and delivery of healthcare services to inmates, that includes medical, dental, mental health, and pharmacy services. These revisions are necessary to ensure the rules align with current operations and organizational structure of the department.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-124-0005
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of this rule is to:

(a) Specify the level of healthcare services to be provided to inmates under the custody of the Department of Corrections; and

(b) Establish department policies and procedures for reimbursement to those hospitals and community based healthcare professionals providing inpatient and outpatient services to inmates.

(3) Policy: It is the policy of the Department of Corrections to:

(a) Provide essential and important healthcare services that support the health status of inmates during incarceration, including end of life care.

(b) Deliver constitutionally mandated healthcare using an efficient managed care system in support of the mission of the department.

(c) Ensure there is an organized system in place to provide inmates with access to care to meet their serious medical, dental, and mental health needs.

(d) Conduct procedures in a clinically appropriate manner using appropriately credentialed personnel in an appropriate setting consistent with the standards for similar care provided in the community.

(e) Death with Dignity Act: It is the policy of the department not to participate in or allow other health care providers to participate on its premises in the Death with Dignity Act (ORS 127.800 to 127.897). Consistent with this policy, inmates will not be permitted to access end of life counseling or drugs under the DWDA, However, the department will continue to offer inmates medically appropriate end of life care, including counseling, hospice and palliative care, through Health Services.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; CD 6-1996(Temp), f. 6-28-96, cert. ef. 7-1-96; CD 19-1996, f. 11-20-96, cert. ef. 12-1-96; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0010
Definitions

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Employee: Any person employed full-time, part-time, or under temporary appointment by the Department of Corrections; any person employed under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to department programs within any Department of Corrections facility.

(3) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to the Director, an Assistant Director or an administrator and has responsibility for the delivery of services or coordination of programs.

(5) Healthcare Provider: Any professional who is licensed or certified to provide health care services, including physicians and hospitals (and the various entities/forms in which they do business), and public, quasi-public and private organizations and entities that contract with direct service providers to furnish health care services, such as insurance companies and managed care organizations.

(6) Inmate: Any person under the supervision of Department of Corrections who is not on parole, probation, or post-prison supervision status.

(8) Treating Practitioner: Any Health Services employee who by licensure is authorized to prescribe treatment, including but not limited to,

physicians, dentists, nurse practitioners, optometrists and physician assistants.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-1998, f. & cert. ef. 7-1-98; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0016
Delivery of Inmate Healthcare

(1) The Health Services administrator is responsible for directing inmate healthcare services in the Department of Corrections. These activities include:

(a) Developing standards for the organization, coordination and delivery of inmate healthcare;

(b) Ensuring the organization and delivery of inmate healthcare meets established standards; and

(c) Ensuring the operation of all areas of inmate healthcare, including medical, dental, mental health care and pharmacy services, comply with appropriate professional standards, statutory requirements, and administrative rules and policies of the department.

(2) The Health Services clinical director is responsible for professional oversight of clinical healthcare providers. The clinical director has authority for all decisions requiring medical judgment and directly affecting outcomes of clinical practice. The clinical director shall appoint a chief medical officer to provide oversight for professional clinical services to inmates for each DOC institution.

(3) The Pharmacy and Stores administrator is responsible for the overall organization and delivery of Pharmacy services.

(4) The Behavioral Health Services administrator is responsible for the overall organization and delivery of mental health services to inmates. The chief psychiatrist shall have clinical oversight of the professional services of behavioral health practitioners.

(5) The administrator for Clinical Operations is responsible for the overall organization and delivery of institutional clinical care.

(6) The administrator for Business Operations is responsible for the overall organization and coordination of business functions, including fiscal management and organizational development.

(7) The Dental Program director, a licensed dentist, is responsible for the overall organization, delivery, and professional oversight of dental services.

(8) Health Services administration shall appoint a Medical Services manager to organize and coordinate delivery of healthcare services to inmates for each DOC institution.

(9) Inmates are prohibited from performing any healthcare duties reserved for licensed or certified health professionals. Inmates may be assigned to assist other inmates with activities of daily living as are commonly done in the community by family or friends.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0017
Professional Credentials

(1) Treating practitioners who provide medical, dental, mental healthcare or pharmacy services to inmates shall be appropriately licensed to practice in their respective professions. Specialists providing healthcare, mental healthcare or dental services shall be board certified in the specialty field or recognized as specialists in the medical community.

(2) All other employees of Health Services requiring licensure, registration or certification shall be licensed, registered, or certified to practice as stipulated by the regulatory agency of their respective discipline.

(3) Employees providing health services shall practice within the scope defined by statute and administrative rule of the respective regulatory professional licensing or certification board.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0020
Facilities and Equipment for Provision of Health Care

(1) Space, Equipment and Supplies:

(a) Sufficient space, equipment, and supplies will be available to provide the level of healthcare designated at each state operated correctional facility.

(b) Health Services administrators are responsible for evaluation of the adequacy of space allocated, review of major equipment purchases, and the system for distribution of healthcare services and supplies within their individual scope of authority.

(2) Level of Service at Each Facility:

(a) The assigned Medical Service managers is responsible for coordinating inmate access to healthcare services either at the site, in the community, or at another correctional facility.

(b) Healthcare services at correctional facilities shall at a minimum include instruction and supervision of self care, ambulatory care, emergency care, and referrals for specialty services.

(c) Inpatient infirmary beds, on site dental clinics, optometry clinics and mental health treatment are not available at each correctional facility. Inmates needing these services may be transferred to the most appropriate correctional facility to receive the needed service.

(d) Inmates with complex medical conditions who cannot be referred to providers in the immediate community may be transported to a correctional facility in another geographic area to receive medically necessary care and treatment.

(e) At correctional facilities with patients occupying inpatient infirmary beds, healthcare staff shall be on duty 24 hours per day with a physician on call 24 hours per day. At correctional facilities without 24 hour on duty coverage, a registered nurse and a treating practitioner shall be designated and on call to provide 24 hours per day coverage.

(f) Health Services staff will be make provisions for hospital access and specialty care as necessary for the healthcare of the inmate.

(g) Each health services program shall have a written plan and maintain readiness to provide basic emergency healthcare services to anyone in emergency situations. This plan shall be in accordance with the emergency response plan for the facility.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0030
Health Evaluation and Screening

(1) During the admission process each inmate shall receive a baseline medical, dental, and mental health evaluation.

(a) The medical evaluation shall consist of a physical examination and medical history including a review of available information and verification of any medication, care or treatment requirements. The evaluation should occur within seven days of admission.

(b) The dental baseline evaluation shall be completed within one month of admission to include review of the dental history, examination of the oral cavity, and diagnostic X-rays, if necessary. If there is documented evidence of an examination of the inmate's dental condition within the previous six months, a dental exam is not required unless determined to be clinically necessary by the treating dentist. If treatment is recommended based upon the baseline dental examination, a treatment plan shall be written and the recommendations reviewed with the inmate.

(c) The mental health evaluation will include a screening for the presence of mental illness and suicide history. Inmates who have a history of mental illness and suicide attempts or who report current suicidal ideations will be referred for further evaluation by a mental health treatment provider. Inmates with mental illness will be housed in a facility with services appropriate for their treatment needs.

(d) A clinical record will be initiated at the time of initial admission into the Department of Corrections.

(e) If the inmate has a documented baseline evaluation from the department within the previous 90 days, the prior evaluation and health record is reviewed and updated as clinically necessary.

(f) Inmates will be informed of relevant recommendations based on the baseline health evaluations and will be provided with self care instruction.

(2) Health Screening at Transfer:

(a) A brief health screening shall be completed on all inmates received on intra-department transfers by healthcare staff at the receiving facility. This shall include review of medical, dental and mental health records information transferred with the inmate and verification of any care or treatment requirements prearranged by the sending facility Medical Services manager.

(b) This information will be used to determine disposition of the inmate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0035
Emergency Services

(1) Health Services employees will be trained to respond to health emergency situations involving inmates, employees, visitors, and others on the facility's premises or worksites.

(2) Health Services will work with the Department Emergency Response Command Structure in declared emergencies.

(3) Each facility Medical Services manager shall assure that healthcare employees are trained and prepared to provide emergency medical assistance.

(4) Emergency medical care exceeding the scope or capacity of the facility or staff will be supplemented by emergency medical response agencies in the community.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0041
Healthcare and Treatment

(1) Health care and treatment is authorized and provided according to priorities established by the clinical director and is subject to peer review.

(a) Level 1:

(A) Medically mandatory is care and treatment that is essential to life and health, without which rapid deterioration may be an expected outcome and where medical/surgical intervention makes a very significant difference.

(B) Level 1 care and treatment shall be routinely provided to all inmates by the department. Any DOC licensed health professional may authorize care and treatment of Level 1 conditions.

(b) Level 2:

(A) Presently medically necessary is care and treatment without which an inmate could not be maintained without significant risk of either further serious deterioration of the condition or significant reduction in the chance of possible repair after release or without significant pain or discomfort.

(B) Level 2 care and treatment may be provided to inmates subject to periodic utilization review by the chief medical officer. Any treating practitioner may authorize care and treatment of Level 2 conditions.

(c) Level 3:

(A) Medically acceptable but not medically necessary is care and treatment for non-fatal conditions where intervention may improve the quality of life for the inmate.

(B) Level 3 care and treatment may or may not be authorized based upon review of each case. Only the clinical director and as delegated, the chief medical officer, may authorize or deny care and treatment of Level 3 conditions.

(d) Level 4: Of limited medical value is care and treatment which may be valuable to a certain individual but is significantly less likely to be cost effective or to produce substantial long term improvement. Level 4 care and treatment will not be routinely provided to inmates by the department.

(2) Infirmary care shall be made available to provide limited medical, dental, and nursing services.

(a) Infirmary services may include, but are not limited to, isolation, observation, first aid, postoperative care, short or long term nursing care, treatment of minor illnesses, sheltered living, convalescence, and end of life care.

(b) Infirmary care shall not be used as an alternative to hospital level acute care. Only appropriately licensed health service employees shall admit and discharge inmates from medical infirmary care.

(3) Therapeutic diets may be ordered by a treating practitioner for an inmate with a medical condition requiring nutritional adjustment that is not obtainable from the regular food services menu. Diets to achieve weight loss are the responsibility of the individual inmate.

(4) Health Services will screen inmates for work limitations at the assignment supervisor's request. Ongoing daily review of inmate workers for symptoms of illness that would interfere with the work assignment is the responsibility of the on site work supervisor.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 1987 OL, Ch. 486
Hist.: CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0055
Health Education

(1) Each facility health services program shall provide inmate health education, including information on self care.

(2) Inmates with chronic diseases will be provided with information designed to increase their ability to monitor and manage their health status.

(3) Material provided by community health education groups, public health departments, or developed by other correctional facilities may be used with appropriate citation.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0060
Transfer, Travel, or Release Arrangements

(1) Transfers Between Oregon Department of Corrections Facilities:

(a) Information about an inmate's health status shall be provided to Office of Population Management to consider for institution assignments and continuity of care of inmates.

(b) Health Services staff shall provide instructions to the Transport Unit regarding any inmate that requires medication or medical care during transport or any other special precautions that are recommended during transport.

(c) The inmate's healthcare record shall be transferred in a confidential manner to the health services program responsible for health care at the receiving facility simultaneously with the inmate.

(2) Coordination of medical and mental healthcare for release:

(a) Prior to release, the facility Medical Services manager or Behavioral Health Services manager shall identify inmates with severe medical or severe mental health conditions that will require ongoing treatment in the community.

(b) Designated staff may assist with referrals to agencies, programs or practitioners in the community to facilitate continuity of care and on going treatment of inmates with severe medical or mental health conditions.

(c) The department is not responsible for medical evaluations or diagnostic workups that are required for admission to treatment facilities in the community.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: OL 433, ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0065
Communicable Disease Control

(1) The department shall have a communicable disease screening program.

(2) Management of communicable diseases shall be in accordance with Oregon Health Division recommendations and department administrative rules and policies.

(3) Standard precautions shall be made known and available to correctional employees working in department facilities to prevent transmission of communicable diseases. Health service employees shall provide specific instructions if additional precautions are necessary for a particular inmate.

(4) Communicable disease control precautions as required by OR-OSHA or recommended by the Oregon Health Division shall be followed.

(5) Information about communicable disease prevention shall be provided to inmates as part of health education.

(6) Immunization and preventative treatment shall be made available to inmates as medically indicated.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0070
Management of Pharmaceuticals

(1) Pharmacy services shall be provided under the professional direction of registered pharmacists.

(2) A central pharmacy(ies) shall be established in accordance with the Oregon Board of Pharmacy regulation for the appropriate and secure purchase, packaging, labeling and distribution of medications needed for inmate healthcare.

(3) Medications shall be made available for the treatment of inmate patients;

(a) Upon prescription by appropriately licensed staff or

(b) From non-prescription stock made available for such purposes.

(4) An organized and regulated system shall be in place in each institution for the secure receipt, storage, accounting and distribution of prescription and non-prescription medications.

(5) Medications shall be administered by appropriately trained healthcare personnel in accordance with professional standards and the laws and regulations governing drug administration.

(6) Psychotropic medications shall be prescribed only when clinically indicated and as one facet of a treatment program in accordance with the department's rule on Informed Consent to Treatment with Psychotropic Medication (OAR 291-064)

(7) Inmates may be allowed to administer their own medication:

(a) As part of a self-care program;

(b) When the medication is on an approved self medication list;

(c) When in the opinion of the health services professional, the inmate is appropriately able to manage his/her own medication; and

(d) In conformance with institutional security practice.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0075
Healthcare Records

(1) A healthcare record shall be established for each inmate received at a DOC facility.

(2) Inmate healthcare records shall be maintained separately from the inmate's custody file.

(3) The healthcare record shall be transferred at the time an inmate is transferred to another Department of Corrections facility.

(4) Personally identifiable confidential health Information contained in the healthcare record may be released to other parties only according to ORS 179.495 through 179.505 and other Oregon statutes relevant to medical confidentiality.

(5) Inactive healthcare records shall be retained in accordance with the authorized retention schedules established in accordance with OAR 166-030.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 179.495-505, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0080
Patient Rights

(1) Medical Research: The use of inmates for medical, psychiatric, or psychological experimentation or research is prohibited as stipulated in ORS 421.085.

(2) Informed Consent:

(a) The inmate's written informed consent or refusal shall be obtained prior to an invasive healthcare procedure with major adverse health risks or prior to beginning non emergent mental health or medication services. An inmate may change their informed consent or refusal.

(b) Informed consent shall include providing the inmate with information about:

(A) The nature, purpose, and benefits of the procedure or treatment;

(B) The risks, if any, of the procedure or treatment; and

(C) Any alternative procedures or methods of treatment that are available.

(c) Informed consent is not required in:

(A) A medical emergency if the inmate is unable to give or to refuse consent and there is an immediate threat to the life of, or irreversible bodily harm to, the inmate;

(B) A psychiatric emergency if the inmate does not have the mental capacity to make an informed decision; and

(C) Certain public health matters.

(3) Confidentiality:

(a) The inmate's healthcare record, which includes medical, dental, and mental health information obtained by health service employees, is confidential and shall not be released except as provided in ORS 179.495 through 179.509, and other Oregon statutes.

(b) Health Services employees shall communicate to correctional employees pertinent information that has a direct impact on the safety and security of the facility or is relevant to the inmate's ability to function.

(4) Inmates may use the inmate grievance system as outlined in OAR 291-109 for health related issues.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0085
Charges for Elective Care or Treatment

(1) An inmate may request approval to purchase healthcare from a healthcare provider in the community. The department will only approve those requests that in the department's judgment are medically appropriate and are otherwise consistent with the department's concerns for institution security and order, public safety, and sound correctional practice.

(a) The inmate's trust account must have sufficient funds to pay for the purchase of care BEFORE the treatment is scheduled, unless other financial arrangements have been made. Cost of care includes expenses associated with providing the treatment, including follow-up care, as well as all costs associated with transport and security.

(b) The chief medical officer of the facility must review and approve follow-up care and treatment recommended by community practitioners.

(3) Prosthetics and Self Care Items:

(a) An inmate is required to pay for prostheses or other devices that become the personal property of the inmate.

(b) The inmate must sign a withdrawal request (CD28) before the service is provided. The inmate's trust account will be charged for the estimated or actual cost of the device.

(c) Upon delivery of the device, any variance from the actual cost will be indebted or credited to the inmate's trust account accordingly.

(d) An inmate shall not be denied prostheses or other devices that are medically necessary because of lack of funds. However, the inmate may incur debt if his/her trust account does not have sufficient funds to cover the cost of the device.

(e) Items for self care are available on the commissary list. An inmate may be advised to purchase a particular self care item by health services employees. Such advice is intended as education in self care and is not a directive that the item is considered medically necessary.

(3) Expenses for Medical Care for Inmates on Escape, Transitional Leave, Parole, Post-Prison Supervision, or Emergency Leave:

(a) Expenses incurred for healthcare of offenders on parole or post-prison supervision are the responsibility of the offender.

(b) Expenses incurred for healthcare of inmates on escape status are not the responsibility of the department.

(c) Expenses incurred for healthcare of inmates on short term transition leave are the responsibility of the inmate.

(4) Refusal of Medical Appointments:

(a) Any inmate who willfully refuses to keep a prearranged medical appointment in the community may have his/her trust account charged or indebted.

(b) A decision under this section to charge or indebt an inmate's trust account is subject to the administrative review process in the rule on Trust Accounts (Inmate) (OAR 291-158).

(5) Destruction of Property: Any inmate who willfully destroys or misuses health services equipment or supplies is subject to disciplinary action in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1990, f. & cert. ef. 1-29-90; CD 18-1995, f. 9-25-95, cert. ef. 10-1-95; DOC 16-2010, f. & cert. ef. 11-19-10

291-124-0090
Reporting and Evaluation

Health Services shall prepare a report each quarter listing the deaths which have occurred in Department of Corrections facilities, including the age of the deceased, cause of death, and disposition of remains. This report shall be submitted to the President of the Senate and the Speaker of the House of Representatives according to ORS 179.509 by the 30th of the month following the end of the quarter.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 16-2010, f. & cert. ef. 11-19-10

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Rule Caption: Short-Term Transitional Leave for Inmates in DOC Institutions.
Adm. Order No.: DOC 17-2010(Temp)
Filed with Sec. of State: 11-23-2010
Certified to be Effective: 12-1-10 thru 5-30-11
Notice Publication Date:
Rules Amended: 291-063-0010, 291-063-0016, 291-063-0030
Subject: These temporary rule amendments are necessary to clarify and update the eligibility requirements and approval process for granting inmates short-term transitional leave. Other amendments are

necessary for housekeeping issues and organizational changes within the department.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-063-0010
Definitions

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Emergency Leave: A leave of ten days duration or less within the state for the specific purposes listed in 291-063-0050(2)(a) where the inmate is expected to return to the releasing facility.

(3) Employee: Any person employed full-time, part-time or under temporary appointment by the Department of Corrections.

(4) Enter Parole/Probation Record (EPR): A record on the Law Enforcement Data System (LEDS) which identifies an inmate who is in the community on parole, probation, post-prison supervision, short-term transitional leave, or emergency leave exceeding five days.

(5) Immediate Family Member: Spouse, domestic partner, parent, sibling, child, and grandparents including step-relationships of such.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(7) Releasing Authority: The functional unit manager or designee of the correctional facility from which the inmate is to be or has been released on 90-day transitional leave/non-prison leave from an alternative incarceration program, supervised trip, or emergency leave. For short-term transitional leave, the releasing authority is the Assistant Director of Transitional Services or designee.

(8) Short-Term Transitional Leave: A leave for a period not to exceed 30 days preceding an established projected release date which allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. The department may grant a transitional leave of up to 90 days for inmates participating in an alternative incarceration program in accordance with ORS 421.500 and the department's rule on Alternative Incarceration Programs (OAR 291-062).

(9) Supervised Trip: Any non-routine trip outside a Department of Corrections facility within the State of Oregon which is supervised by an employee of the Department of Corrections or a person authorized to supervise or maintain custody of persons outside of correctional facilities.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030, 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11

291-063-0016
Procedures

(1) Eligibility Requirements:

(a) An inmate must be incarcerated for six months, including applicable county jail time credits, before being eligible for short-term transitional leave.

(b) Any person serving a sentence for a crime committed prior to November 1, 1989, shall not be eligible for short-term transitional leave.

(c) Persons incarcerated for parole revocation sanctions are not eligible for short-term transitional leave pursuant to ORS 421.168(1) and 144.108(3)(b).

(d) Persons incarcerated for post-prison supervision revocation sanctions are not eligible for short-term transitional leave pursuant to ORS 421.168(1) and 144.108(3)(b). However, such persons are eligible for emergency leave pursuant to ORS 421.166 and 144.108(3).

(e) Under the provisions of ORS 144.260, any inmate sentenced on or after December 4, 1986, require that a notification be distributed to the sentencing judge, district attorney, and sheriff 30 days prior to unescorted release from physical custody. Upon request, victims will be notified in the same manner.

(f) Any person serving a sentence under the provisions of ORS 137.635 shall not be eligible for short-term transitional leave.

(g) Any person serving a sentence under the provisions of ORS 161.610 shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(h) Any person serving a sentence under the provisions of ORS 163.105 for aggravated murder committed on or after November 1, 1989, shall not be eligible for short-term transitional leave. The person shall not be eligible for short-term transitional leave even after completion of the minimum incarceration term imposed by the court, or if the Board of Parole and Post Prison Supervision converts the sentence to "life with possibility of parole, release to post-prison supervision, or work release."

(i) Any person serving a sentence under the provisions of ORS 163.115 for murder:

(A) Committed on or after November 1, 1989, and prior to April 1, 1995, shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121;

(B) Committed on or after April 1, 1995 and prior to June 30, 1995, shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court; or

(C) Committed on or after June 30, 1995, shall not be eligible for short-term transitional leave. The person shall not be eligible for short-term transitional leave even after completion of the minimum incarceration term imposed by the court, or if the Board of Parole and Post Prison Supervision converts the sentence to "life with possibility of parole, release to post-prison supervision, or work release."

(j) Any person serving a sentence under the provisions of ORS 137.700 or ORS 137.707 for a crime:

(A) Committed prior to December 5, 1996, shall not be allowed short-term transitional leave until completion of the mandatory minimum incarceration term; or

(B) Committed on or after December 5, 1996, shall not be allowed short-term transitional leave until completion of the mandatory minimum incarceration term and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(k) Any person serving a sentence under the provisions of ORS 137.712 for Robbery II, Kidnapping II, or Assault II committed:

(A) On or after April 1, 1995 and prior to December 5, 1996 is eligible for short-term transitional leave.

(B) On or after December 5, 1996 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(l) Any person serving a sentence under the provisions of ORS 137.712 for Manslaughter II committed on or after October 23, 1999 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(m) Any person serving a sentence under the provisions of ORS 137.712 for Rape II, Sodomy II, Unlawful Sexual Penetration II, or Sex Abuse 1 committed on or after January 1, 2002 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(n) Any person serving a sentence under the provisions of ORS 161.725 to ORS 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989 shall not be eligible for short-term transitional leave during service of the required minimum term of incarceration (determinate sentence) imposed by the court. The person shall not be eligible for short-term transitional leave even after completion of the required minimum term of incarceration (determinate sentence) even if the Board of Parole and Post Prison Supervision finds that the condition that made the person dangerous is absent or in remission and sets a post-prison supervision release date.

(o) If otherwise eligible under Oregon law, any person serving a sentence for a crime committed on or after December 5, 1996, shall be eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(2) Criteria: In order for an inmate to be approved for any form of leave, he/she must meet the following criteria:

(a) Be classified as minimum custody in accordance with the Department of Corrections rule on Classification (Inmate) (OAR 291-104);

(b) Plan to reside within the State of Oregon;

(c) Does not have a current detainer of other charges that would result in incarceration upon release to transitional leave;

(d) Acceptable performance in the completion of correctional programming to address assessed needs and reduce the risk of future criminal behavior;

(e) Be in suitable physical and mental condition; and

(f) Institution conduct and program compliance warrant leave consideration.

(3) The supervising community corrections office must review and approve any transitional leave release plan.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11

291-063-0030
Approval of Short-Term Transitional Leaves

(1) Short-term transitional leaves may be granted from any Department of Corrections facility with proper approval of the releasing authority.

(2) Application:

(a) The inmate may initiate the short-term transitional leave process by filling out the appropriate Short-Term Transitional Leave application and submitting it to the assigned institutional counselor or designated staff member.

(c) Designated staff members will verify the information given and submit the leave recommendation and other relevant information to the releasing authority.

(3) Approval:

(a) The releasing authority or designee may grant a short-term transitional leave up to 30 days prior to the inmate's release to post-prison supervision to allow an inmate to participate in an approved release plan.

(b) No short-term transitional leave will be granted to allow the inmate to reside with a Department of Corrections employee, contractor, or volunteer unless the inmate is an immediate family member of the employee pursuant to ORS 144.108(3)(b).

(c) The releasing authority or designee will stipulate the special conditions necessary to enhance community safety. Short-term transitional leave conditions will replicate as much as possible post-prison supervision conditions. Short-term transitional leave conditions may hold an inmate to a higher standard than post-prison supervision.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11

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Rule Caption: Mental Health Special Housing for Inmates in ODOC Institutions.
Adm. Order No.: DOC 18-2010(Temp)
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10 thru 6-11-11
Notice Publication Date:
Rules Adopted: 291-048-0230, 291-048-0240, 291-048-0270, 291-048-0280, 291-048-0320
Rules Suspended: 291-048-0120, 291-048-0180
Rules Ren. & Amend: 291-048-0100 to 291-048-0200, 291-048-0110 to 291-048-0210, 291-048-0115 to 291-048-0220, 291-048-0130 to 291-048-0250, 291-048-0140 to 291-048-0260, 291-048-0150 to 291-048-0290, 291-048-0160 to 291-048-0300, 291-048-0170 to 291-048-0310, 291-048-0190 to 291-048-0330
Subject: The department recognizes there are inmates it its facilities with significant mental health issues. Modification of these rules is necessary to establish policy and procedures for assignment of an inmate to mental health special housing who, because of mental health issues, is unable to adjust in the general inmate population. Mental health special housing is separate and apart from the general inmate population. This allows the department to safely manage and provide an environment oriented to mental health treatment for this high risk inmate population.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-048-0120
Assignments to Special Management Unit

(1) Inmates may be assigned to a Special Management Unit on either a voluntary or involuntary basis in accordance with these rules.

(2) Assignment Criteria: Inmates who meet one or more of the following criteria should be considered for assignment to a Special Management Unit:

(a) Inmates who, due to a mental illness or severe emotional disturbance are:

(A) A danger to others;

(B) A danger to themselves (including all inmates who are acutely suicidal);

(C) Unable to care for their basic needs;

(D) Being victimized by other inmates; or

(E) In an acute phase of mental or emotional disorder.

(b) Inmates who need a diagnostic evaluation or medication adjustment.

(3) Inmates assigned to an SMU may be placed in a seclusion room for observation and security purposes as directed by program or security staff assigned to the unit, and for such period(s) as the SMU program manager or designee, or SMU lieutenant or designee, in consultation with the psychiatrist/nurse practitioner and the SMU treatment team, determines is necessary.

(4) Suicide/Crisis: Inmates assigned to an SMU because of suicidal ideation/attempt may be placed on suicide watch as directed by program or security staff assigned to the unit, and will be continued on this status until the SMU program manager or designee, in consultation with the psychiatrist/nurse practitioner and the SMU treatment team, determines that the suicide watch is no longer necessary, in accordance with the Department of Corrections rule on Suicide Prevention in Correctional Facilities (OAR 291-076).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Suspended by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0180
Release Process

(1) Voluntary Assignment: Inmates assigned to a Special Management Unit on a voluntary basis will be reassigned to the general population, upon request, within 72 hours, unless the treatment team believes continued treatment is necessary. In such instances, the treatment team shall follow the procedures for involuntary assignment outlined in this rule.

(2) Involuntary Assignment: Inmates assigned involuntarily to Special Management Unit status will remain so assigned for only the shortest length of time necessary to achieve the purpose(s) for which the assignment was prescribed.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 42-1978, f. 12-19-78, ef. 12-20-78; CD 24-1980, f. & ef. 7-3-80; CD 46-1985, f. & ef. 8-16-85; CD 12-1989, f. & cert. ef. 6-30-89; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0040; DOC 10-1999, f. & cert. ef. 7-6-99; Suspended by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0200
Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish department policy and procedures for the assignment of inmates to mental health special housing who, because of a mental illness or severe emotional disturbance, are unable to adjust satisfactorily in the general inmate population.

(3) Policy: The department recognizes there are a number of inmates with significant mental health issues. It is the policy of the Department of Corrections to:

(a) Provide an environment oriented to mental health treatment for inmates within the department who, because of mental illness or severe emotional disturbance, are behaving in such a way as to endanger themselves or others or are unable to provide for their basic needs; and

(b) Adopt practices within this environment to safely manage this high risk inmate population where effective treatment and behavior management can occur.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-1984; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 4-1988, f. & cert. ef. 3-21-88; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0005; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0100, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0210
Definitions

(1) Behavior Health Services (BHS): A Health Services unit with primary responsibility for the assessment and treatment of inmates with mental illness and developmental disabilities.

(2) Behavioral Health Unit: An intensive behavioral management and skills training unit for inmates with serious mental illness that have committed violent acts or disruptive behavior.

(3) BHS Program Manager: That person who reports to the Behavior Health Services administrator and has responsibility for delivery of program services or coordination of program operations in a mental health special housing unit. Whenever the term "BHS program manager" is used in this rule it means BHS program manager or designee.

(4) Facility: The building and grounds area operated by the Department of Corrections which physically houses inmates.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations. Whenever the term "functional unit manager" is used in this rule it means functional unit manager or designee.

(6) Intermediate Care Housing (ICH): A mental health special housing unit with a therapeutic environment for mental health step down from a Mental Health Infirmary; a stabilization unit for inmates who cycle in and out of a Mental Health Infirmary.

(7) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(8) Mental Health Infirmary (MHI): A crisis response unit that provides psychiatric care and a therapeutic environment for inmates that require intensive assessment, care, and stabilization.

(9) Mental Health Specialist: Any person who reports to the BHS administrator and has the responsibility for delivery of mental health program services in a facility.

(10) Mental Health Special Housing: A housing assignment separate and apart from the general population, including facilities, rooms, or cells for inmates that are unable to adjust satisfactorily to the general inmate population because of a serious mental illness. Mental health special housing includes a Mental Health Infirmary, Intermediate Care Housing, and Behavioral Health Unit.

(11) Mental Health Special Housing (MHSH) Custody Manager: That person designated by the functional unit manager who is responsible for security in a mental health special housing unit and for making operational decisions in accordance with policy, rule, or procedure. Whenever the term "mental health special housing custody manager" is used in this rule it means the mental health special housing custody manager or designee.

(12) Mental Health Treatment Team: A team that may consist of the unit program manager(s), psychiatrist or nurse practitioner, nurse, mental health specialist, MHSH custody manager, represented custody staff members and other designated staff. The purpose of this group is to:

(a) Assess the mental condition of inmates assigned to a mental health special housing unit,

(b) Establish and update treatment plans for these inmates, and

(c) Coordinate their discharge and mental health follow-up.

(13) Reasonable Grounds: Information that is of such credibility that it would induce a reasonably prudent person to use it in the conduct of their affairs.

(14) Serious Mental Illness: An inmate that, in the judgment of the department, because of a mental disorder is one or more of the following:

(a) Dangerous to self or others;

(b) Unable to provide for basic personal needs and would likely benefit from receiving additional care for the inmate's health or safety;

(c) Chronically mentally ill, as defined in ORS 426.495; or

(d) Will continue, to a reasonable medical probability, to physically or mentally deteriorate so to become a person described in (c) above unless treated.

(15) Special Population Management Committee (SPM): A committee that is composed of at least three department staff to include a representative from institution operations, Behavior Health Services, and the Office of Population Management.

(16) Treating Practitioner: Any Health Services employee who, by licensure, is authorized to prescribe treatment, including but not limited to, physicians, nurse practitioners and physicians assistants.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0010; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0110, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0220
Selection and Training of Staff for Mental Health Special Housing

(1) Selection Criteria: For positions that are solely assigned to mental health special housing:

(a) Custody staff must have successfully completed trial service;

(b) All staff requesting to work in mental health special housing will be reviewed and must receive a satisfactory appraisal by a committee designated the functional unit manager before assignment to the unit. At a minimum, the staff member must meet the following criteria:

(A) Have expressed a constructive interest in working with inmates in mental health special housing;

(B) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(C) Have demonstrated the ability to use good judgment.

(2) Mental health special housing positions will be made by the functional unit manager and will be reviewed as needed.

(3) Mental Health Special Housing Position Rotations: Rotation of staff may occur as it is found to be in the best interest or well being of the employee, or the operation of the unit, upon determination by a committee designated the functional unit manager.

(4) Training of Assigned Personnel: All employees assigned to work in a mental health special housing unit are required to annually complete a minimum number of 12 training hours specific to mental health special housing, in addition to any other department training requirements.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 15-1984, f. & ef. 7-20-84; CD 4-1985 f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 37-1987(Temp), f. & ef. 9-24-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; Suspended by DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0115, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0230
Recommendation and Referral Process to a Mental Health Special Housing Unit

(1) An inmate that, in the judgment of the department, meets one or more of the following conditions because of a mental illness should be considered for assignment to mental health special housing:

(a) A danger to others;

(b) A danger to self (including all inmates who are acutely suicidal);

(c) Unable to care for his/her basic needs;

(d) In an acute phase of mental or emotional disorder; or

(e) Needs a diagnostic evaluation or medication adjustment.

(2) If any staff member thinks an inmate is in need of mental health treatment in mental health special housing, the concerned staff member may submit a recommendation for a mental health evaluation.

(3) A mental health specialist shall complete an evaluation of the inmate within five calendar days.

(4) If the mental health specialist recommends placement, he/she will make the appropriate referral.

(5) Upon completion of the evaluation, the inmate will be assigned to a mental health special housing unit or be returned to his/her former status if assignment to mental health special housing is not needed.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0240
Mental Health Special Housing Assignment

(1) An inmate will be assigned to a mental health special housing unit based on the least restrictive environment that satisfies the needed level of care.

(2) Mental health special housing includes Mental Housing Infirmary, Intermediate Care Housing, and the Behavioral Health Unit. The assignment process varies dependent on the specific unit.

(a) Assignment to a Mental Health Infirmary will be made in accordance with OAR 291-048-0250 to 0260.

(b) Assignment to Intermediate Care Housing will be made in accordance with OAR 291-048-0270

(c) Assignment to a Behavioral Health Unit will be made in accordance with OAR 291-048-0280

(3) Once an inmate has been assigned to a mental health special housing unit, the inmate may be assigned to other mental health special housing units for treatment as deemed necessary or advisable by the mental health treatment team. However, an inmate may only be assigned to a Mental Health Infirmary by order of the treating practitioner.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0250
Voluntary Assignment to a Mental Health Infirmary

(1) An inmate may be voluntarily placed in a Mental Health Infirmary when:

(a) There is a referral from an institution mental health specialist, nurse, or outside mental health contractor; and

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is reasonable likelihood that treatment can be accomplished in a Mental Health Infirmary; and

(d) The inmate consents to admission in writing.

(2) The treating practitioner shall make the final decision whether an inmate is admitted to a Mental Health Infirmary for treatment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0015; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0130, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0260
Involuntary Assignment to a Mental Health Infirmary

(1) Emergency:

(a) An inmate may be involuntarily assigned to a Mental Health Infirmary for evaluation for a period not to exceed five working days by order of the BHS program manager, treating practitioner, or functional unit manager, only upon a finding of reasonable grounds.

(b) The decision to place an inmate in a Mental Health Infirmary will be based on the recommendation of the mental health staff, psychologist, thee Medical Services manager, or available program staff. Other pertinent staff reports may also be considered.

(c) If the inmate is placed in a Mental Health Infirmary on an emergency basis, the functional unit manager shall inform the inmate in writing.

(d) Assessment: Within five working days following assignment to a Mental Health Infirmary, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the treating practitioner in making the assessment:

(A) Existence and type of disorder;

(B) Potential therapeutic effect of a change in environment;

(C) Potential for development of a comprehensive program for treatment of the inmate that is available within a Mental Health Infirmary and is likely to benefit the inmate;

(D) Ability to function in the general population; and

(E) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(e) Upon completion of the assessment and compilation of the inmate's mental health history:

(A) If the mental health treatment team determines the inmate is not in need of the level of care in a Mental Health Infirmary, the inmate will be returned to his/her former status or referred to mental health treatment as appropriate.

(B) If the mental health treatment team determines the inmate is in need of the level of care in a Mental Health Infirmary, an overall treatment plan will be developed with appropriate referral as needed.

(f) The inmate will be given the opportunity to voluntarily admit himself/herself to a Mental Health Infirmary.

(g) If the inmate is unwilling to be voluntarily admitted, the treating practitioner may admit the inmate on an involuntary basis.

(A) The treating practitioner will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(B) The functional unit manager will notify the hearings officer.

(C) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the evaluation.

(2) Non-Emergency:

(a) If an inmate is thought by any staff member to be in need of mental health treatment in a Mental Health Infirmary, the concerned staff member may submit a recommendation for a mental health evaluation as described in OAR 291-048-0230.

(b) If the mental health specialist recommends placement in Mental Health Infirmary, admission consideration will follow as provided in section (1)(d)(A-E) of this rule, with notification to the functional unit manager.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to a Mental Health Infirmary. If the inmate is unwilling to be voluntarily admitted, the treating practitioner may admit the inmate on an involuntary basis.

(A) The treating practitioner will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(B) The functional unit manager will notify the hearings officer.

(C) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the evaluation.

(3) Recommended Length of Stay: In all instances where assignment is recommended, the treating practitioner will include a recommendation for the length of stay in a Mental Health Infirmary, not to exceed 180 days.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-1985; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0020; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0140, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0270
Assignment to Intermediate Care Housing

(1) An inmate may be assigned to Intermediate Care Housing based on a referral from a mental health specialist. An inmate may be referred if:

(a) It is determined at release from an MHI that the inmate requires additional stabilization prior to placement into a less restrictive environment;

(b) It is determined at intake that the inmate does not have the basic coping skills to be placed directly into a less restrictive environment;

(c) It is determined during the inmate's incarceration that he or she will have an increase in symptoms in a less restrictive environment if he or she is not provided a higher level of treatment and support; or

(d) The inmate demonstrates high risk for suicide or frequent self-harm.

(2) An inmate may be placed in Intermediate Care Housing when:

(a) There is a referral from a mental health specialist, nurse, or outside mental health contractor;

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is a reasonable likelihood that treatment can be accomplished in Intermediate Care Housing.

(d) The BHS program manager shall make the final decision whether an inmate is admitted to Intermediate Care Housing for treatment.

(3) Assessment: Within five working days following assignment to Intermediate Care Housing, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the BHS program manager in making the assessment:

(a) Existence and type of disorder;

(b) Potential therapeutic effect of a change in environment;

(c) Potential for development of a comprehensive program for treatment of the inmate that is available within Intermediate Care Housing and is likely to benefit the inmate;

(d) Ability to function in the general population; and

(e) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(4) Upon completion of the assessment and compilation of the inmate's mental health history:

(a) If the mental health treatment team determines the inmate is not in need of the level of care in Intermediate Care Housing, the inmate will be returned to his/her former status or referred to mental health treatment as appropriate.

(b) If the mental health treatment team determines the inmate is in need of the level of care in Intermediate Care Housing, an overall treatment plan will be developed with appropriate referral as needed.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to Intermediate Care Housing.

(d) If the inmate is unwilling to be voluntarily admitted, the BHS program manager may admit the inmate on an involuntary basis.

(A) If the inmate has previously been assigned to a mental health special housing unit on an involuntary basis within the last 180 days, the inmate may be assigned to Intermediate Care Housing without any further action.

(B) If the inmate has not previously been assigned to a mental health special housing unit on an involuntary basis, the BHS program manager will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(C) The functional unit manager will notify the hearings officer.

(D) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the assessment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0280
Assignment to a Behavioral Health Unit

(1) An inmate may be assigned to a Behavioral Health Unit if the inmate has committed violent acts or disruptive behavior and is diagnosed with a serious mental illness. An inmate may be referred if:

(a) The inmate has committed violent or disruptive disciplinary actions in either general housing or special housing units and is placed in temporary disciplinary segregation in accordance with OAR 291-105; or

(b) A hearings officer recommends assignment to a Behavioral Health Unit as a diversion to a disciplinary segregation sanction in accordance with OAR 291-105; or

(c) The inmate is being considered for placement in an Intensive Management Unit in accordance with OAR 291-055 and the Special Population Management (SPM) Committee recommends assignment to a Behavioral Health Unit.

(2) An inmate may be placed in a Behavioral Health Unit when:

(a) There is a referral from a mental health specialist, nurse, or outside mental health contractor;

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is a reasonable likelihood that treatment can be accomplished in a Behavioral Health Unit.

(d) The BHS program manager shall make the final decision whether an inmate is admitted to a Behavioral Health Unit for treatment.

(3) Assessment: Within five working days following assignment to a Behavioral Health Unit, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the BHS program manager in making the assessment:

(a) Existence and type of disorder;

(b) Potential therapeutic effect of a change in environment;

(c) Potential for development of a comprehensive program for treatment of the inmate that is available within a Behavioral Health Unit and is likely to benefit the inmate;

(d) Ability to function in an Intensive Management Unit or disciplinary segregation; and

(e) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(4) Upon completion of the assessment and compilation of the inmate's mental health history:

(a) If the mental health treatment team determines the inmate is not in need of the level of care in a Behavioral Health Unit, the inmate will be returned to his/her former status, assigned to an Intensive Management Unit or assigned to disciplinary segregation.

(b) If the mental health treatment team determines the inmate is in need of the level of care in a Behavioral Health Unit, an overall treatment plan will be developed with appropriate referral as needed.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to a Behavioral Health Unit.

(d) If the inmate is unwilling to be voluntarily admitted, the BHS program manager may admit the inmate on an involuntary basis.

(A) If the inmate has previously been assigned to a mental health special housing unit on an involuntary basis within the last 180 days, the inmate may be assigned to a Behavioral Health Unit without any further action.

(B) If the inmate has not previously been assigned to a mental health special housing unit on an involuntary basis, the BHS program manager will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(C) The functional unit manager will notify the hearings officer.

(D) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the assessment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291-048-0290
Involuntary Assignment to Mental Health Special Housing

(1) Notice of Hearing:

(a) The inmate shall be given written notice of the hearing by the hearings officer not less than 24 hours prior to the hearing.

(b) The notice shall include a statement of the inmate's rights with respect to the hearing.

(2) The hearing shall be conducted by a hearings officer or other person trained in the hearings process, in the event the hearings officer is unavailable.

(3) The hearings officer shall not have participated in any previous way in the assessment process.

(4) The hearings officer may pose questions during the hearing.

(5) Representation:

(a) In all cases, the inmate is entitled to:

(A) Speak in his/her own behalf;

(B) Be present at all stages of the hearing process, except when the hearings officer finds that to have the inmate present would present an immediate threat to facility security or safety of its staff or others. The reason(s) for the finding shall be a part of record.

(b) Assistance by a staff member, inmate, or other person approved by the hearings officer will be ordered for those individuals in cases where it is found that assistance is necessary based upon language barriers or competence and capacity of the inmate.

(6) Investigation: The inmate has a right to request that an investigation be conducted. If an investigation is ordered, a designee of the hearings officer shall conduct the investigation. No person shall serve as an investigator who has participated in any previous way in the process.

(a) An investigation shall be conducted upon the inmate's request if an investigation will assist in the resolution of the proceedings and the information sought is within the ability of the facility to procure or the inmate to provide with his/her own resources.

(b) The hearings officer may order an investigation on his/her own motion.

(c) The hearings officer shall allow the inmate access to the results of the investigation unless disclosure of the investigative results would constitute a threat to the safety and security of the facility, its staff or others.

(7) Witnesses: Inmates have the right to call witnesses to testify before the hearings officer. Witnesses may include inmates, staff, or other persons.

(a) If witnesses will be called, the inmate, prior to the hearing, must develop a list of witnesses and questions to be posed to each witness. The inmate shall bring the list of questions and the list of witnesses to the hearing.

(b) The inmate or his/her representative shall not have the right to cross examine or directly pose questions to any witness.

(c) The hearings officer may exclude a specific inmate or staff witness upon finding that the witness' testimony would not assist in the resolution of the proceeding or presents an immediate undue hazard to facility security or the safety of its staff or others. If a witness is excluded, the reason(s) shall be made a part of the record.

(d) The hearings officer may exclude other persons as witnesses upon finding that their testifying is unduly hazardous to facility security or the safety of its staff or others; not reasonably available; or would not assist in the resolution of the action. The reason(s) for exclusion shall be made a part of the record.

(e) An inmate witness shall have the right to refuse to testify.

(f) Persons other than inmates or staff requested as witnesses shall have the right to refuse to appear or testify.

(g) The hearings officer may, on his/her own motion, call witnesses to testify.

(h) All questions which will assist in the resolution of the proceedings, as determined by the hearings officer, shall be posed. The reason(s) for not posing a question will be made a part of the record.

(8) Documentation/Reports:

(a) Inmates shall have the right to present documents/reports during the hearing.

(b) The reporting staff member, or other agents of the facility who are knowledgeable, may submit documents/reports in advance of the hearing.

(c) The hearings officer may exclude documents/reports, making a finding that such would be unduly hazardous to facility security or the safety of its staff or others, or would not assist in the resolution of the proceeding. The reason(s) for exclusion shall be made a part of the record.

(d) The hearings officer may classify documents/reports as confidential upon making a finding that revealing such would constitute a threat to the safety and security of the facility or violate statutory provisions regarding confidentiality. The reason(s) for classifying documents/reports as confidential shall be made a part of the record.

(9) Postponement:

(a) A hearing may be postponed by the hearings officer for "good cause" and for a reasonable period of time, not to exceed three working days.

(b) "Good cause" includes, but is not limited to:

(A) Illness or unavailability of the inmate;

(B) Gathering of additional evidence; or

(C) Gathering of additional documentation.

(c) The reason(s) for the postponement shall be made a part of the record.

(10) At the conclusion of the hearing, the hearings officer will deliberate and determine whether the information supports placement of the inmate in mental health special housing, taking into account any contrary information submitted by the inmate. The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three working days, for the purpose of reviewing the information.

(a) No Justification: The hearings officer may find that the information does not support placement in mental health special housing, in which case the hearings officer will recommend that the inmate return to his/her former status with all rights and privileges of that status.

(b) Justification: The hearings officer may find the report does support placement in mental health special housing, in which case the hearings officer will so inform the inmate and recommend the inmate be assigned to mental health special housing for a specified period of time as recommended by the treating practitioner and mental health treatment team, not to exceed 180 days.

(11) Hearing Record:

(a) Upon completion of a hearing, the hearings officer shall prepare a hearing record within five days following the conclusion of the hearing.

(b) The record of the formal hearing shall include:

(A) Examination reports;

(B) Notice of hearing and rights;

(C) Recording of hearing;

(D) Supporting material(s); and

(E) "Findings of Fact, Conclusion, and Recommendation" of the hearings officer.

(c) The hearings officer will retain the recording and forward to the Behavior Health Services Administrator items (A), (B), (D), and (E) of this section.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84 CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0025; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0150, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291 048 0300

Administrative Review

(1) The Behavior Health Administrator or designee shall review the results of any hearing held to involuntarily place an inmate in mental health special housing.

(2) The Behavior Health Administrator or designee shall review the Findings of Fact, Conclusion, and Recommendation of the hearings officer to determine whether:

(a) There was substantial compliance with the procedural requirements of these rules;

(b) The recommended decision was based on substantial information; and

(c) The recommended decision was proportionate to the information and consistent with the provisions of the rule.

(3) Within five days of the receipt of the hearings officer's report, the Behavior Health Administrator or designee shall enter an order to:

(a) Affirm the hearings officer's recommended decision;

(b) Modify the hearings officer's recommended decision; or

(c) Reverse the hearings officer's recommended decision.

(4) If the Behavior Health Administrator or designee modifies or reverses the hearings officer's recommended decision, the Behavior Health Administrator or designee must state the reason(s) in writing and promptly notify the inmate, hearings officer, mental health treatment team and functional unit managers of the action and reason.

(5) A copy of the order shall be returned to the hearings officer and the inmate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 4-1988, f. & cert. ef. 3-21-88; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0030; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0160, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291 048 0310

Provision of Basic Services and Programs in Mental Health Special Housing

(1) Mental health special housing shall be under the clinical supervision of the BHS program manager and the operational supervision of the MHSH custody manager.

(2) An inmate in mental health special housing may be given special security housing upon recommendation of the mental health treatment team for a specified period of time, and may not be permitted out of their assigned cell/room except when in actual custody of a custody staff member.

(3) Basic services and programs shall be determined by the mental health treatment team. The manner in which services and programs are provided may differ from the way they are provided to inmates in general population, if providing them in a routine manner would cause an immediate and continuing threat to the security of the facility or the safety of its staff or others.

(4) The mental health treatment team will develop, implement, or modify each individual inmate's treatment. A review of the inmate's treatment plans will occur as clinically indicated.

(a) The plan will have a specific set of objectives to meet in a progression of increasing personal responsibility. The treatment plan must be written, and a copy given to each inmate with whom the treatment plan is developed. A review of treatment plans will occur every 30 days or as clinically indicated.

(b) A treatment plan may include, but is not limited to, a structured daily schedule for that individual inmate different from the unit schedule based on that inmate's individual needs.

(5) Mental health special housing staff may temporarily withhold a basic service previously approved to an inmate in mental health special housing if he/she has sufficient reason to believe the security of the facility, its staff or others is in immediate danger.

(a) The MHSH custody manager shall be informed as soon as is reasonable of any service or program that is withheld.

(b) All such actions directly affecting an inmate's individual treatment must be reported to the BHS program manager by the following work day.

(c) The mental health treatment team must review any basic service or program that is withheld continuously.

(6) Psychiatric treatment or any type of psychotropic drugs administered to an inmate assigned to mental health special housing shall be in accordance with the Department of Corrections rule on Informed Consent to Treatment (OAR 291-064).

(7) All psychotropic medication administered to inmates housed in mental health special housing shall be prescribed by a licensed treating practitioner. All prescribed medication shall be administered by a nurse licensed to administer medication.

(8) Personal Property: Items permitted will, in general, be in accordance with the department's rule on Personal Property (Inmate) (OAR 291-117). Personal property items may be withheld for security and treatment purposes, as determined by the mental health treatment team.

(9) Visits: An inmate in mental health special housing will be permitted visits in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127).

(10) Recreation: An inmate will have an opportunity to participate in an exercise period in accordance with the inmate's individual treatment plan and the operational needs of the unit.

(11) The management of an inmate placed in therapeutic restraints for medical or mental health treatment shall be in accordance with the rule on Therapeutic Restraints (Use of) (OAR 291-071).

(12) Suicide or Crisis:

(a) An inmate assigned to mental health special housing because of suicidal ideation, or attempt, may be placed on suicide precaution as directed by program or custody manager(s) assigned to the unit.

(b) The inmate will maintain this status until the assigned BHS staff determines that the suicide precaution is no longer necessary, in accordance with the Department of Corrections rule on Suicide Prevention in Correctional Facilities (OAR 291-076).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0170, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291 048 0320

Release From Mental Health Special Housing

(1) Upon inmate petition, an inmate assigned to mental health special housing on a voluntary basis will be reassigned to a less restrictive envi-

ronment within five working days, unless the mental health treatment team determines continued treatment at the current level of care is necessary. In such instances, the mental health treatment team shall follow the procedures for involuntary assignment outlined in OAR 291-048-0290.

(2) An inmate assigned involuntarily to mental health special housing will remain so assigned for only the shortest length of time necessary to achieve the purpose(s) for which the assignment was prescribed. The assignment shall not exceed 180 days unless the assignment is renewed in a subsequent administrative hearing as outlined in OAR 291-048-0290.

(3) When an inmate is released from mental health special housing, the mental health treatment team, in collaboration with the Office of Population Management, will determine the appropriate housing assignment; e.g., general population, Intensive Management Unit, disciplinary segregation, administrative housing, etc.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

291 048 0330
Administrative Hold Assignments

(1) The functional unit manager(s) may temporarily assign an inmate to mental health special housing for other than mental health reasons on administrative hold status if he/she determines that the inmate's assignment is necessary or advisable to protect the safety, security, health, good order and discipline of the facility, its staff, visitors or other inmates, or to further other legitimate correctional objectives.

(2) Assignment to mental health special housing on administrative hold status shall not be an admission to the unit. An inmate assigned to mental health special housing on administrative hold status will be subject to all operational policies and procedures while assigned to the unit.

(3) An inmate may be involuntarily assigned to mental health special housing for a period in excess of 30 days in accordance with the notice and hearings process set forth in the department's rule on Administrative Housing (OAR 291-046).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0190, DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11

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Department of Energy
Chapter 330

Rule Caption: Modification of the Business Energy Tax Credit to implement caps and revise processing criteria.
Adm. Order No.: DOE 14-2010
Filed with Sec. of State: 11-23-2010
Certified to be Effective: 11-23-10
Notice Publication Date: 8-1-2010
Rules Adopted: 330-090-0350, 330-090-0450
Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0133, 330-090-0140, 330-090-0150
Rules Repealed: 330-090-0105(T), 330-090-0110(T), 330-090-0120(T), 330-090-0130(T), 330-090-0133(T), 330-090-0140(T), 330-090-0150(T), 330-090-0350(T), 330-090-0450(T)
Subject: These rules implement the provisions of HB 3680 (2010) which went into effect on May 27, 2010. These rules:

(1) Implement the monetary cap for renewable energy facility pre-certifications established in HB 3680.

(2) Create a system to prioritize renewable energy projects based on criteria and factors to consider.

(3) Define renewable energy storage device.

(4) Update eligible cost for wind powered devices above 10MW and electric vehicle manufacturing.

(5) Create deadlines for applications prior to program sunsets revised in HB 3680.

(6) Amend standards used when considering what constitutes a single facility, including phasing, expansions or additions to renewable energy manufacturing facilities.

(7) Clarify when final certifications may be issued for efficient truck technology.

(8) Add clarity to existing policies for applicants.

(9) Update calculations used for determining discounted value of tax credits transferred under ORS 469.206.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-090-0105
What a BETC Is

(1) A Business Energy Tax Credit (BETC) for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource equipment manufacturing facilities and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 but excluding wind facilities with an installed capacity of more than 10 megawatts for which preliminary certification is issued on or after January 1, 2010 are eligible for a tax credit equal to 50 percent of eligible costs. Wind facilities with an installed capacity of more than 10 megawatts, for which preliminary certification is issued on or after January 1, 2010, are eligible for a tax credit equal to 5 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities are eligible for a tax credit of up to $9,000 and qualifying high performance homes are eligible for a tax credit of up to $12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment.

(2) The Oregon Department of Energy (Department) must issue a final certificate pursuant to ORS 469.215 before the credit can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules Chapter 330, Division 90 applies to all BETC applications. These rules apply to all applications pending as of the effective date of these rules and preliminary and final applications received on or after July 1, 2009.

(3) The Department may also apply these rules to applications currently being reviewed by the Department where a final determination is pending or has been made, when the Department finds that its failure to apply the new criteria set forth in these rules may hamper the Department's efforts to reduce the costs of the BETC program.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0110
Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)" is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.

(4) "Applicant": An applicant means:

(a) A person who applies for a preliminary certification of a BETC under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a BETC under this section must be the facility owner listed on the preliminary certification.

(c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act,

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend,

(c) Ethanol (CH3CH2OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007,

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) "E85," a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) "Biomass": An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.

(7) "Building Automation Controls Facility": Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as defined in these rules. Facilities are eligible when energy saving features meet the following requirements and applicable code:

(a) For existing systems within their service life, the following standards apply:

(A) The baseline will be based on the existing system's capabilities in fully functional and operating condition.

(B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).

(b) For systems beyond service life or new buildings, the following standards apply:

(A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.

(B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.

(C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).

(8) "Building Code": Applicable state and local codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.

(9) "Building Envelope": That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

(10) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(11) "Combined Heat and Power (Cogeneration)": Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent BETC. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is FCP = (FI - FD)/ P, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(12) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(13) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(14) "Commuter Parking Space" means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(A) Separate from the lease for the business premises.

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(15) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-090-0150. All questions on the application must be answered. A completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. Except as provided in OAR 330-090-0133, no application for a final certification in which the facility owner has indicated a choice to transfer

the tax credit under ORS 469.206 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.

(16) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.

(17) "Component Parts of Electric Vehicles": means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this definition, "conventional vehicle" is a production vehicle that is powered with an internal combustion engine, excluding hybrids.

(18) "Cooperative Agreement Organization": The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the qualifications of the organization and subject to conditions specified in the agreement.

(19) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee's or contractor's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC review charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;

(G) Expenses related to training, education or other related expenses;

(H) Expenses that are directly or indirectly offset with federal grants or fee waivers. Final certified costs will be reduced dollar for dollar by any federal grant amount received in connection with the facility; or

(I) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features. Cost may be limited to incremental cost for conservation applications for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

(A) In commercial new construction, it is the difference between building to code, or standard practice if this exceeds code, and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a more than one to 15-year simple payback period unless otherwise specified in these rules. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of $/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:

(i) Up to and including 30 kW is $7.50/watt.

(ii) More than 30 kW, but less than 200 kW, is -0.01 X (system size in kW) + 7.8.

(iii) 200 kW or more is $5.80/watt.

(E) Costs for a facility, or portion thereof, that has previously received a BETC.

(F) Costs to replace the same baseline facility more than once.

(i) The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.

(G) For solar thermal (ST) systems,

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula: MEC = SOC x Number of modules x Solar Thermal Rate. Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft2-day) test data using the following equation: SOC=0.1(Category A)+0.2(Category B)+ 0.3(Category C)+0.4(Category D).

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:

(I) For a system size of less than 100KBtu/day, the rate is $220/KBtu/day

(II) For a system size that is 100 KBtu/day or greater, but less than 250 KBtu/day, the rate is $210/KBtu/day

(III) For a system size greater than 250 KBtu/day, the rate is $200/KBtu/day.

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.

(g) Costs for space conditioning or individual metering of a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be limited to the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.

(j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.

(k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in Table 1.

[ED. NOTE: Table reference is available from the agency.]

(L) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the BETC may not exceed certified costs.

(20) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department's website.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Energy Department": The Department of Energy.

(23) "Energy Facility": is defined in ORS 469.185 (5).

(24) "Facility": is defined in ORS 469.185 (6) and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following BETC program requirements:

(A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.

(B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in these rules, of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(e) For a solar photovoltaic facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) Facility must be permitted and in compliance with all applicable building and electrical codes.

(B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All facility components must be new (modules, inverter, batteries, mounting hardware).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include all building code required signage and a customer manual.

(F) A customer manual must contain the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.

(II) Facility site plan that indicates array and inverter location.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(ii) Warranties and installation documentation

(I) Minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for PV modules and inverter

(III) Permit documentation

(iii) Manuals and data sheets

(I) Bill of material listing all primary facility components including part numbers

(II) Inverter owner's manual

(III) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.

(G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.

(H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.

(I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).

(J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.

(K) The solar array must be used exclusively for business purposes. The applicant must supply a recent utility billing statement and a power purchase or net metering agreement, with a local utility in the name of the business. If the system is being placed on a rental dwelling, a signed rental agreement must be provided and the property must remain a rental property for at least five years. Arrays erected at a location that includes a residence that is not a rental dwelling, must be separately metered from the residence to qualify for a BETC.

(L) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a BETC.

(f) For a solar thermal facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.

(B) All equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All primary facility components must be new (collectors, tanks, controls, pumps).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include a customer manual containing the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed, including a valve chart.

(II) Facility site plan that indicates the location of collectors and storage tank.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(V) Permit documentation.

(ii) Warranties and installation documentation, including:

(I) A minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.

(III) Permit documentation.

(iii) Manuals and data sheets, including:

(I) Bill of material listing all primary facility components, including part numbers

(II) Facility controller owner's manual

(III) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.

(F) Facility is sized appropriately for the load. The solar savings faction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.

(G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.

(H) All solar storage tanks must be insulated with not less than R15 insulation.

(I) The following standards are for pipe insulation:

(i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.

(ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.

(J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.

(K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.

(L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 KBtu/day. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.

(M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F.

(N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OMSC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.

(O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.

(P) Pressurized storage tanks must not be allowed to be heated above 180°F.

(g) A facility does not include:

(A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as a rental dwelling or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.

(B) A renewable energy system or device, other than a homebuilder installed renewable energy facility or high performance home facility, that is placed on or at a residence, except for those used exclusively as a rental dwelling, for the purpose of supplying energy to the residence.

(C) Swimming pools and hot tubs used to store heat.

(D) Wood stoves.

(E) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC rules.

(F) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(G) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(H) Devices or materials which are standard practice.

(I) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(J) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(K) Other items the Director finds are not allowed under ORS 469.185 to 469.225.

(25) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(26) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(27) "Facility Owner": An applicant who purchases and owns a qualified facility.

(28) "Facility Start" prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:

(a) A non-refundable deposit will be placed on the facility equipment;

(b) A purchase order will be placed for the equipment;

(c) A contract for the design of the facility will be executed;

(d) A document that obligates the applicant to proceed with a facility will be executed; or

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility. or

(f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50 percent of Design Document for the facility are complete, or prior to receiving building permits for the facility. or

(g) For a renewable energy facility, the applicant shall not be considered to have started erection, construction, installation or acquisition of a proposed facility until excavation or actual physical construction of the renewable energy facility has begun. Eligible costs include all costs as defined in these rules, including costs incurred prior to the receipt by the department of the preliminary certification application related to site and facility development and approval. Applicants who start a facility prior to issuance of preliminary certification shall not be eligible to reapply.

(29) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(30) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(31) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative ener-

gy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent BETC.

(32) "High Efficiency Combined Heat and Power" (Cogeneration): means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent BETC. The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is FCP = (FI - FD)/ P, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(33) "High Performance Home": Meets the criteria in ORS 469.185(8) and 469.197 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:

(a) Shall be certified through the ENERGY STAR® Homes Northwest program.

(b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;

(c) Meet the criteria established for a high-performance home under ORS 469.197

(d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:

(A) Ceilings: U≤0.030

(B) Walls: above grade U≤0.050

(C) Walls: below grade U≤0.060

(D) Floors: above grade U≤0.025

(E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal — heated slab also requires R-10 foam board under slab.

(F) Windows and glass doors: U≤0.32 (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.

(G) Glazing area: glazing to floor area ratio ≤ 16 percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and < 18 percent for homes 1,500 square feet of conditioned space floor area and smaller.

(H) Shell tightness: 5.0 ACH50 Pa confirmed by blower door test

(e) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.

(f) Space conditioning equipment shall meet one of the following requirements:

(i) Two-stage gas or propane furnace, minimum AFUE 0.92

(ii) Gas or propane boiler, minimum AFUE 0.88

(iii) Central AC SEER ≥ 14 (if installed)

(iv) Ducted heat pump ≥ HSPF 8.5, air source, and ground source COP ≥ 3.0

(v) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in affect at the time the preliminary application is issued.

(g) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.

(h) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.

(i) Includes at least one of the following measures:

(A) Obtain certification through a Green Building program recognized by the Department.

(B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be > 50 percent at 32ºF and the EUI shall be <1.5 Watts/cfm.

(C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.

(j) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.

(a) Shell measures shall be a combination of assemblies that together have a total U x A no higher than a base case home described in section (C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).

(b) Mechanical facilities will be evaluated for comparable annual energy use.

(k) Shall be a detached single-family dwelling unit or a single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

(34) "Homebuilder Installed Renewable Energy Facility" is defined in ORS 469.185(9). The amount of the tax credit for homebuilder-installed renewable energy facilities shall be capped at $9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:

(a) Photovoltaic: The credit amount is based on $3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the BETC application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.

(b) Solar domestic water heating: The credit amount is equal to $0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(c) Active solar space heating: The credit amount is equal to $0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(d) Passive solar: The credit amount is equal to $600 per home plus $0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the Residential Energy Tax Credit or demonstrated with whole building energy modeling and certified by a professional engineer.

(e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to $0.60 per kWh saved.

(f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to $0.60 per kWh saved. Facilities must be connected

to home's main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.

(35) "HVAC Equipment": Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent BETC.

(a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to application of a different distribution system (e.g.: radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:

(A) Air source heat pumps: 8.5 HSPF

(B) Water source heat pumps: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(2)

(C) Air Conditioning: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(1)

(36) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a BETC.

(37) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(38) "Lease Contract": A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

(39) Lighting Facility": An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility. For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled, how.

(40) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(41) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(42) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(43) "Necessary Feature": A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statues or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted under the definition of "Recycling Facility" in ORS 469.185(11); or

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.

(44) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140. This is also referred to as the "pass-through rate."

(45) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(46) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

(47) "Pass-through Partner": A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(48) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(49) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department's Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department's Premium Efficient Commercial Appliances Directory.

(50) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(51) "Qualified Transit Pass Contract": is defined in ORS 469.185(10).

(52) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.

(53) "Recycling Facility": is defined in ORS 469.185(11)

(54) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(55) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(56) "Renewable Energy Resource": is defined in ORS 469.185(12).

(57) "Renewable Energy Resource Facility": means an energy facility used in the processing utilization, or storage of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(58) "Renewable Energy Resource Equipment Manufacturing Facility": means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy in these rules.

(59) "Renewable Energy Storage Device": A facility that enables the storage of energy derived from Renewable Energy Resources as defined in ORS 469.185(12). To qualify as a renewable energy storage device a facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship must be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. A Renewable Energy Storage Device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources.

(60) "Rental Dwelling": means any property that meets the requirements of the state building codes and contains a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

(61) "Rental Weatherization": means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a BETC, an applicant must meet requirements (a) through (c):

(a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling. Eligible second measures include one of the following:

(A) Adding floor insulation to R-21,

(B) Attic/ceiling/roof insulation to R-38 or cavity fill,

(C) Wall insulation to R-13 or cavity fill,

(D) Replacing exterior doors to R-5,

(E) Duct sealing and testing by a contractor certified by the Residential Energy Tax Credit program, or

(F) An applicant can demonstrate that the measures (A) through (E) above have already been completed by providing an energy audit from the Energy Trust of Oregon or the applicant's utility, if unavailable the Department may approve another type of energy audit.

(b) Prior to being eligible to receive a BETC for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed. An applicant shall provide appropriate documentation, such as an energy audit as described above in section (a)(F), to verify standard weatherization measures.

(c) For purposes of meeting the requirements of ORS 469.207, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:

(A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;

(C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;

(D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation and sealing of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows;

(H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher);

(I) Programmable thermostats; or

(J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program.

(d) If an applicant undertakes envelope measures, the following requirements apply:

(A) Replacement windows must have a U-value of 0.30 or less for residences.

(B) U-values must be 10 percent better (lower) than code requirements for commercial.

(C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.

(62) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (f):

(a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. BETC RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at $20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and $10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than $2 million annually in eligible costs for innovative travel reduction programs;

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment; or

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent BETC; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility may include:

(A) Engineering, design and administrative costs

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(C) The following costs related to demonstration model(s) may be considered eligible:

(i) Materials for the demonstration model(s).

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(iii) Testing and monitoring the demonstration model(s).

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110(19)(f).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a BETC when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

(63) "Residential Dwelling": means a structure or the part of a structure that meets the requirements of the state building codes and is used as a permanent home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A BETC may not be claimed for a renewable energy facility located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling.

(64) "Residential Energy Tax Credit Qualifying Equipment": means equipment that qualifies under the standards and rules for the Residential Energy Tax Credit from the Department. The equipment is eligible for the BETC in either of the two following methods:

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-090-0105using operating schedules, capacity, efficiency and cost information to prove qualification; or

(b) The facility, made up of qualifying equipment may also effectively qualify what would otherwise be an eligible Residential Energy Tax Credit facility through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list) ÷ 0.35 = BETC eligible cost.

(65) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(66) "Service Life": Equipment service life is as established in the 2007 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project cost based on the remaining service life of the equipment. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(67) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(68) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(69) "Substantial Energy Savings": Means that the Department has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building practices facility as defined under "Sustainable Building Practices Facility" of this rule; or

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(70) "Sustainable Building Practices Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC™ , LEED-CS™ , or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).

(b) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.

(c) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net of renewable generation credits, can never be less than that required for a Silver rating.

(71) "Transportation District": A transportation district included in ORS 184.675(7).

(72) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of $800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger.

The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any farebox contributions from eligible costs.

(j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(k) Vanpool Program is defined as a facility that is an employer-sponsored or organization sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(L) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.

(A)The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.

(A) Eligible projects must meet the following requirements:

(i) Retrofit a truck or add to a newly manufactured truck one or more USEPA SmartWay efficiency measures. With a newly manufactured truck, a new trailer with one or more SmartWay efficiency measures may also be included with this project. The new trailer and newly manufactured truck must independently qualify for tax credits; and

(ii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:

(I) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial "YC" plate from the Oregon Motor Carrier Transportation Division (MCTD); or

(II) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned "YA" plate from the Oregon MCTD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:

(II-a) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle's annual mileage that was driven in Oregon.

(II-b) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.

(B) Applicants that can document that 15 to 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit equal to 35 percent of 71.5 percent of the facility's otherwise eligible certified costs.

(C) Applicants that can document that more than 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility's eligible certified costs.

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.

(E) The facility's simple payback period must be between more than one and fifteen years.

(73) "Transportation Provider": is defined in ORS 469.185(16).

(74) "Transportation Services Contract": is defined in ORS 469.185(17).

(75) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(76) "Vanpool Program": means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(77) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(78) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(79) "Wind Facility": means a facility that converts wind power into another energy resource.

(80) "Year": Calendar year.

[ED. NOTE: Tables & publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0120

Preliminary Certificate Application Requirements for a BETC

(1) Eligible facilities

(a) The Department may issue only one BETC for each separate and distinct facility under these rules. The following facilities, as further defined in these rules, are eligible for a BETC: An energy facility, recycling facility, rental dwelling weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a home-builder-installed renewable energy system, a renewable energy resource equipment manufacturing facility or a research development and demonstration facility that complies with these rules.

(b) A proposed facility must meet applicable codes and standards, must include a warranty and must be serviceable locally.

(2) Required information

(a) Persons requesting a BETC shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469.205, the applicant shall provide the following information:

(A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.

(B) The applicant's federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.

(C) Proposed facility construction and operational start and finish dates. A facility's start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a down-payment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.

(D) The proposed facility location within the geographical confines of Oregon or in the case of an alternate fuel vehicle demonstrated intent that the vehicle will be titled in the State of Oregon.

(E) Information demonstrating that the proposed facility will comply with or have a variance from the land use laws of the city or county where the facility will be located;

(F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws, including but not limited to the following:

(i) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Proof of permits, licenses, or exemptions from DWR and the FERC must be submitted to the Department before a facility is eligible to receive final certification. Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power and Conservation Council's Fish and Wildlife Program.

(ii) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(iii) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.

(H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to, where appropriate, the amount and type of jobs potentially created or eliminated in the construction, installation and operation of the facility in Oregon, the benefits of the facility with regard to overall economic activity in this state, the amount of projected energy saved, generated or transmitted and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. Except that, as a condition of the preliminary and final certificate, the following facilities must remain in operation for one year: Tele-working equipment, transit passes, transportation services, incentive programs, car-share programs and individualized travel behavior change programs, and van-pool programs. If an applicant expects that a facility not listed in this subsection will operate less than five years, the applicant may submit a request for approval of the shorter operating period as part of their application for preliminary certification. This request shall include information describing the proposed facility and supporting the proposed operating period. The Director will determine whether to approve the shorter operating period and may include conditions, reductions or other limits on any potential tax credits.

(I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.

(J) If the application is for a Renewable Energy Resource Equipment Manufacturing Facility, information that demonstrates that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. An applicant shall provide sufficient information relating to the specific characteristics of the equipment, machinery or other products that demonstrate how such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes. In the case of a facility manufacturing Electric Vehicles under the all-terrain-vehicles standards, an applicant shall provide information that demonstrates that the vehicles will be used for agricultural, commercial, industrial or governmental purposes.

(K) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469.185 shall provide all information required as part of the tiered priority system under OAR 330-090-0350.

(b) The Department may request additional information from the applicant in order to determine whether multiple applications have been made for the same facility. The department will make its determination based on the following:

(A) All applications under consideration will be reviewed against other current applications, facilities that have received preliminary certification and facilities that have received final certification within the past 12 months. Further review shall be given to applications which:

(i) when combined exceed the annual limit for a tax credit found in ORS 469.200.

(ii) are individually below the threshold for one year tax credit found in ORS 315.354, but if combined exceed this threshold; or

(iii) when combined, result in assessment within a different category or tier, or against different criteria or cost allowances.

(B) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469.185 will be determined to be a single facility, despite the number of applications, owners or construction phases, if three or more of the following apply:

(i) The facility is located on one or more adjacent parcels of land or parcels;

(ii) The facility has been recognized in a license or permit as a single facility by a federal, state, county, city or local authority including, but not limited to siting council, state or local boards or commissions, or the facility has obtained or applied for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;

(iii) When the facility is designed to generate energy, the construction of the facility is performed under the same contract with a general contractor licensed under ORS 701 or multiple contracts entered into within one year of each other with one or more general contractors licensed under ORS 701. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as an eligible facility and that each phase of the facility is not interdependent in purpose or the manner in which it will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be determined to be one facility for the purposes of these rules;

(iv) The facility owners have entered into or expect to enter into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;

(v) The generating equipment for the facility and the related facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;

(vi) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or

(vii) Other factors or considerations which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.

(C) Applications for renewable energy resource equipment manufacturing facilities will be considered a single facility unless each phase of development or each expansion of or addition to existing facilities or production lines can be demonstrated to meet, through increased production and number of jobs created, the requirements of ORS 469.197 (4) and these rules.

(D) Applications other than those described in subsections (B) and (C) will be considered a single facility if three or more of the following apply:

(i) shared ownership of facilities,

(ii) shared location of facilities,

(iii) project permits are issued to a common entity or at the same time or

(iv) a shared contract to construct the facilities.

(c) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or acquisition of the proposed facility, its expected operational life, and its simple payback as defined in ORS Chapter 469 and these rules.

(d) Information demonstrating anticipated substantial energy savings or a description of products that will result from the facility and how those products will result in substantial energy savings.

(e) For a proposed renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site. Facilities must have a Total Solar Resource Fraction of at Least 75 percent.

(B) For a wind energy facility:

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or

(ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

(iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or

(iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(v) In the event that estimated wind resource data are used as described under section (iii) and (iv) above, the project owner shall provide to the Department not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data at wind energy facility's site.

(vi) Proposed equipment must meet the following:

(1) Each proposed model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or

(2) Proof that the proposed wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect on April 30, 2010; or

(3) The proposed manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).

(vii) The Department reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented, lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generation.

(C) For a geothermal energy facility (except a heat pump system): A plot of well temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of actual or predicted average monthly stream flows. If flows are predicted, describe the method used to predict flows.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy requirements for a period of a minimum of five years.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 grams per hour for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(f) The payment required by OAR 330-090-0150(3).

(g) For proposed alternative fuel vehicle facilities: proof that the proposed vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(h) For proposed alternative fuel vehicle facilities: the proposed number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(i) For proposed alternative fuel fueling station facilities: a description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(j) For proposed transportation facilities: required documentation for each category specified under the definition of "Transportation Facility" in these rules.

(k) For a proposed waste-to-energy renewable energy resource facility that meets the definition of waste stream includes the anticipated percentage of waste stream product to be recovered and a remediation plan for anticipated emissions and byproducts.

(L) For a proposed renewable energy resource equipment manufacturing facility:

(A) The applicant shall demonstrate that they can meet ORS 469.197(4)(c) through (f) by:

(i) Describing the minimum level of direct employment that will be provided by the facility during each of the tax years in which the tax credit will be claimed and by describing the anticipated average annual direct employment during each of those years, including the number of average hourly and annual wages of employees by employment classifications by geographic location. The applicant must also describe actions it will take to achieve cultural diversity in its work force.

(ii) Demonstrating its financial ability to construct and operate the proposed facility through documentation such as independent credit ratings; credit references, including letters from banks or other financial institutions attesting to the applicant's credit worthiness; and other documentation demonstrating the applicant's financial viability.

(iii) Demonstrating that the facility will achieve long-term operation and success by documenting the qualifications, capabilities and experience of the applicant in the construction and operation of such facilities, the long-term commercial and technical viability of the renewable energy resources manufacturing equipment and the renewable energy resource facilities for which the equipment is produced.

(iv) Certifying that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.

(v) Before the Director will approve a final certification for a renewable energy resource equipment manufacturing facility, the Department may require the applicant to enter into a performance agreement or other similar agreement for the facility. Failure to comply with the terms of the performance agreement or other similar agreement may be the basis for denial or revocation of the final certification pursuant to OAR 330-090-0133.

(B) Any other information necessary to find that a proposed facility complies with ORS 469.185 to 469.225 and these rules.

(C) In considering such applications, the Director may consult with other state agencies.

(D) The Director must find that:

(i) The applicant has demonstrated that it has a reasonable likelihood of achieving the minimum level of employment proposed and that such employment will contribute to public benefit, based on the number of average hourly and annual wages of employees including benefits by employment classifications by geographic location, and actions to achieve cultural diversity in its workforce.

(ii) The applicant has a reasonable likelihood of being financially viable based on its credit ratings and references from banks and financial institutions attesting to its credit worthiness.

(iii) The applicant has the organizational expertise as demonstrated by qualifications and experience to construct and operate the proposed facility.

(iv) The renewable energy resource equipment and the renewable energy resource facilities for which the equipment is produced have the

commercial and technical viability to have a reasonable likelihood to achieve long-term success.

(v) The facility will contribute to a diversified portfolio of renewable energy resource equipment manufacturing facilities.

(vi) The applicant has certified that allowance of the tax credit is integral to the decision to expand or locate in Oregon.

(3) Standards When Reconstructing a Facility: If a facility is reconstructed and an application for preliminary certification is filed seeking a tax credit on the reconstructed facility, any tax credit certified for the reconstructed facility will be reduced by the amount of the original tax credit remaining for the original facility.

(4) Eligible Costs of a Renewable Energy Resource Equipment Manufacturing Facility:

(a) A BETC may be granted based on the eligible costs of a facility that is used to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.

(b) Subject to the facility cost limitations of OAR 330-090-0150(1)(a) and the provisions of OAR 330-090-0120(4), eligible costs for a renewable energy resource equipment manufacturing facility include any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.

(A) Eligible costs do not include any costs of any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-090-0150 (1)(a) if such costs would exceed that cost limitation.

(B) Eligible costs do not include costs of a facility that is used to manufacture equipment, machinery or other products not used exclusively for renewable energy resource facilities.

(C) An application for a renewable energy resource equipment manufacturing facility must demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.

(5) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0130

How the Oregon Department of Energy Processes a BETC Application

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department. Applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources as defined under ORS 469.185, must be submitted under the tiered priority system described in OAR 330-090-0350 and include any additional requirements under this section.

(c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director.

(e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

(2) Pre-Approval of Preliminary Certifications: The Director has pre-approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:

(a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file for a preliminary certification to present documentation supporting different determinations for review and approval.

(b) Pre-qualified hybrid-electric vehicles.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) Renewable Energy Resource Equipment Manufacturing Facility: If under the provisions of ORS 469.200(2), the Director intends to certify less than the total or no amount of eligible costs of a renewable energy resource equipment manufacturing facility, the Director will notify the applicant in writing of that intent before approving the preliminary certification. The applicant will have 30 calendar days from the date notification was issued to inform the Director in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application. If the Director has not received notification or additional information in support of the application within that period of time, the Director

may certify less than the total or no amount of eligible costs of the renewable energy resource equipment manufacturing facility. Once eligible costs are certified and a preliminary certification is issued under this section, the certified eligible costs may be revised if conditions under ORS 469.200(2) change or upon notification from the applicant or other information indicating that the scope of the project or the energy facility has changed in such a way to impact the preliminary certificate.

(5) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and 330-090-0130(5)(b).

(b) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(6) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section

(a) A facility, other than a renewable energy resource equipment manufacturing facility, is not completed and a complete final certification application received before 1,095 days (3 years) after the preliminary certification was issued or a further 730 days (2 years) if an extension has been approved. A renewable energy equipment manufacturing facility is not completed and a complete final certification application received before 1,825 days (5 years) after the preliminary certification was issued.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(d) Any other reason allowed by the amendments to ORS 469.210 (3) in Oregon Laws, 2010, Chapter 76, Section 11.

(7) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.

(c) Preliminary certifications issued for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469.185, shall not be eligible for consideration of amendments other than those listed below in (A) through (C). An eligible amendment cannot change the tier within which the application was reviewed.

(A) Equipment capacity within 10 percent of the approved specification;

(B) Amendments to the facility that do not result in an increased potential tax credit amount, but increase output or otherwise improve the facility; or

(C) Changes in ownership.

(d) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

(8) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(9) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-though Option Application form supplied by the Department.

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner provides evidence to the Department that the owner has received the pass-through payment in full.

(10) Extension of Preliminary Certification: Applicants, other than for renewable resource manufacturing facilities, who have not previously extended their certification and whose preliminary certification is anticipated to expire prior to completion of the facility may apply for an extension of an additional two years from the current expiry of the preliminary certification.

(a) Applicants must submit a written request to the department, accompanied by the appropriate fee, describing the progress made in developing the facility since the department issued the preliminary certification and verifying that the project will be developed in accordance with the initial approval, within two years from the current end of the preliminary certification and prior to the sunset date of the program. The request shall include the new proposed facility completion date. Requests may be made no earlier than 6 months prior to the expiration of the existing preliminary certification.

(b) If an applicant wishes to make changes other than to the completion date, the applicant must submit a request for amendment as described in ORS 330-090-0130(7).

(c) If a request or original application does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director the department will provide the applicant a written notice specifying the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no extension will be made to the preliminary certification expiration date.

(d) The department will review the previously approved application against current statute and rules. Within 60 days after the department receives the extension request, the Director will decide if the request complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the extension and provide written reasons for the denial.

(11) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules.

(a) An application for final certification must include:

(A) Evidence to demonstrate that:

(i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469 and the rules adopted thereunder;

(ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and

(iii) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than $50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required under these rules unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an

applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or

(ii) If the facility costs are $50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.

(C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.

(D) Proof the facility is completed and operating.

(E) If the facility is leased or rented, a copy of the lease or rental agreement.

(F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and

(H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate

(I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0133
How ODOE Processes a Final Application

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469.220 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.

(A) When a facility owner chooses to transfer the tax credit under ORS 469.206, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department. Any application in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 is not a "completed application" until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in ORS 469.220.

(B) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.

(C) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469.206, if the Department has not received a completed application that includes the signed pass-through partner agreement form at least sixty days prior to the sunset date for the BETC program provided under ORS 315.357. The Final Certificate will be issued to a facility owner if the only piece causing the application for final certification to be incomplete is the pass-through partner(s) agreement form.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification. Prior to the program sunset, the Director will process a complete final certification application received by April 30, 2012. The Director does not guarantee that a complete final certification application received after April 30, 2012 will be processed prior to the program sunset.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of eligible certified costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.

(2) Basis for Denying Tax Credit Benefits

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469.215(4).

(d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469 and the rules adopted thereunder.

(3) Basis for Revoking Tax Credit Benefits

(a) The Director may revoke certificates as provided in ORS 469.225 and 315.354(5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

(A) The facility has been moved;

(B) Title to the facility has been conveyed;

(C) The facility is subject to or part of a bankruptcy proceeding;

(D) The facility is not operating; or

(E) The term of a leased facility has ended.

(c) Pursuant to ORS 469.225, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(e) For a facility other than a renewable energy resource equipment manufacturing facility, the revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(f) For a renewable energy resource equipment manufacturing facility, revocation of the certificate due to misrepresentation, fraud or failure to construct or operate the facility in compliance with the certificate results in the loss of all prior and future tax credits. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(4) Sale or Disposition of the Facility after Final Certification:

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the BETC for the facility has already been transferred under ORS 468.206.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-090-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469.205 or 469.215 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0140

Pass-through Option Facilities

(1) A pass-through Partner may purchase a BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass through payment is calculated based on the formulas below:

(a) For original preliminary certifications issued on or after January 1, 2010:

(A) For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579. Tax Credit/1.3579

(B) For a one year tax credit the net present value is determined by taking the tax credit amount divided by 1.0309. Tax Credit/1.0309

(b) For original preliminary certifications issued on or before December 31, 2009:

(A) 50percent BETC more than $20,000 in eligible costs — 33.5 percent pass-through rate.

(B) 50percent BETC $20,000 or less in eligible costs — 43.5 percent pass-through rate.

(C) 35percent BETC more than $20,000 in eligible costs — 25.5 percent pass-through rate.

(D) 35percent BETC $20,000 or less in eligible costs — 30.5 percent pass-through rate.

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits — 87 percent of tax credit amount.

(c) If an applicant elects to use the pass through option, the net present value of the credit (the pass through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.

(2) An Investor-Owned Utility may choose to become a utility Pass-through Partner under the provisions of this section or participate as a Pass-through Partner under other Provisions of these rules that would apply to any other Pass-through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise the application has been denied.

(D) The application for preliminary certification of the pass-through must include a detailed work plan. The applicant and ODOE must mutually agree upon the work plan and program. The detailed work plan must include:

(i) A copy or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered,

(ii) A not to exceed estimate of the total eligible costs that will be incurred for that calendar year with an estimate of the number of rental dwellings that will be affected, and

(iii) An agreement that upon submitting the complete final certification application the applicant will provide a detailed description of each facility owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(11) of these rules.

(A) An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies, not to exceed the total eligible costs multiplied by the existing net present value of the tax credit for the pass-through payment as defined in OAR 330-090-0140(1).

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i). A sample selected by the Department of individual weatherization location audit reports will be submitted for at least 15 percent of the facility sites.

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If costs associated with an individual rental dwelling are $50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(B) Within 60 days after a complete final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0133(5). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to $5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv);

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment must be a percentage of the cost-effective portion of the energy conservation measures as approved by the Oregon Public Utility Commission, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; including the net present value of the tax credit for the pass through payment as defined in OAR 330-090-0170(1) for the EMCs at that specific site address the IOU may claim; or

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the net present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 1-2010, f. & cert. ef. 1-8-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0150
Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) $20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility, not including wind facilities with an installed capacity of more than 10 megawatts;

(B) $7 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2010.

(C) $5 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2011.

(D) $3 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification on or after January 1, 2012.

(E) $40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility, not including those used to manufacture electric vehicles;

(F) $2.5 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles;

(G) $10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home BETC subject to subsection (b).

(b) A final certification for a BETC will not be issued for more than 50 percent of the cost not to exceed $9,000 for a homebuilder-installed renewable energy facility or $12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: This section does not apply to applications subject to the tiered priority system under OAR 330-090-0350. If under OAR 330-090-0130, the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to the Department, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification.

(A) Applicants within tier two or three of the tiered priority system under OAR 330-090-0350 shall include with their initial application a payment to the department of $500 for the costs of step one. Applicants who are notified that their application is approved for step two will be required to submit an additional fee as calculated under (B) prior to review.

(B) For all facilities except Sustainable Building Facilities, renewable energy resource equipment manufacturing facilities, or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost, or $30 whichever is greater. The maximum payment amount is $35,000.

(C) For renewable energy resource equipment manufacturing facility applications the payment will be 0.0060 multiplied by the facility eligible cost not to exceed a payment amount of $75,000.

(D) For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules.

(E) For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification application was received by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of a application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) Requests for amendments or changes to a preliminary certification must be accompanied by a payment. The payment is the lesser of $300 or the preliminary certification application fee for the project. If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (3)(a) of this rule.

(d) Requests for extension of a preliminary certification under ORS 469.205 must be accompanied by a payment. The payment is the lesser of $300 or the preliminary certification application fee for the project.

(e) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(f) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130, except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-

14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0350
Tiered Prioritization System for Renewable Facilities

(1) Applicability: The tiered priority system applies to applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources, as defined under ORS 469.185.

(2) Process: The department will issue a BETC Opportunity Announcement (OA) detailing the availability of potential tax credits for renewable facilities, the criteria to be applied in selecting facilities for allocation of available potential credits, and soliciting applications within a set time period. Applications will be reviewed within tiers, differentiated by facility cost. The process and level of review differ between tiers as specified in these rules and the OA. The requirements for issuance of preliminary and final certifications within these rules will apply to all applications allocated potential tax credits through the tiered priority system.

(a) Tier one application acceptance and review will be completed on an ongoing basis subject to the tax credit limitations published by the department. Complete applications will be processed in the order they were received and may be rejected once the department has received applications totaling all available credits for this tier.

(b) Tier two application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards, which will include criteria that will ensure those that advance are complete and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional non-refundable fee.

(D) Step three: Technical review of proposed facilities will be completed, allocations of potential tax credits confirmed and announced, and preliminary certifications issued.

(c) Tier three application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards specified within the OA to include ensuring those that advance are complete, and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional fee.

(D) Step three: Technical review of proposed facilities will be completed and allocations of potential tax credits confirmed prior to the issuance of a preliminary certification. If the department determines that it does not have the appropriate resources available to conduct the review, the department may notify the applicant that the department intends to use a third party to conduct the technical review. If a third party is used, the applicant will be required to submit payment to the department approved third party for the review.

(3) Tier Boundaries:

(a) Tier one shall consist of applications with projected facility cost less than $500,000.

(b) Tier two shall consist of applications with projected facility cost equal to or greater than $500,000 but less than $6,000,000.

(c) Tier three shall consist of applications with projected facility cost equal to or greater than $6,000,000.

(d) For the purposes of determining tier assignment, facility cost shall not be limited as defined in ORS 469.200.

(e) Applicants may apply for less than the maximum eligible potential tax credit for their project, this shall not change the tier within which the application is reviewed.

(4) Allocation of tax credits between tiers and application periods

(a) The department shall announce the allocation of potential tax credits. The OA will specify the distribution of funding for the appropriate tiers and the amount allocated to the current application period. The department will continually monitor the rate of allocation of potential tax credits to ensure the total amount of potential tax credits does not exceed the limits provided in Oregon Laws, 2010, Chapter 76, Section 2.

(b) If no applications are received within an application period for any tier, the allocated potential tax credits for that period and tier will be reallocated by the department. If the total request from all complete applications received for a period and tier is less than the allocated potential tax credits, the department will review all applications to determine that they meet any applicable standards prior to allocating potential tax credits, and reallocating remaining potential tax credits. If allocated potential tax credits remain but are insufficient to satisfy the request of the next applicant, the Director may offer a reduced tax credit amount or reallocate the remaining potential tax credits.

(c) Potential tax credit amounts that are not allocated to a facility at the end of a limitation period specified in Oregon Laws, 2010, Chapter 76, Section 5 will expire.

(5) Application acceptance periods

(a) Tier one applications will be accepted at any time prior to the sunset, while allocated funds are available.

(b) Tier two and three applications will only be accepted during an application acceptance period specified in an OA. Applications for tier two and three received outside of an application acceptance period will not be accepted.

(6) Criteria. The department will announce specific standards and criteria that will be considered in determining eligibility in the OA. In addition to the criteria listed in Oregon Laws, 2010, Chapter 76, Section 6, criteria for tiered two and three potential tax credits may include:

(a) The completeness of the application and whether it was received within the time period specified in the OA;

(b) The appropriate application payment;

(c) The time frame in which actual construction will be started and completed and the ability to meet all regulatory requirements including program deadlines;

(d) Criteria established in statute or rules that apply to the BETC program;

(e) The simple payback period;

(f) The number of jobs created;

(g) Whether the renewable activities were aligned with conservation activities;

(h) The financing structure of the facility;

(i) The reliability of power created;

(j) Whether the facility is combined heat and power or co-gen system;

(k) If the applicant is a public body, whether a competitive bidding process was utilized;

(L) Nationally recognized standards or practices for the specified technology; and

(m) Any other factors listed in the OA.

(7) Incomplete applications

(a) The department will determine if an application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules, standards and criteria in the OA, rules or otherwise adopted by the Director.

(b) For tier one the department will provide a written notice to applicants that the application is incomplete, specifying the information needed to make the application complete. Applicants will be allowed 30 days from the time of notification by the department to provide specified information. The application expires if the applicant does not supply the information within 30 days.

(c) Incomplete applications for tier two or three will not be accepted for the current OA. Applicants may reapply and resubmit their application during the next OA.

(8) Prioritization within tiers

(a) Applications within tier one are not be subject to prioritization, but will be required to meet listed standards and other requirements of the BETC program. If the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the allocation for tier one, the Director will allocate potential tax credits in the order in which complete applications are received.

(b) Applications within tiers two and three will be ranked within each tier against required criteria specified within the OA in effect at the time of

application acceptance, and must meet the requirements of the OA and the BETC program.

(9) Allocation of potential tax credits within tiers:

(a) Potential tax credits available within an application period will be allocated to applications in order of the priority established under section (8) and as determined by the procedure in the OA. Applicants may be offered less potential tax credit than requested in their application.

(b) For tiers two and three, applicants will have 10 business days to respond in writing to the department's written notification of the offer of preliminary certification. Applicants who do not respond during this period will be considered to have rejected the offer of the preliminary certification. If an applicant does not accept an allocation, the potential tax credits may be issued to other applications within the period or to future periods or tiers. Upon written acceptance from the applicant, the department will issue a preliminary certification under ORS 469.205.

(10) Applications allocated potential tax credits: Applicants who are issued a preliminary certification under this section must follow all department procedures and obtain final certification prior to issuance of tax credits. Allocation of potential tax credits through the issuance of a preliminary certification does not guarantee issuance of final certification.

(11) Applications not issued preliminary certification: Applications reviewed under this section and not allocated potential tax credits will be notified by the department. Applicants may make application for the same facility within a future application period but will not be eligible to carry-forward applications or fees.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.
Hist.: DOE 14-2010, f. & cert. ef. 11-23-10

330-090-0450
Prioritization System for Renewable Resource Equipment Manufacturing Facilities

Applications in excess of Biennial limits: In the event that the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in Oregon Laws, 2010, Chapter 76, the Director shall allocate the potential tax credits according to the order in which the applications are received.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.
Hist.: DOE 14-2010, f. & cert. ef. 11-23-10

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Rule Caption: Establishes procedures, criteria and fees for the implementation of the EEAST Loan Program Pilots.
Adm. Order No.: DOE 15-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 12-15-10
Notice Publication Date: 11-1-2010
Rules Adopted: 330-112-0000, 330-112-0010, 330-112-0020, 330-112-0030, 330-112-0040, 330-112-0050, 330-112-0060, 330-112-0070, 330-112-0080, 330-112-0090, 330-112-0100
Rules Repealed: 330-112-0000(T), 330-112-0010(T), 330-112-0020(T), 330-112-0030(T), 330-112-0040(T), 330-112-0050(T), 330-112-0060(T), 330-112-0070(T), 330-112-0080(T), 330-112-0090(T), 330-112-0100(T)
Subject: These rules carry out provisions of ORS Chapter 470 as they pertain to the administration by the Oregon Department of Energy of the Energy Efficiency and Sustainable technology Act of 2009. Oregon Administrative Rules, chapter 330, division 112 sets out the rules governing the department's energy efficiency and sustainable loan program. The purpose of the program is to provide financing for energy efficiency upgrades of residential and commercial buildings in the State of Oregon.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-112-0000
Purpose and Objectives

These rules carry out provisions of ORS Chapter 470 as they pertain to the administration by the Oregon Department of Energy of the Energy Efficiency and Sustainable Technology Act of 2009. Oregon Administrative Rule, chapter 330, division 112 sets out the rules governing the department's energy efficiency and sustainable technology loan program. The purpose of the program is to provide financing for energy efficiency upgrades of residential and commercial buildings in the State of Oregon.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0010
Definitions

As used in ORS Chapter 470 and in Oregon Administrative Rule, Chapter 330, Division 112, the following terms have the definitions set forth below unless the context requires otherwise:

(1) "Act" means ORS 470.500 through 470.715.

(2) "Base efficiency package" has the meaning given that term in ORS 470.050(3).

(3) "Contractor" is defined in ORS 701.119.4.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the director of the Oregon Department of Energy.

(6) "Eligible entities" means those parties that meet with the general provisions of ORS 470.060.

(7) "Energy savings projection" is defined in ORS470.050 (13).

(8) "Estimated economic benefit" means the amount by which the average estimated monthly energy savings of a project exceed the project repayment costs.

(9) "Financial Manager" is a financial manager as described in ORS 470.590

(10) "Measure" means the building shell and energy efficiency equipment improvements via materials and products that reduce energy use by an existing building.

(11) "Nontraditional technology" means technology applicable to renewable energy sources (such as, biomass, geothermal, solar, wave, and wind), smart grid, and alternative fuels.

(12) "Optional package" has the meaning given that term in ORS 470.050(21).

(13) "PPFA" means the Public Purpose Fund Administrator as defined in ORS 470.050(23).

(14) "Program", "EEAST" or "EEAST program" means the energy efficiency and sustainable technology loan program.

(15) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.

(16) "Sustainable energy project manager" means a sustainable energy project manager as defined in ORS 470.050 (30).

(17) "Property" means the property benefited by a project.

(18) "Territory" or "sustainable energy territory" means the geographic service area that a sustainable energy project manager serves.

(19) "Useful life" means the number of years that a project or project component will likely function without major repair or replacement.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0020
Sustainable Energy Project Managers

(1) The PPFA shall be the sustainable energy project manager for the investor-owned electric utility service territory, and shall be the acting sustainable energy project manager in any other territory that is not served by an existing sustainable energy project manager. The PPFA and consumer-owned utilities are not subject to the requirements of this section.

(2) Entities may apply to be the sustainable energy project manager for a territory: where the 5-year term of the sustainable energy project manager for that territory is within 1 year of expiry; or where the PPFA is the acting sustainable energy project manager.

(3) Each entity applying to be a sustainable energy project manager shall submit to the director the following:

(a) Completed application on a form approved by the director,

(b) Proof of its status as a city, county, metropolitan service district, local government, nonprofit, for-profit, tribal or state entity;

(c) Boundaries that are consistent with the parameters established in ORS 330-112-0030 for the sustainable energy territory of the proposed sustainable energy project manager;

(d) A proposed business plan that demonstrates how the entity will provide the following services for the program within the proposed sustainable energy territory:

(A) Promotion and outreach;

(B) Technical support;

(C) Financial support including loan applicant support;

(D) Project installation verification;

(E) Monitoring of program effectiveness of energy efficiency and sustainable technology loans;

(F) Cooperation and coordination of outreach and promotional efforts with local utilities and other stakeholders;

(G) Coordination with gas utilities regarding any changes to a gas pipeline or the installation of appliances used for space heating, water heating and compressed natural gas refueling;

(H) Coordination with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure;

(I) Referral of applicants with household incomes that may qualify them for a weatherization program to the Housing and Community Services Department;

(J) Reporting of information on a monthly basis regarding:

(i) The total amount of energy efficiency and sustainable technology loans issued;

(ii) The types of projects being funded by the loans;

(iii) The characteristics of the loan recipients; and

(iv) The number of applications denied, and the reasons for denial;

(K)Maintenance of records that document the receipt and disbursement of funds provided through the program;

(L) Maintenance of records that document both approved and denied applications for loans; and

(M) Development of the underwriting criteria used to determine loan eligibility.

(e) A detailed breakdown of the cost of implementation of its business plan, in particular the elements of its business plan listed in OAR 330-112-0020(3) (d) (A) through (D); and

(f) Background information about the applicant including, but not limited to, the qualifications, relevant experience, financial status and staff of the applicant.

(4) When reviewing an applicant, the director may consider:

(a) The organizational experience of the applicant and the capacity of the applicant to successfully implement the energy efficiency and sustainable technology loan program goals and requirements; (b) The strength of the applicant's proposed plan for implementing the goals and requirements of the energy efficiency and sustainable technology loan program;

(c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services necessary to implement the energy efficiency and sustainable technology loan program;

(d) Any fiduciary or other obligation of the applicant that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program; and

(e) The approval of the utility or utilities within whose service territory the applicant is requesting certification.

(5) The director may negotiate any feature of the applicant's proposed plan, or place such conditions on the certification, as necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program.

(6) The director will notify an applicant in writing within no more than 90 days from the day the completed application was received as to whether or not the applicant is awarded the sustainable energy project manager position.

(7) The Department may request verification that a sustainable energy project manager continues to meet the required qualifications and provide the required services at any time.

(8) The director may terminate the certification of a sustainable energy project manager for:

(a) Failure to adequately implement an applicable energy efficiency and sustainable technology loan program plan;

(b) Noncompliance with the regulatory requirements established in OAR 330-112 or the statutory requirements of the energy efficiency and sustainable technology loan program established in the Act;

(c) Failure to meet any sustainable energy project manager criteria established by the director; or

(d) Failure to perform other certification conditions. If the director terminates the certification of a sustainable energy project manager, the PPFA shall become acting sustainable energy project manager.

(9) The Department shall monitor reports to determine compliance with program requirements, monitor fiscal patterns and chart program progress. The Department may conduct a review of a sustainable energy project manager, and this may include, but not be limited to, a review of:

(a) Financial records of the sustainable energy project manager;

(b) Loan files;

(c) Work completed by the sustainable energy project manager, including training and technical assistance provided;

(d) Post-installation inspections conducted by the sustainable energy project manager.

(10) Pilot program sustainable energy project managers in consumer-owned utility service areas shall provide information to the director, in a form approved by the director, to meet the requirements of the Energy Efficiency and Sustainable Technology Act of 2009.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0030
Sustainable EnergyTerritories

(1) The boundaries for sustainable energy territories shall comply with ORS 470.530(3) (a), (b), and (c) and ORS 470.555

(2) Territory boundaries may be set by the director as necessary to accomplish the goals of the program.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0040
Form of Loan Assistance

(1) The Department may make loans to eligible entities under the terms of written commitments.

(2) Loans shall be made with proceeds from bonds issued pursuant to ORS 470.610 or other available funds obtained by the Department. The Department may establish such fees, charges, premiums, interest rates, and repayment terms, as the Department considers appropriate or necessary to provide sufficient funds to:

(a) Pay for the cost of borrowing through bond issuance; and

(b) Carry out the EEAST program; Further, the Department may include in the loan documentation such covenants, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided, and such other provisions as the Department considers appropriate or necessary, to provide sufficient safeguards to protect the financial interest of the state.

(3) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the program's goals as defined in ORS 470.500.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0050
Loan Evaluation, Processing and Collection

(1) Projects and EEAST loans may be processed through a sustainable energy project manager. The PPFA and consumer-owned utilities that participate in the EEAST program will be the initial sustainable energy project managers within their territories.

(2) The Department may make loans to entities that will use the funds to provide EEAST loans.

(3) The Department or sustainable energy project manager will review all applications of eligible entities. An applicant shall submit such documentation as the Department or sustainable energy project manager may require to determine whether a loan should be approved. If any items requested by the Department or sustainable energy project manager are not received within fourteen days from the date of the request, the loan application may be denied. If a loan application is denied and an applicant chooses to re-apply, the applicant must submit a new application and again pay any applicable fees and charges.

(4) The Director or sustainable energy project manager may deny a loan to any applicant that restricts membership, sales, or services on the basis of any of the protected classes listed in ORS 659A.003.

(5) The final maturity of a loan shall not exceed the lesser of (a) 20 years from the date of its making, and (b) the dollar-weighted average of the useful life of the project components.

(6) The director may limit the term and amount of any loan. The director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds and the Department.

(7) All EEAST loans made by the Department or sustainable energy project managers shall comply with the requirements of ORS 470.060; 470.065; 470.070; 470.080; 470.090; 470.100; 470.120; 470.150; 470.155;

470.170; 470.190; 470.200; and 470.210, to the extent not contrary to the requirements of the Act.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0060
Certification Standards for Contractors

These standards apply to contractors participating in the construction of projects financed through the program, but not including home energy savings projections. Contractors must obtain certification under ORS 701.119 from the Construction Contractors Board to participate. To obtain certification the contractor must:

(1) Prove that the contractor has sufficient skill to ensure that the contractor can successfully install energy efficiency, renewable energy or weatherization projects with a high degree of quality and customer satisfaction, such skills to be demonstrated by one of the following:

(a) Oregon Home Performance certified through the ENERGY STAR Building Performance Institute (BPI);

(b) Residential Energy Analyst Program (REAP) certified through the Oregon Energy Coordinators Association; or

(c) Completion by its employees of training based on the curriculum developed by an accredited organization to meet the United States Department of Energy standards and any additional specifications and standards designated by the Department and PPFA.

(2) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.

(3) Be an equal opportunity employer or small business or be a minority or women business enterprise or disadvantaged business enterprise as those terms are defined in ORS 200.005.

(4) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(5) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.

(6) Demonstrate a history of compliance with federal and state wage and hour laws.

(7) Pay wages to employees used for projects at a rate equal to at least 180 percent of the state minimum wage.

(8) Pay wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed. Certified contractors that provide the Department proof that they provide employees with health insurance benefits shall be identified as preferred service providers by the Department. This information must be provided annually on the anniversary of certification by the Construction Contractors Board.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0070
Standards for Contractors during Pilot Programs

Contractors without certification may work on projects under pilot programs if no certified contractor is available, and the PPFA or sustainable energy project manager has approved the contractor. The contractor must pay wages to employees used for pilot projects at a rate equal to at least 180 percent of the state minimum wage or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0080
Energy Savings Projections

Proposed measures shall be ranked in order of energy cost savings per dollar of measure cost before incentives, with less effective measures including in their energy savings calculations any reductions in energy use available from more effective measures. The estimated costs and energy savings calculations for each measure in the energy savings projections shall clearly and separately note all eligible rebates, tax credits or other incentives for the measure.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0090
Base Efficiency Package and Optional Packages Content

(1) The base efficiency package and any recommended optional packages for a property shall be compiled from the results of an energy savings projection as defined in ORS 470.050 (3); 470.050 (13)].

(2) All energy savings projection evaluations shall meet with the provisions of ORS 470.635

(3) A package that does not during its useful life produce anticipated energy savings of at least 25 percent of the cost of the package is not eligible for a loan under this program; but this restriction does not apply to non-traditional technologies approved by the Department.

(4) The base efficiency package for a residential dwelling served by a single meter shall include an insulation package in accordance with installation standards to at least the following, as applicable:

(a) Building Envelope

(A) Attic/Ceiling: insulate to R-38;

(B) Floor: if currently R-11 or less, insulate to R-30 or full cavity thickness;

(C) Wall: if currently R-4 or less, insulate to R-11 or fill wall cavity; and

(D) Air Leakage: whole-house air sealing measures in accordance with installation standards.

(5) Any measure identified in an energy savings projection that produces energy savings equal to 95 percent or more of the loan payment amount for that measure may also be included in the base efficiency package if there are sufficient loan offset grant funds available to offset measure costs to the point where energy savings and loan costs for the base efficiency package are equal.

(6) All base efficiency package measures, if any, shall be included in the project before a project may include any optional packages.

(7) Optional package measures may be added to a project in order of energy savings per dollar of measure cost. More efficient measures must be included in a project before less efficient measures can be considered.

(8) If determined necessary by the Department, the Department may conduct a review of a project completed and financed under these rules to ensure the installation meets all of the requirements under these rules and the project manager.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

330-112-0100
Fees

Project Initiation Fee The department hereby establishes the project initiation fee for all EEAST loans at three percent of the application loan amount.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 15-2010, f. & cert. ef. 12-15-10

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Department of Environmental Quality
Chapter 340

Rule Caption: Revisions to DEQ Regional Haze BART Rules for the PGE Boardman Power Plant.
Adm. Order No.: DEQ 14-2010
Filed with Sec. of State: 12-10-2010
Certified to be Effective: 12-10-10
Notice Publication Date: 9-1-2010
Rules Adopted: 340-223-0060, 340-223-0070, 340-223-0080
Rules Amended: 340-200-0040, 340-223-0010, 340-223-0020, 340-223-0030, 340-223-0040, 340-223-0050
Subject: The federal regional haze rule requires states to adopt plans to improve visibility in 156 Class I areas across the country. Plans must address Best Available Retrofit Technology (BART) standards for certain older industrial facilities built before 1977 by evaluating whether they cause significant visibility impacts in wilderness areas and national parks (Class I areas). If they do, the states must require new pollution controls to be installed within five years.

DEQ's current rules, adopted in 2009, included new BART requirements for the PGE Boardman Coal-Fired Power Plant. In

April 2010, PGE asked DEQ to adopt less stringent emission limits based on a 2020 closure date. DEQ instead proposed three options with emission limits that would apply if PGE chose to close the plant in 2015, 2018, 2020 or 2040 or later. The comment period for that rule proposal closed on October 1. In late October, PGE proposed a new approach that would require the Boardman facility to meet increasingly stringent emission limits, close no later than Dec. 31 2020 and eliminate existing rules that allow the plant to operate indefinitely. DEQ re-opened the public comment period until November 15, 2010, to take public comments on this proposal.

On December 10, 2010, the Environmental Quality Commission adopted revised BART rules for the PGE Boardman plant which included the stringent emission limits, permanent closure by 2020, and repealing of the 2009 rules, subject to EPA approval.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the **federal Clean Air Act, 42 U.S.C.A 7401 to 7671q**.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 9, 2010.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of **40 CFR 51.102** (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0010

Purpose

OAR 340-223-0020 through 340-223-0080 establish requirements for certain sources emitting air pollutants that reduce visibility and contribute to regional haze in Class I areas, for the purpose of implementing Best Available Retrofit Technology (BART) requirements and other requirements associated with the federal Regional Haze Rules in 40 CFR § 51.308, as in effect on December 9, 2010.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "BART-eligible source" means any source determined by the Department to meet the criteria for a BART-eligible source established in Appendix Y to 40 CFR Part 51, "Guidelines for BART Determinations Under the Regional Haze Rule", and in accordance with the federal Regional Haze Rules under 40 CFR § 51.308(e), as in effect on December 9, 2010.

(2) "Best Available Retrofit Technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source or unit, the remaining useful life of the source or unit, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(3) "Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

Deciview haze index=10ln(bext/10 Mm-1)

Where bext= the atmospheric light extinction coefficient, expressed in inverse megameters (Mm-1).

(4) "Dry sorbent injection pollution control system" means a pollution control system that reduces sulfur dioxide emissions by combining a dry alkaline reagent directly with the boiler exhaust gas stream to enable the reagent to adsorb sulfur dioxide and be collected by the existing electrostatic precipitator.

(5) "Subject to BART" means a BART-eligible source that based on air quality dispersion modeling causes visibility impairment equal to or greater than 0.5 deciview in any Class I area, at the 98th percentile for both a three-year period and one-year period.

(6) "Ultra-low sulfur coal" means coal that contains no more than 0.25 lb sulfur/mmBtu heat input on average.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0030

BART Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106)

(1) Emissions limits:

(a) Between July 1, 2011 and December 31, 2020, nitrogen oxide emissions must not exceed 0.23 lb/mmBtu heat input as a 30-day rolling average, provided that:

(A) If the source submitted a complete application for construction and/or operation of pollution control equipment to satisfy the emissions limit in subsection (1)(a) at least eight months prior to the compliance date of July 1, 2011, and the Department has not approved or denied the application by the compliance date, the compliance date is extended until the Department approves or disapproves the application, but may not be extended to a date more than five years from the date that the United States Environmental Protection Agency approves a revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR 340-223-0030; and

(B) If it is demonstrated by December 31, 2011 that the emissions limit in subsection (1)(a) cannot be achieved with combustion controls, the Department by order may grant an extension of compliance to July 1, 2013.

(b) Except as provided in section (3) below:

(A) Between July 1, 2014 and June 30, 2018, sulfur dioxide emissions must not exceed 0.40 lb/mmBtu heat input as a 30-day rolling average; and

(B) Between July 1, 2018 and December 31, 2020, sulfur dioxide emissions must not exceed 0.30 lb/mmBtu heat input as a 30-day rolling average.

(c) Between July 1, 2014 and December 31, 2020, particulate matter emissions must not exceed 0.040 lb/mmBtu heat input as determined by compliance source testing.

(d) During periods of startup and shutdown, the following emissions limits apply instead of the limits in subsections (a) through (c):

(A) Sulfur dioxide emissions must not exceed 1.20 lb/mmBtu, as a 3-hour rolling average;

(B) Nitrogen oxide emissions must not exceed 0.70 lb/mmBtu, as a 3-hour rolling average; and

(C) Particulate matter emissions must be minimized to extent practicable pursuant to approved startup and shutdown procedures in accordance with OAR 340-214-0310.

(e) The Foster-Wheeler boiler at the source must permanently cease burning coal by no later than December 31, 2020. Notwithstanding the definition of netting basis in OAR 340-200-0020, and the process for reducing plant site emission limits in OAR 340-222-0043, the netting basis and PSELs for the boiler are reduced to zero upon the date on which the boiler permanently ceases burning coal, and prior to that date the netting basis and PSELs for the boiler apply only to physical changes or changes in the method of operation of the source for the purpose of complying with emission limits applicable to the boiler.

(2) Studies to evaluate compliance with the sulfur dioxide emissions limits in paragraphs (1)(b)(A)-(B), and the potential side effects of compliance with those limits, if required by section (3), must be completed as follows:

(a) A plan to evaluate the sulfur dioxide emissions limit in paragraph (1)(b)(A) must be submitted for Department approval by July 1, 2011, and the results of the evaluation must be submitted to the Department by July 1, 2013;

(b) A plan to evaluate the sulfur dioxide emissions limit in paragraph (1)(b)(B) must be submitted for Department approval by July 1, 2015, and the results of the evaluation must be submitted to the Department by July 1, 2017; and

(c) Each study pursuant to this section (2) must:

(A) Evaluate whether a dry sorbent injection pollution control system is technically infeasible, will prevent compliance with mercury emissions limits under OAR 340-228-0606, or cause a significant air quality impact (as that term is defined in OAR 340-200-0020) for PM10 or PM2.5;

(B) Evaluate a range of commercially available sorbent materials that could be used in a dry sorbent injection pollution control system to reduce sulfur dioxide emissions;

(C) Evaluate the potential for significant air quality impacts for PM10 or PM2.5 as follows:

(i) Perform modeling consistent with the requirements of OAR 340-225-0050(1) with screening meteorological data containing conservative meteorological assumptions; or

(ii) If modeling with screening meteorological data pursuant to subparagraph (i) demonstrates that significant air quality impacts for PM10 or PM2.5 will occur, perform modeling with site specific meteorological data obtained from the installation of a meteorological monitoring station, including one year of monitoring data for each study. The meteorological monitoring station must be installed, certified, operated and maintained, and the output of the meteorological monitoring station must be recorded, in accordance with a plan approved by the Department;

(D) Evaluate the use of other sulfur dioxide pollution control systems of equal or lower cost as a dry sorbent injection pollution control system, including but not limited to the use of ultra-low sulfur coal, if the study demonstrates that the use of a dry sorbent injection pollution control system is technically infeasible, will prevent compliance with mercury emissions limits under OAR 340-228-0606, or will cause a significant air quality impact (as that term is defined in OAR 340-200-0020) for PM10 or PM2.5; and

(E) If applicable, propose an emissions limit for sulfur dioxide based on a 30-day rolling average that exceeds the limits listed in paragraphs (1)(b)(A)-(B), based upon the reduction of sulfur dioxide emissions to the maximum extent feasible through the use of a dry sorbent injection pollution control system or another sulfur dioxide pollution control system of equal or lower cost, including but not limited to the use of ultra-low sulfur coal, provided that the emissions limit may not exceed 0.55 lb/mmBtu heat input as a 30-day rolling average.

(3) Between July 1, 2014 and December 31, 2020, sulfur dioxide emissions may exceed the limit listed in paragraph (1)(b)(A) or (B), or both, if:

(a) Studies have been submitted pursuant to section (2);

(b) Compliance with the applicable emissions limit or limits would:

(A) Be technically infeasible;

(B) Prevent compliance with mercury emissions limits under OAR 340-228-0606; or

(C) Cause a significant air quality impact, as that term is defined in OAR 340-200-0020, for PM10 or PM2.5;

(c) Sulfur dioxide emissions are otherwise reduced to the maximum extent feasible as described in subsection (2)(c); and

(d) The source's Oregon Title V Operating Permit is modified to include a federally enforceable permit limit reflecting the requirements of subsection (2)(c), prior to the compliance date for the sulfur dioxide emissions limit in paragraph (1)(b)(A) or (B) that will be exceeded; provided that if the source's Oregon Title V Operating Permit has not been modified prior to the applicable compliance date, sulfur dioxide emissions may exceed the emissions limit in paragraph (1)(b)(A) or (B) if the source submitted a complete application to modify its Oregon Title V Operating Permit at least eight months prior to the applicable compliance date and sulfur dioxide emissions do not exceed the emissions limit proposed in its application (which may not exceed 0.55 lb/mmBtu heat input as a 30-day rolling average).

(4) Compliance demonstration. Using the procedures specified in section (5) of this rule:

(a) Compliance with a 30-day rolling average limit must be demonstrated within 180 days of the compliance date specified in section (1) of this rule; and

(b) Compliance with any 30-day rolling average limit for sulfur dioxide that may be established pursuant to subsection (3)(c) must be demonstrated within 180 days of the compliance date for the limit in paragraph (1)(b)(A) or (B) that is superseded by the emissions limit established pursuant to subsection (3)(c).

(5) Compliance Monitoring and Testing.

(a) Compliance with the emissions limits in subsections (1)(a), (b) and (d)(A)-(B), and with any emissions limit for sulfur dioxide that may be established pursuant to subsection (3)(c), must be determined with a continuous emissions monitoring system (CEMS) installed, operated, calibrated, and maintained in accordance with the acid rain monitoring requirements in 40 CFR Part 75 as in effect on December 9, 2010.

(A) The hourly emissions rate in terms of lb/mmBtu heat input must be recorded each operating hour, including periods of startup and shutdown.

(B) The daily average emissions rate must be determined for each boiler operating day using the hourly emissions rates recorded in (A), excluding periods of startup and shutdown.

(C) 30-day rolling averages must be determined using all daily average emissions rates recorded in (B) whether or not the days are consecutive.

(D) The daily average emission rate is calculated for any calendar day in which the boiler combusts any fuel. An operating hour means a clock hour during which the boiler combusts any fuel, either for part of the hour or for the entire hour.

(b) Compliance with the particulate matter emissions limit in subsection (1)(c) must be determined by EPA Methods 5 and 19 as in effect on December 9, 2010.

(A) An initial particulate matter source test must be conducted by January 1, 2015.

(B) Subsequent tests must be conducted in accordance with a schedule specified in the source's Oregon Title V Operating Permit, but not less than once every 5 years.

(C) All testing must be performed in accordance with the Department's Source Sampling Manual as in effect on December 9, 2010.

(6) Notifications and Reports.

(a) The Department must be notified in writing within 7 days after any control equipment (including combustion controls) used to comply with emissions limits in section (1), and with any emissions limit for sulfur dioxide that may be established pursuant to subsection (3)(c), begins operation.

(b) For nitrogen oxide and sulfur dioxide emissions limits in section (1) based on a 30-day rolling average, a compliance status report, including CEMS data, must be submitted within 180 days of the compliance dates specified in section (1).

(c) For any sulfur dioxide emissions limit that may be established pursuant to subsection (3)(c), a compliance status report, including CEMS data, must be submitted within 180 days of the compliance date for the limit in paragraph (1)(b)(A) or (B) that is superseded by the emissions limit established pursuant to subsection (3)(c).

(d) For particulate matter, a compliance status report, including a source test report, must be submitted within 60 days of completing the initial compliance test and all subsequent tests as specified in subsection (5)(b).

(e) The Department must be notified in writing within 7 days of the date upon which the boiler permanently ceases burning coal.

(7) The following provisions of this rule constitute BART requirements for the Foster-Wheeler Boiler: subsection (1)(a), paragraph (1)(b)(A), subsections (1)(c)-(e), (2)(a) and (2)(c), and sections (3)-(6).

(8) The following provisions of this rule constitute additional requirements pursuant to the federal Regional Haze Rules under **40 CFR § 51.308(e)** for the Foster-Wheeler Boiler: paragraph (1)(b)(B), subsections (2)(b) and (2)(c), and sections (3)-(6).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0040

Federally Enforceable Permit Limits

(1) A BART-eligible source that would be subject to BART may accept a federally enforceable permit limit or limits that reduces the source's emissions and prevents the source from being subject to BART.

(2) Any BART-eligible source that accepts a federally enforceable permit limit or limits as described in section (1) to prevent the source from being subject to BART, and that subsequently proposes to terminate its federally enforceable permit limit or limits, and that as a result will increase its emissions and become subject to BART, must submit a BART analysis to the Department and install BART as determined by the Department prior to terminating the federally enforceable permit limit or limits.

(3) The Foster-Wheeler boiler at The Amalgamated Sugar Company plant in Nyssa, Oregon (Title V permit number 23-0002) is a BART-eligible source, and air quality dispersion modeling demonstrates that it would be subject to BART while operating. However, it is not operating as of December 9, 2010, and therefore is not subject to BART. Prior to resuming operation, the owner or operator of the source must either:

(a) Submit a BART analysis and install BART as determined by the Department by no later than five years from the date that the United States Environmental Protection Agency approves a revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR chapter 340, division 223, or before resuming operation, whichever is later; or

(b) Obtain and comply with a federally enforceable permit limit or limits assuring that the source's emissions will not cause the source to be subject to BART.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0050

Alternative Regional Haze Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106)

(1) The owner and operator of the Foster-Wheeler boiler at the Boardman coal-fired power plant may elect to comply with OAR 340-223-0060 and 340-223-0070, or with 340-223-0080, in lieu of complying with OAR 340-223-0030, if the owner or operator provides written notification to the Director by no later than July 1, 2014. The written notification must identify which rule of the two alternatives the owner or operator has chosen to comply with. The owner or operator may not change its chosen method of compliance after July 1, 2014.

(2) Compliance with OAR 340-223-0080 in lieu of complying with OAR 340-223-0030 is allowed only if the Foster-Wheeler boiler at the Boardman coal-fired power plant permanently ceases to burn coal within five years of the approval by the United States Environmental Protection Agency (EPA) of the revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR chapter 340, division 223. If the boiler has not permanently ceased burning coal by that date, the owner and operator shall be liable for violating OAR 340-223-0030 for each day beginning July 1, 2014 on which the owner or operator did not comply with OAR 340-223-0030. This liability shall include, but is not limited to, civil penalties pursuant to OAR chapter 340, division 12, which includes penalties for the economic benefit of operating the facility without the required pollution controls.

(3) If, by December 31, 2011, the EPA fails to approve a revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR 340-223-0030 (concerning BART requirements based upon permanently ceasing the burning of coal in the Foster-Wheeler Boiler by December 31, 2020), or OAR 340-223-0060 and 340-223-0070, then the compliance date of July 1, 2014 in 340-223-0060(2)(b) and (c) (sulfur dioxide and particulate matter emissions limits) is delayed until three years from the date of EPA approval.

(4) Notwithstanding sections (1) and (3), if the EPA approves a revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR 340-223-0030 (concerning BART requirements based upon permanently ceasing the burning of coal in the Foster-Wheeler Boiler by December 31, 2020), then OAR 340-223-0060 and 340-223-0070 are repealed, compliance with 340-223-0060 and 340-223-0070 in lieu of complying with 340-223-0030 is no longer an alternative, and compliance with OAR 340-223-0030 or 340-223-0080 is required.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0060

Alternative BART Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106) Based Upon Operation Until 2040 or Beyond

(1) Subject to OAR 340-223-0050, the owner or operator of the Foster-Wheeler boiler at the Boardman coal-fired power plant may elect to comply with this rule and 340-223-0070 in lieu of compliance with OAR 340-223-0030.

(2) Emissions limits:

(a) On and after July 1, 2011, nitrogen oxide emissions must not exceed 0.28 lb/mmBtu heat input as a 30-day rolling average and 0.23 lb/mmBtu heat input as a 12-month rolling average.

(A) If it is demonstrated by July 1, 2012 that the emissions limits in (a) cannot be achieved with combustion controls, the Department may grant an extension of compliance to July 1, 2014.

(B) If an extension is granted, on and after July 1, 2014 the nitrogen oxide emissions must not exceed 0.19 lb/mm Btu heat input as a 30-day rolling average, and the emissions limits of 0.28 lb/mmBtu heat input as a 30-day rolling average and 0.23 lb/mmBtu heat input as a 12-month rolling average no longer apply.

(b) On and after July 1, 2014, sulfur dioxide emissions must not exceed 0.12 lb/mmBtu heat input as a 30-day rolling average.

(c) On and after July 1, 2014, particulate matter emissions must not exceed 0.012 lb/mmBtu heat input as determined by compliance source testing.

(d) During periods of startup and shutdown, the following emissions limits apply instead of the limits in subsections (2)(a) through (c):

(A) Sulfur dioxide emissions must not exceed 1.20 lb/mmBtu, as a 3-hour rolling average;

(B) Nitrogen oxide emissions must not exceed 0.70 lb/mmBtu, as a 3-hour rolling average; and

(C) Particulate matter emissions must be minimized to extent practicable pursuant to approved startup and shutdown procedures in accordance with OAR 340-214-0310.

(3) Compliance demonstration. Using the procedures specified in section (4) of this rule:

(a) Compliance with a 30-day rolling average limit must be demonstrated within 180 days of the compliance date specified in section (2) of this rule.

(b) Compliance with a 12-month rolling average must be demonstrated within 12 months of the compliance date specified in section (2) of this rule.

(4) Compliance Monitoring and Testing.

(a) Compliance with the emissions limits in (2)(a), (b) and (d)(A)-(B) must be determined with a continuous emissions monitoring system (CEMS) installed, operated, calibrated, and maintained in accordance with the acid rain monitoring requirements in 40 CFR Part 75 as in effect on December 9, 2010.

(A) The hourly emissions rate in terms of lb/mmBtu heat input must be recorded each operating hour, including periods of startup and shutdown.

(B) The daily average emissions rate must be determined for each boiler operating day using the hourly emissions rates recorded in (A), excluding periods of startup and shutdown.

(C) 30-day rolling averages must be determined using all daily average emissions rates recorded in (B) whether or not the days are consecutive.

(D) 12-month rolling averages must be determined using calendar month averages based on all daily averages during the calendar month.

(b) Compliance with the particulate matter emissions limit in (2)(c) must be determined by EPA Methods 5 and 19 as in effect on December 9, 2010.

(A) An initial test must be conducted by January 1, 2015.

(B) Subsequent tests must be conducted in accordance with a schedule specified in the Oregon Title V Operating Permit, but not less than once every 5 years.

(C) All testing must be performed in accordance with the Department's Source Sampling Manual as in effect on December 9, 2010.

(7) Notifications and Reports.

(a) The Department must be notified in writing within 7 days after any control equipment (including combustion controls) used to comply with emissions limits in section (2) begin operation.

(b) For nitrogen oxide and sulfur dioxide limits based on a 30-day rolling average, a compliance status report, including CEMS data, must be submitted within 180 days of the compliance dates specified in section (2).

(c) If applicable, a compliance status report for the 12-month rolling average nitrogen oxide limit in section (2)(a) must be submitted by August 1, 2012.

(d) For particulate matter, a compliance status report, including a source test report, must be submitted within 60 days of completing the initial compliance test specified in section (4)(b).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0070

Additional NOx Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106) Based Upon Operation Until 2040 or Beyond

(1) Subject to OAR 340-223-0050, the owner or operator of the Foster-Wheeler boiler at the Boardman coal-fired power plant may elect to comply with this rule and 340-223-0060 in lieu of compliance with OAR 340-223-0030.

(2) On and after July 1, 2017, nitrogen oxide emissions must not exceed 0.070 lb/mmBtu heat input as a 30-day rolling average, excluding periods of startup and shutdown.

(3) Compliance with the nitrogen oxide emissions limit in section (2) must be determined with a continuous emissions monitoring system in accordance with OAR 340-223-0060(3)-(4).

(4) The Department must be notified in writing within 7 days after any control equipment used to comply with the emissions limit in section (2) begins operation.

(5) A compliance status report, including CEMS data, must be submitted by January 1, 2018.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-2010, f. & cert. ef. 12-10-10

340-223-0080

Alternative Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106) Based Upon Permanently Ceasing the Burning of Coal Within Five Years of EPA Approval of the Revision to the Oregon Clean Air Act State Implementation Plan Incorporating OAR Chapter 340, Division 223.

(1) Subject to OAR 340-223-0050, the owner or operator of the Foster-Wheeler boiler at the Boardman coal-fired power plant may elect to comply with this rule in lieu of compliance with OAR 340-223-0030 if the boiler permanently ceases to burn coal within five years of the approval by the United States Environmental Protection Agency (EPA) of the revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR chapter 340, division 223.

(2) Emissions limits:

(a) Beginning July 1, 2011, nitrogen oxide emissions must not exceed 0.23 lb/mmBtu heat input as a 30-day rolling average, provided that:

(A) If the source submitted a complete application for construction and/or operation of pollution control equipment to satisfy the emissions limit in subsection (2)(a) at least eight months prior to the compliance date of July 1, 2011, and the Department has not approved or denied the application by the compliance date, the compliance date is extended until the Department approves or disapproves the application, but may not be extended to a date more than five years from the date that the EPA approves a revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR 340-223-0030; and

(B) If it is demonstrated by December 31, 2011 that the emissions limit in subsection (2)(a) cannot be achieved with combustion controls, the Department by order may grant an extension of compliance to July 1, 2013.

(b) During periods of startup and shutdown, the emissions limit in subsection (2)(a) does not apply, and nitrogen oxide emissions must not exceed 0.70 lb/mmBtu, as a 3-hour rolling average.

(c) The Foster-Wheeler boiler at the source must permanently cease burning coal by no later than five years after the approval by the EPA of the revision to the State of Oregon Clean Air Act Implementation Plan that incorporates OAR chapter 340, division 223. Notwithstanding the definition of netting basis in OAR 340-200-0020, and the process for reducing plant site emission limits in OAR 340-222-0043, the netting basis and PSELs for the boiler are reduced to zero upon the date on which the boiler permanently ceases burning coal, and prior to that date the netting basis and PSELs for the boiler apply only to physical changes or changes in the method of operation of the source for the purpose of complying with emission limits applicable to the boiler.

(3) Compliance demonstration. Using the procedures specified in section (4) of this rule, compliance with a 30-day rolling average limit must be demonstrated within 180 days of the compliance date specified in section (2) of this rule.

(4) Compliance Monitoring and Testing. Compliance with the emissions limit in subsection (2)(a) must be determined with a continuous emissions monitoring system (CEMS) installed, operated, calibrated, and maintained in accordance with the acid rain monitoring requirements in 40 CFR Part 75 as in effect on December 9, 2010.

(a) The hourly emission rate in terms of lb/mmBtu heat input must be recorded each operating hour, including periods of startup and shutdown.

(b) The daily average emission rate must be determined for each boiler operating day using the hourly emission rates recorded in (a), excluding periods of startup and shutdown.

(c) 30-day rolling averages must be determined using all daily average emissions rates recorded in (b) whether or not the days are consecutive.

(d) The daily average emission rate is calculated for any calendar day in which the boiler combusts any fuel. An operating hour means a clock hour during which the boiler combusts any fuel, either for part of the hour or for the entire hour.

(5) Notifications and Reports

(a) The Department must be notified in writing within 7 days after any control equipment (including combustion controls) used to comply with emissions limit in subsection (2)(a) begin operation.

(b) A compliance status report, including CEMS data, must be submitted within 180 days of the compliance date specified in section (2).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-2010, f. & cert. ef. 12-10-10

Department of Fish and Wildlife
Chapter 635

Rule Caption: Prior Year 5,000 Pound Landing Requirement Temporarily Removed from Brine Shrimp Permit Renewal Rule.
Adm. Order No.: DFW 155-2010(Temp)
Filed with Sec. of State: 11-22-2010
Certified to be Effective: 11-23-10 thru 5-21-11
Notice Publication Date:
Rules Amended: 635-006-1075
Subject: This amended rule allows the renewal of Brine Shrimp permits without the previously required 5,000 pound landing from the previous year. Due to low water in Lake Abert, in 2010, harvesters were unable to use their boats and harvest enough Brine Shrimp to satisfy the 5,000 pounds in landings required for permit renewal.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-1075
Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application, see ORS 508.781 and 508.790;

(b) Troll salmon — Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application, see ORS 508.807 and 508.816;

(c) Shrimp — see ORS 508.892 and 508.907;

(d) Scallop — see ORS 508.849 and 508.858;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a $125.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of the Commercial Fishery Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing requirement by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery:

(A) Permits may be renewed for the following year:

(i) By submitting $100.00 fee (plus a $2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by December 31 of the year the permit is sought for renewal and;

(ii) Submitting the logbooks required under OAR 635-006-1110; and

(iii) If during the year preceding the calendar year for which the permit is sought for renewal, the federal coastwide maximum harvest guideline referenced in OAR 635-004-0016 was greater than 100,000 metric tons and the permitted vessel lawfully landed into Oregon either (I) a minimum of 10 landings of sardines of a least 5 metric tons each, or (II) landings of sardines having an aggregate ex-vessel price of at least $40,000.

(B) The Commercial Fishery Permit Board may waive the landing requirements of section (A)(iii) of this rule if it finds that the failure to meet these requirements is due to the permit holder's illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commercial Fishery Permit Board and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Commission may, at its discretion, waive the landing requirements of section (A)(iii) of this rule for all Limited Entry Sardine Permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941
Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 23-2006, f. & cert, ef, 4-21-06; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 86-2007(Temp), f. & cert. ef. 9-10-07 thru 9-17-07; Administrative correction 10-16-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 155-2010(Temp), f. 11-22-10, cert. ef. 11-23-10 thru 5-21-11

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Rule Caption: Commercial Smelt Seasons Are Rescinded for the Columbia River.
Adm. Order No.: DFW 156-2010(Temp)
Filed with Sec. of State: 11-23-2010
Certified to be Effective: 12-1-10 thru 3-31-11
Notice Publication Date:
Rules Amended: 635-042-0130
Subject: Amended rule rescinds the commercial smelt fishing season in the Columbia River that was scheduled by permanent rule to start December 1, 2010 and continue until March 31, 2011. These modifications are consistent with the action taken November 23, 2010 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0130
Smelt Season

Smelt may not be taken for commercial purposes from the Columbia River at any time.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f, 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 20-2009, f. & cert.

ef. 2-26-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 10-2010(Temp), f. 2-4-10, cert. ef. 2-8-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 156-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 3-31-11

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Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish and Commercial Smelt Fisheries.
Adm. Order No.: DFW 157-2010
Filed with Sec. of State: 12-6-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 635-004-0018, 635-004-0019, 635-004-0025, 635-004-0035, 635-004-0070, 635-004-0075, 635-006-0215, 635-039-0080, 635-039-0090
Subject: Amended rules to include: 2011 recreational groundfish harvest specifications and fishery regulations; 2011 commercial groundfish harvest specifications and fishery regulations; and closure of commercial smelt fisheries on the Umpqua and Sandy rivers. State rules governing marine commercial and recreational groundfish fisheries are based on rules adopted federally. The final federal rules governing 2011-2012 groundfish fisheries is expected to be published after January 1, 2011. Two rule modifications are needed in state prior to the January 1, 2011 implementation of federal rules. There are additional housekeeping amendments relative to the sport groundfish regulations for yelloweye and Canary rockfish harvest guidelines. On May 17, 2010, the National Marine Fisheries Service (NMFS) listed Pacific eulachon, commonly known as smelt, as threatened under the Endangered Species Act (ESA). Because of the difficulty in distinguishing between smelt species, all directed smelt fisheries must be closed by rule.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0018
Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the groundfish specifications and management measures for 2011 to the extent they are consistent with **Code of Federal Regulations**, **Title 50 Part 660**, **Subpart G (61FR34572, July 2, 1996)**, **Vol. 74, No. 43, dated March 6, 2009** as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Federal Regulations may be obtained by contacting the National Oceanic and Atmospheric Administration's National Marine Fisheries Service at www.nwr.noaa.gov or 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Stat. Auth.: ORS 496.138 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-004-0019
Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart G**, **West Coast Groundfish Fisheries**.

(2) The **Code of Federal Regulations (CFR)**, **Title 50**, **Part 660**, **Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-004-0025
Closed Season

There is no closed season or area for the taking of ocean food fish for commercial purposes except:

(1) As provided in these rules or in the **Code of Federal Regulations**, **Title 50 Part 660**, **subpart G**.

(2) It is *unlawful* at all times to take ocean food fish for commercial purposes from Oregon coastal bays, the Oregon estuary waters of the Columbia River, or from man-made structures, that extend from coastal bays, or within 200 yards of any man-made structure. This closure does not apply to:

(a) Ocean food fish taken in specific fisheries established by rule;

(b) Ocean food fish taken to be sold or used for scientific or educational purposes, or for live public display;

(c) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by hook-and-line and sold as bait; or to

(d) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by beach seine in the Umpqua estuary and sold as bait.

(3) All species other than those whose harvest is authorized under subsection (2) above, must be immediately returned to the water unharmed.

(4) It is *unlawful* to take surfperch for commercial purposes from the Pacific Ocean from August 1 through September 30

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 38, f. & ef. 1-23-76, Renumbered from 625-010-0550; FWC 8-1979, f. 3-1-79, ef. 3-2-79; FWC 9-1979(Temp), f. & ef. 3-5-79 through 3-31-79; FWC 50-1979, f. & ef. 11-1-79, Renumbered from 635-036-0275; FWC 95-1994, f. 12-28-95, cert. ef. cert. ef. 1-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 63-2002(Temp) f. & cert. ef. 6-18-02 thru 12-14-02; DFW 103-2002(Temp), f. 9-13-02 cert. ef. 9-14-02 thru 9-30-02; DFW 115-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-004-0035
Fishing Gear

(1) It is unlawful to possess, deploy, haul, or carry on board a fishing vessel a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions listed in sections (2) and (3) of this rule, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the **International Convention for the Prevention of Pollution From Ships, 1973** (Annex V of MARPOL 73/78).

(2) It is unlawful to take ocean food fish for commercial purposes by any means except:

(a) Handline, pole-and-line, or pole-reel-and-line;

(b) Longlines and vertical hook and lines are permitted in the ocean;

(c) Pots or traps;

(d) Dipnets of hoop or A-frame design;

(e) Troll gear is permitted in the ocean from May 1 of any year through April 14 of the following year;

(f) Seines are permitted in the ocean for ocean food fish other than groundfish and for the taking of herring, sardine, and anchovy from the following inland waters:

(A) Columbia River westerly of the U.S. Highway 101 Astoria Bridge across the Columbia River;

(B) Tillamook Bay;

(C) Yaquina Bay;

(D) Alsea Bay;

(E) Winchester Bay;

(F) Coos Bay.

(g) Trawl nets (bottom and pelagic) are permitted in the ocean;

(h) Set nets (trammel nets and anchored gillnets) are permitted outside state waters for groundfish south of latitude 38 degrees N. (Pt. Reyes, CA). The use of set nets is prohibited in all areas of the Pacific Ocean north of latitude 38 degrees N. except when permitted by an experimental gear permit (OAR 635-006-0020) or except when permitted under the Developmental Fisheries Program (OAR 635-006-0800 through 635-006-0950); or

(i) Spear.

(3) Longline, vertical hook-and-line and pot gear which is fixed or anchored to the bottom or drifting unattached to the vessel have the following restrictions:

(a) Gear shall not be left unattended for more than seven days;

(b) Longline and pot gear shall be marked at each terminal surface end with a pole, flag, light, radar reflector, and a buoy showing clear identification of the owner or operator;

(c) Vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 1/4 nautical mile as determined by electronic navigational equipment, of its vertical hook-and-line gear;

(d) Pot gear used for other than Dungeness crab and hagfish shall have biodegradable escape panels constructed with #21 or smaller, untreated cotton twine in such manner that an opening at least eight inches in diameter will result when the twine deteriorates;

(e) Pot gear used for hagfish shall include a biodegradable escape exit of at least three inches in diameter constructed with 120 thread size or smaller, untreated cotton twine or mild steel not to exceed 1/4-inch (six mm) in diameter or other materials approved by the Director. All other species of finfish and shellfish caught in hagfish pots authorized under this rule must be returned immediately to the water.

(4) A buoy used to mark fixed gear under section (3)(b) of this rule must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(a) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(b) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0555; FWC 166, f. & ef. 12-23-77; FWC 34-1979, f. & ef. 8-22-79, Renumbered from 635-036-0280; FWC 10-1983, f. & ef. 3-1-83; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 123-1989, f. 12-19-89, cert. ef. 1-1-90; FWC 112-1990, f. 10-3-90, cert. ef. 10-5-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 51-1995, f. 6-16-95, cert. ef. 6-19-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-004-0070

Seasons

(1) Smelt may be taken for commercial purposes from the Columbia River described in OAR 635-042-0130.

(2) The targeted take of smelt for commercial purposes in areas and at times not specified in this rule is prohibited including take in the Pacific ocean at all times.

(3) Incidentally caught smelt may be landed by vessels targeting other commercial species not to exceed 1% of landing by weight.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: ORS 506

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 290(75-3), f. 2-20-75, ef. 3-11-75, Renumbered from 625-0100-210; FWC 16-1979, f. & ef. 4-27-79, Renumbered from 635-036-0140; FWC 83-1985, f. 12-17-85, ef. 12-18-85; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-004-0075

Fishing Gear

It is *unlawful* to take smelt for commercial purposes from the:

(1) Pacific Ocean by any means other than fishing gear authorized for the taking of ocean food fish.

(2) Columbia River by any means other than those described in OAR 635-042-0130.

Stat. Auth.: ORS 506

Stats. Implemented: ORS 506

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0215; FWC 16-1979, f. & ef. 4-27-79, Renumbered from 635-036-0145; FWC 83-1985, f. 12-17-85, ef. 12-18-85; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. The following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.30

(B) Halibut:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.35

(C) Sablefish, gutted and headed — 1.60

(D) Pacific whiting:

(i) Fillet — 2.86

(ii) Headed and gutted — 1.56

(iii) Surimi — 6.25

(E) Razor Clams, shelled and cleaned — 2.0

(F) Scallops, shelled and cleaned — 12.2

(G) Thresher shark — 2.0

(H) Skates — 2.6

(I) Lingcod:

(i) Gilled and gutted — 1.1

(ii) Gilled, gutted and headed — 1.5

(J) Spot prawn, tails — 2.24

(K) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-004-0033 when there are 60 or greater individuals of a category in a single landing as follows:

(I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;

(II) Completely remove glaze from individual fish making up the sample;

(III) Re-weigh the sample to obtain the non-glazed weight;

(IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;

(V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;

(VI) Documentation of this calculation must be retained with the dock receiving ticket.

(ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-004-0033 in a single landing.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5 percent.

(C) All other food fish and shellfish, 1.09 percent until the first Emergency Board hearing of 1993 and 1.25 percent, thereafter.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of $5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530

Stats. Implemented: ORS 506.129, 508.535 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the 2011 Oregon Sport Fishing Regulations in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The International Pacific Halibut Commission's News Release dated February 1, 2010 and the Oregon Department of Fish and Wildlife's "Staff recommended **2010 PACIFIC HALIBUT SPORT REGULATIONS**" dated February 10, 2010 (copies available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), Vol. 75, No. 52, dated March 18, 2010 as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660, Subpart G (61FR34572, July 2, 1996), Vol. 74, No. 43, dated March 6, 2009 as amended by Federal Regulations; to determine regulations applicable to this fishery.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

635-039-0090

Inclusions and Modifications

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2011, the sport harvest cap for black rockfish is 440.8 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

(4) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2011 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the 2011 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2011:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2011 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one be a cabezon from April 1 through September 30. Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40 fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20 fathom, 25 fathom, or 30 fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(6) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11

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Rule Caption: Modifications to By-catch Reduction Device Rules for the Commercial Pink Shrimp Fishery.
Adm. Order No.: DFW 158-2010
Filed with Sec. of State: 12-6-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 635-005-0190
Subject: On May 17, 2010, the National Marine Fisheries Service (NMFS) listed the southern District Population Segment (DPS) of eulachon smelt as "threatened" under the Endangered Species Act (ESA). By-catch of eulachon smelt in the shrimp trawl fishery has been reduced greatly since a 2003 requirement that shrimp trawlers use by-catch reduction devices (BRDs). In order to conserve eulachon smelt and reduce the likelihood of NMFS issuing protective regulations for the shrimp trawl fishery, by-catch in this fishery needs to be reduced to the maximum extent practicable, given current technology.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0190
Fishing Gear

(1) It is *unlawful* to take pink shrimp for commercial purposes by any means other than trawl net or pots.

(2) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved rigid-grate bycatch reduction device is used in each net. A rigid-grate bycatch reduction device uses a rigid panel of narrowly spaced bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. The panel may be hinged to facilitate rolling over a net reel. An approved rigid-grate bycatch reduction device must meet the following criteria:

(a) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend;

(b) None of the openings between the bars in the rigid panel may exceed:

(A) 1.0 inches, effective April 1, 2011.

(B) 0.75 inches, effective April 1, 2012.

(c) The escape hole must, when spread open, expose a hole of at least 100 square inches;

(d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

(3) All bycatch reduction devices and codends used for trawl fishing for pink shrimp must be readily accessible and made available for inspection at the request of an authorized agent of the state. No trawl gear may be removed from the vessel prior to offloading of shrimp.

(4) It is unlawful to modify bycatch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except for the purpose of testing the bycatch reduction device to measure shrimp loss. Authorized testing of bycatch reduction devices must meet the following criteria:

(a) Testing is allowed by special permit only, consistent with OAR 635-006-0020.

(b) For vessels fishing two nets simultaneously (double-rigged boats), while testing under the authority of a special permit, only one net may contain a disabled bycatch reduction device; the other net must be fishing a fully functional bycatch reduction device as described in subsection (2).

Stat. Auth.: ORS 506.119 & 506.129
Stats. Implemented: ORS 506.119 & 506.129
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0245, Renumbered from 635-036-0155; FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 31-2001, f. & cert. ef. 5-4-01; DFW 63-2001(Temp), f. 7-24-01, cert. ef. 8-1-01 thru 10-31-01; DFW 56-2002(Temp), f. 5-29-02, cert. ef. 7-1-02 thru 10-31-02; DFW 24-2003, f. & cert. ef. 3-26-03; DFW 158-2010, f. 12-6-10, cert.ef. 1-1-11

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Rule Caption: Amend the Fish Hatchery Management Policy Spawning and Rearing Protocol to Minimize Surplus Eggs/Fish.
Adm. Order No.: DFW 159-2010
Filed with Sec. of State: 12-6-2010
Certified to be Effective: 12-6-10
Notice Publication Date: 11-1-2010
Rules Amended: 635-007-0545
Rules Repealed: 635-007-0825, 635-007-0830
Subject: Rule modifications set policy to minimize surplus eggs and fish by correctly forecasting the potential for and magnitude of loss in incubation and rearing. Direction for management of any surplus in harvest, conservation and/or resident stocks are consistent with direction in the Native Fish Conservation Policy. Further modifications incorporate relevant criteria derived from rules 635-007-0825 and 635-007-0830 which are themselves repealed.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-007-0545
Hatchery Program Management Plans

(1) The Department shall develop hatchery program management plans for all hatchery programs. Clear management objectives that describe the role and expectations for hatchery programs relative to species conservation, watershed health and fisheries shall be the foundation for all hatchery program management plans. A hatchery program management plan may be a Hatchery and Genetic Management Plan, a Lower Snake River Compensation Plan annual operating plan, an aspect of a conservation plan developed under the Native Fish Conservation Policy (OAR 635-007-0502 through -0506) or similar document which describes the program's objectives, fish culture operations, facilities operations, and monitoring and evaluation, as more fully detailed in subsections (2) through (24) of this rule.

Planning and Coordination of Hatchery Programs.

(2) When developing hatchery program management plans, the Department shall use the most up to date and reliable scientific information and seek the input and involvement of appropriate tribal, state and federal management partners, university programs and the public.

(3) The Native Fish Conservation Policy (OAR 635-007-0502 through -0506) provides the primary process for planning and coordinating hatchery programs, but these programs shall also be coordinated with obligations arising in other forums (e.g., U.S. v. Oregon, Lower Snake River Compensation Plan, Pacific Salmon Treaty) to avoid inconsistency and duplication.

(4) Coordination objectives include:

(a) Efficient use of resources (including sharing of facilities, staff, equipment and supplies);

(b) improved communication among managing entities to share information and experience, jointly resolve issues, and promote common objectives pursued at local and regional scales.

(5) Hatchery program management plans shall be submitted to and approved (or modified) by the Fish Division. The Fish Division may waive the requirement to include specific elements of a hatchery program management plan upon a determination that the requirement would provide no appreciable benefit to hatchery management or native fish conservation.

(6) The Department shall continue to operate a hatchery program according to existing statutes, administrative rules, Commission directives, and binding agreements until that program's plan is approved.

Hatchery Program Objectives and Types.

(7) Hatchery program objectives and types shall be based on fish management objectives established via conservation plans (OAR 635-007-0505) or other binding agreements. Until conservation plans or other agreements are in place, hatchery program objectives and types will be based on existing statutes, rules, Commission directives and current management direction.

(8) Hatchery program management plans shall include measurable criteria relating to the following general objectives:

(a) Conservation and/or fishery benefits;

(b) a net survival advantage (egg to adult) over naturally produced fish;

(c) minimal adverse interactions (e.g., competition, predation, genetic introgression, and disease amplification) of hatchery programs with naturally produced native fish populations;

(d) minimal adverse effects (e.g., water quality and quantity, solid and chemical wastes and fish passage) of hatchery facility operations on watershed health and native fish populations; and

(e) sustainability of hatchery programs over time.

(9) Department hatchery programs will generally be distinguished as harvest or conservation hatchery programs. A single hatchery may have both harvest and conservation hatchery programs. If harvest and conservation programs are not distinguished, the Department shall clarify harvest and conservation objectives and their relative priorities.

(10) Harvest hatchery programs operate to enhance or maintain fisheries without impairing naturally reproducing populations. Operations shall integrate hatchery and natural production systems (e.g., locally-derived hatchery broodstocks, rearing containers simulating natural characteristics) if necessary for conservation, within funding and facility constraints and consistent with fishery management objectives. Harvest hatchery programs shall also separate (e.g., temporally, spatially, visually) hatchery produced and naturally produced native fish in fisheries and on spawning grounds as necessary for conservation. The hatchery program management plan may be designated as one of the following harvest hatchery program types:

(a) Harvest augmentation, which is used to increase fishing and harvest opportunities where there is no mitigation program in place;

(b) mitigation, which is used pursuant to an agreement to provide fishing and harvest opportunities lost as a result of habitat deterioration, destruction or migration blockage.

(11) Conservation hatchery programs operate to maintain or increase the number of naturally produced native fish without reducing the productivity (e.g., survival) of naturally produced fish populations. Conservation hatchery programs shall integrate hatchery and natural production systems to provide a survival advantage with minimal impact on genetic, behavioral and ecological characteristics of targeted populations. Implementation shall proceed with caution and include monitoring and evaluation to gauge success in meeting goals and control risks. Long-term conservation success shall be tied to remediating causes of the decline that resulted in the need for hatchery intervention. Once goals are met then the hatchery program will be discontinued. The hatchery program management plan may be designated as one of the following conservation hatchery program types:

(a) Supplementation, which routes a portion of an imperiled wild population through a hatchery for part of its life cycle to gain a temporary survival boost, or brings in suitable hatchery produced fish or naturally produced native fish from outside the target river basin to supplement the imperiled local population;

(b) restoration, which outplants suitable non-local hatchery produced or naturally produced native fish to establish a population in habitat currently vacant for that native species using the best available broodstock;

(c) captive brood, which takes a portion or all of an imperiled wild population into a protective hatchery environment for the entire life cycle to maximize survival and the number of progeny produced;

(d) captive rearing, which takes a portion of an imperiled wild population into a protective hatchery environment for only that part of its life cycle that cannot be sustained in the wild;

(e) egg banking, which temporarily removes a naturally produced native fish population from habitats that cannot sustain it and relocates the population to another natural or artificial area that can support the population;

(f) cryopreservation, which freezes sperm from naturally produced native fish for later use in conservation hatchery programs;

(g) experimental, which investigates and resolves uncertainties relating to the responsible use of hatcheries as a management tool for fish conservation and use.

Fish Culture Operations.

(12) Fish culture operations shall comply with fish health requirements of OAR 635-007-0549.

(13) Broodstock selection and collection. Hatchery program management plans shall identify the broodstock best able to meet the objectives of the type of program in which the broodstock will be used.

(a) For harvest hatchery programs, broodstock shall be used that best meet fishery objectives, consistent with conservation objectives to ensure risk to naturally produced native fish and their watersheds is within acceptable and clearly defined limits.

(A) For some harvest hatchery programs, fishery and conservation objectives will be best met using existing hatchery broodstocks and managing for minimal spatial or temporal overlap of hatchery produced and naturally produced native fish in spawning areas.

(B) For other harvest hatchery programs, fishery and conservation objectives will be best met using broodstocks derived from, or transitioning to, naturally produced native fish from the local watershed. This approach shall not be used if available data indicates the donor wild population will be impaired, or if conservation objectives are better met with existing hatchery broodstocks, or if hatchery programs are located in areas with too few naturally produced native fish to supply the hatchery broodstock;

(b) For conservation hatchery programs, broodstock shall be derived from the wild population targeted for hatchery intervention, or from nearby wild or hatchery populations with desired characteristics if the targeted wild population is extirpated or too depressed to provide brood fish;

(c) Broodstock maintenance shall be consistent with the fishery and conservation objectives established for the hatchery program.

(A) Hatchery program management plans shall identify effective population size targets and other strategies to reduce risk of inbreeding depression, genetic drift and domestication for broodstocks developed under subsection (a)(A).

(B) Hatchery program management plans shall identify target and allowable proportions of hatchery produced and naturally produced native fish incorporated into broodstocks developed under subsections (13)(a)(B) and (13)(b), consistent with conservation plan objectives.

(d) Broodstock collected shall represent the genetic variability of the donor stock by taking an unbiased representative sample with respect to run timing, size, gender, age and other traits important for long-term fitness of the population. The Fish Division may approve a deviation from this subsection if necessary to shift run timing and other characteristics of long-term hatchery broodstocks to better coincide with characteristics of wild populations in the watershed or to meet fish management goals. Hatchery program management plans shall explain the reason for any deviations;

(e) Facilities and methods used to collect broodstock shall minimize stress and maximize survival of fish to spawning, consistent with management objectives.

(14) Disposition of adult hatchery produced fish returning to hatchery facilities. Adult hatchery produced fish returning to collection facilities shall be used to meet program objectives and, if available, provide other ecological, societal and program benefits, consistent with objectives for watershed health and native fish conservation.

(a) Hatchery programs will be managed to meet, but not exceed, program objectives for returning adult fish. Environmental variation and other factors outside of management control may result in significantly less or more fish than planned.

(b) Consistent with subsection (7) of this rule, the numbers of returning adults to be collected and held for spawning shall be determined for each facility as part of the annual production planning process in coordination with hatchery managers, hatchery coordinators, district biologists, Fish Division staff, and co-managers where appropriate.

(c) Adult hatchery produced fish returning to hatchery facilities shall be allocated among the categories of uses described in order of preference in subsections (14)(d) and (14)(e). The Department need not satisfy all potential uses within a category before providing fish to uses in lower categories. The Fish Division may approve additional uses or deviations from the stated order of preference to satisfy agreements with management partners, respond to unique situations or respond to unforeseen circumstances. The final disposition of all surplus adult hatchery fish shall be reported on in the Fish Propagation Annual Report.

(d) Order of preference for disposition of adult hatchery produced fish returning to or collected at harvest hatchery program facilities:

(A) meet broodstock needs for the program;

(B) release live, spawned fish back into the wild if specified in management plans for species able to spawn more than once;

(C) provide fish for tribal ceremonial and subsistence use;

(D) provide additional fishing opportunities consistent with management plans (e.g., Fishery Management and Evaluation Plans);

(E) allow hatchery produced fish to spawn naturally at locations and in numbers identified in existing fish management plans or conservation plans developed through the process outlined in the Native Fish Conservation Policy (OAR 635-007-0505);

(F) place carcasses in natural spawning and rearing areas to enhance nutrient recycling, consistent with Department of Environmental Quality requirements, management plans and pathology constraints identified in OAR 635-007-0549;

(G) provide for experimental, scientific or educational uses identified in conservation plans, management plans or other Department agreements;

(H) sell eggs and carcasses from selected facilities to provide revenues to support hatchery programs and facilities;

(I) provide fish to charitable food share programs benefiting needy Oregonians;

(J) provide fish for animal feed to animal rehabilitation shelters, zoos, or other such operations;

(K) dispose of fish in a landfill or at a rendering plant.

(e) Order of preference for disposition of adult hatchery produced fish returning to or collected at conservation hatchery program facilities:

(A) Meet natural spawning objectives of the specific hatchery program as identified in conservation plans;

(B) meet hatchery broodstock needs for the specified conservation hatchery program management plan;

(C) release live, spawned fish back into the wild if specified in conservation plans for species able to spawn more than once;

(D) place carcasses in natural spawning and rearing areas to enhance nutrient recycling, consistent with Department of Environmental Quality requirements, management plans and pathology constraints identified in OAR 635-007-0549;

(E) provide fish for tribal ceremonial and subsistence use;

(F) provide additional fishing opportunities consistent with fishery management plans (e.g., Fishery Management and Evaluation Plans).

(G) provide for experimental, scientific or educational uses identified in conservation plans, management plans or other Department agreements;

(H) sell eggs and carcasses to provide revenues to support hatchery programs and facilities;

(I) provide fish to charitable food share programs benefiting needy Oregonians;

(J) provide fish for animal feed to animal rehabilitation shelters, zoos, or other such operations;

(K) dispose of fish in a landfill or at a rendering plant.

(f) Department staff shall use standard, professionally accepted practices (such as sharp blow to head, electrical current or anesthetic overdose) to kill fish at hatchery facilities.

(15) Spawning protocols.

(a) Hatchery program management plans shall include a description of the abundance, size, age structure, gender ratios, fecundity, fertility, and spawning pairings of the broodstock.

(b) A 1:1 male-to-female spawning ratio (single pair mating, unpooled gametes) is preferred, although for harvest hatchery programs with large spawning populations (greater than 300 females) a 1:3 spawning ratio is acceptable.

(c) For critically small populations, a matrix spawning strategy shall be used to enhance effective population size and reduce variability of survival among family units.

(d) Conservation hatchery programs may use natural spawning within natural or engineered spawning channels in an attempt to mimic natural mate selection, gender ratio, age structure, spawn timing and preferred spawning area characteristics of wild populations.

(e) Consistent with subsection (7) of this rule, the number of eggs to be collected during spawning operations shall be determined for each facility as part of the department's annual production planning process. The following guidelines shall be used to set egg collection requirements to meet individual hatchery program objectives:

(A) Preliminary egg numbers to be collected to meet hatchery program objectives shall be determined for each facility as part of the department's annual production planning process in coordination with hatchery managers, hatchery coordinators, district biologists, Fish Division staff and co-managers where appropriate.

(B) Additional eggs to be collected to compensate for predicted egg and fish losses during the hatchery rearing cycle will be developed from survival estimates compiled by the ODFW Fish Health section and approved during the annual production Planning process.

(C) Surplus eggs from harvest hatchery stocks will be removed from production and disposed of immediately. Disposition of surplus eggs from conservation hatchery stocks shall be determined through the department's annual production planning process, consistent with direction in the Native Fish Conservation Policy and the Hatchery Management Policy regarding the use of conservation hatcheries. Disposition of surplus resident eggs shall be determined based on statewide fish management needs. The final disposition of all surplus eggs shall be reported on in the Fish Propagation Annual Report.

(16) Incubation protocols.

(a) Incubation methods shall be selected to best meet program objectives, consistent with facility and funding constraints. These methods may include single bucket incubation (for isolation of a single female's eggs), multiple vertical incubators, in-stream hatchboxes, or other methods suited to the available facilities. The Integrated Hatcheries Operations Team Policies and Procedures (IHOT 1995) provide acceptable, but not exclusive, guidance on water flows and egg-to-fry capacities for incubation systems. The hatchery program management plan shall include a description of and explanation for the incubation system identified in the plan.

(b) The Department shall continue providing eggs for educational classroom incubators and in-stream incubators (e.g., hatch boxes) for selected stocks in selected watersheds associated with the Salmon and Trout Enhancement Program (STEP). All STEP incubator programs shall be consistent with existing management plans or new conservation plans and hatchery program management plans.

(17) Rearing protocols.

(a) Hatchery program management plans shall describe rearing facilities and methods selected for the program and specific rearing standards used to gauge success meeting program objectives.

(b) Rearing capacity of hatchery programs shall be based on the number of fish that can be produced without adversely affecting fish growth and survivability necessary to meet program objectives.

(c) Best management practices may dictate that, based on known and anticipated disease or predation losses, fish in excess of planned production goals be reared well past the initial ponding date. Hatchery managers, in coordination with hatchery coordinators and Fish Division staff, will establish these numbers for each facility based on survival estimates compiled by ODFW Fish Health section. Surpluses held to meet production goals should be disposed of at the earliest point in the rearing cycle. At the point in rearing cycle that the risk of these known hazards is past, these surpluses should be removed from the production cycle. Consistent with subsection (7), disposition of surplus fish from harvest hatchery programs shall be determined by Regional and Fish Division staff on a individual basis, with emphasis on minimizing conservation risks while providing angling opportunities where possible (e.g., stocked in closed water bodies). For conservation hatchery programs, disposition of surplus fish shall be determined through the department's annual production planning process, consistent with direction in the Native Fish Conservation Policy and the Hatchery Management Policy regarding the use of conservation hatcheries. Disposition of resident fish shall be determined based on statewide fish management needs. The final disposition of all surplus fish shall be reported on in the Fish Propagation Annual Report.

(d) Water replacement time and velocity shall be managed to provide adequate levels of dissolved oxygen and the reduction of metabolic waste products that are harmful to fish.

(e) Experimental rearing techniques may be investigated at some hatcheries, particularly for conservation hatchery programs, to simulate natural rearing characteristics and fish behavior traits while ensuring adequate fish health, survival and production numbers to meet program objectives.

(f) Fish food and feeding shall be managed to meet production objectives (e.g., fish number, size, growth rate, health and condition), minimize waste and maintain water quality.

(g) The Department shall purchase the best fish feed products available for the best price while considering service delivery, maintenance of competition and innovation among fish feed vendors, and state preferences for recycled products. Qualifying feed manufacturers must monitor the accumulation of toxins in the fish feed they provide, and comply with standards specified by the Department.

(h) The Department shall have standardized procedures for conducting feed trials comparing feed types and coordinate results among fish

hatchery managers and STEP facility managers. The Department shall maintain a centralized database of fish feed purchases and fish feed trial results.

(i) Hatchery programs may include an experimental feeding regime designed to simulate natural diets and feeding behavior (such as sub-surface feeding techniques) to align growth, physiology and maturity with natural schedules.

(18) Fish marking.

(a) Hatchery produced fish shall be marked as required to facilitate mixed stock fisheries, research, distinction of hatchery produced and naturally produced native fish throughout their life cycle as necessary for conservation, and evaluation of program objectives.

(b) The Department shall use precise fish marking methods consistent with industry standards and management needs. Mark quality (e.g., fin excision, tag placement, tag retention) shall be monitored during the marking process and prior to fish releases.

(19) Fish transfers and releases.

(a) Hatchery program management plans shall specify targets for the number, size, quality, timing, location and release strategy of fish released, based on fish management objectives established for that program (e.g., native fish conservation plans, brood source objectives, production agreements, harvest management plans, mitigation agreements).

(b) Hatchery program management plans shall include protocols to minimize stress and direct or delayed mortality associated with collecting, handling, loading, transporting and releasing fish.

(c) The Fish Division may approve emergency contingency release plans in the event of unforeseen catastrophic events at a facility.

(d) Transfer and release of any life stage of fish shall meet fish health requirements of OAR 635-007-0549.

(20) Predator control at hatchery facilities.

(a) Hatchery operations shall include strategies to reduce excessive loss of fish to predation and limit opportunities for predators to introduce pathogens to the rearing environment, within funding, facility and permit constraints.

(b) Some hatchery programs, particularly conservation hatchery programs, may experiment with using natural predators to help avoid domestication, reduce deleterious traits and train hatchery produced fish to improve post-release survival and reduce behavioral differences between hatchery produced and naturally produced native fish.

Hatchery Facilities Operations.

(21) Hatchery facility operations shall comply with fish health requirements of OAR 635-007-0549.

(22) Hatchery program management plans shall describe hatchery facilities and operations to optimize fish culture operations, comply with fish health requirements described in OAR 635-007-0549, and comply with legal obligations concerning water rights, water use reporting, chemical use and reporting, fish passage and water quality standards.

(23) Reliable hatchery alarm and security systems shall be required as necessary to minimize risk of egg and fish mortalities caused by loss of water supplies or risk of vandalism and poaching. All hatchery incubation systems, rearing containers and adult fish facilities at Department hatcheries shall have alarm systems. Fish Division may grant exceptions for STEP hatch-box facilities or other temporary or remote facilities.

(24) Hatchery water intakes and outfalls shall be screened to minimize the risk of unintended fish entering or escaping from the facility. Outfalls of fish rearing containers shall be double screened if used for fish from outside the basin that could jeopardize endemic stocks if escapes occurred.

(25) The Department shall identify hatchery facility maintenance, modifications and upgrades necessary to comply with program objectives and other legal requirements.

(26) Hatcheries shall provide informational signs and literature, guided tours as allowed by staffing constraints and other programs to educate the public about fish and wildlife stewardship.

(27) Additional provisions specific to hatchery trout programs.

(a) The Department shall continue hatchery production of nonanadromous rainbow trout for consumptive recreational fisheries as an important and popular fish management tool.

(b) The Department shall reduce potential impacts to wild trout, char and steelhead in streams and maximize returns to the creel such as by rearing and releasing trout for target fisheries in standing water bodies (i.e., lakes, ponds, and reservoirs) and marking trout for targeted fisheries.

(c) All trout the Department purchases for harvest augmentation from private sources must be genetically triploid, sterile rainbow trout.

Monitoring and Evaluation.

(28) The purpose of hatchery monitoring and evaluation programs shall be to gauge success meeting hatchery program and fish management objectives, improve understanding of the reasons for success or failure, contain risks within acceptable limits, and provide feedback to modify operations through time (adaptive management). Clear management objectives that describe the role and expectations for hatcheries relative to species conservation, watershed health and fisheries shall be the foundation for all hatchery monitoring and evaluation programs.

(29) Each hatchery program need not have its own individual monitoring and evaluation program if monitoring and evaluation on a landscape perspective provides adequate information to manage potential risks. The greater the uncertainty of the risks or results of a hatchery program, the greater the specificity of the monitoring and evaluation program must be. Each hatchery program management plan shall describe how the plan's operations and objectives will be monitored and evaluated.

(30) Monitoring and evaluation programs shall use generally accepted scientific procedures and gather multi-generational information to evaluate hatchery programs relative to measurable criteria developed through OAR 635-007-0545.

(31) Monitoring hatchery produced fish and their performance may include, but is not limited to:

(a) Broodstock selection including but not limited to source, number, size, fecundity, life history, timing as percent of entire run, disease history, and disease treatment;

(b) pre-release performance (e.g., survival, growth, disease) by life stage;

(c) post-release survival to the adult life stage, catch distribution, fishery contributions, straying, and characteristics of adult fish (e.g., age structure, gender ratio, size, health).

(d) production advantage provided by the hatchery relative to natural production;

(e) water quality, flow and other physical conditions in the hatchery through the production cycle;

(f) impacts of operation of the hatchery facilities on the adjacent habitats;

(g) success of the hatchery program in meeting harvest and/or conservation program objectives.

(h) cost-benefit analysis of hatchery performance.

(32) Monitoring and evaluation to assess impacts of the hatchery program on naturally produced native fish may include, but is not limited to:

(a) Impacts of broodstock selection on wild populations;

(b) ecological interactions of hatchery produced and naturally produced native fish resulting in changes to phenotypic, genotypic, behavioral and survival characteristics;

(c) timing, location and relative number of hatchery produced fish spawning naturally;

(d) success of maintaining long-term fitness of wild populations;

(e) reproductive success and fitness of hatchery produced fish in the natural environment; and

(f) success maintaining or enhancing natural genetic variation and life history characteristics within and among wild populations.

(33) Results and evaluation of hatchery monitoring programs shall be compiled at intervals adequate to track success, contain risks and provide feedback for adaptive management. Monitoring results shall be made available to management partners and the public.

(34) Hatchery monitoring and evaluation programs shall complement and coordinate with specific research addressing key uncertainties about hatchery operations, uses and consequences. Research priorities shall focus on developing hatchery strategies that minimize the risk or maximize the benefit of hatchery actions to naturally produced native fish populations.

Stat. Auth.: ORS 496.012 & 496.138
Stats. Implemented: ORS 496.171, 496.172, 496.176, 496.182, 496.430, 496.435, 496.445, 496.450 & 496.455
Hist.: DFW 65-2003, f. & cert. ef. 7-17-03; DFW 159-2010, f. & cert. ef. 12-6-10

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Rule Caption: Inseason Actions Implemented by the Federal Government for Commercial Groundfish Fisheries.
Adm. Order No.: DFW 160-2010(Temp)
Filed with Sec. of State: 12-7-2010
Certified to be Effective: 12-7-10 thru 12-31-10
Notice Publication Date:
Rules Amended: 635-004-0019
Rules Suspended: 635-004-0019(T)
Subject: The amended rule adopts in-season actions implemented by the federal government for Pacific ocean commercial groundfish

fisheries, including changes to cumulative trip limits and RCA boundaries for limited entry non-whiting trawl fisheries and cumulative trip limits for commercial fixed gear fisheries.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0019
Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart G**, **West Coast Groundfish Fisheries**.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the **National Oceanic and Atmospheric Administration (NOAA)**, by means of Federal Register/Vol. 75, No. 162/Monday, August 23, 2010, announced inseason management measures effective August 18, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry fixed-gear sablefish fishery and lincod retention allowances for vessels fishing in the salmon troll fishery and operating outside of the non-trawl RCA.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 191/Monday, October 4, 2010, announced inseason management measures effective October 1, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry non-whiting trawl fishery.

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 232/Friday, December 3, 2010, announced inseason management measures effective December 1, 2010, including, but not limited to, changes in cumulative trip limits and RCA boundaries for limited entry non-whiting trawl fisheries and cumulative trip limits for commercial fixed gear fisheries.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 11-10; DFW 160-2010(Temp), f. & cert. ef. 12-7-10 thru 12-31-10

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Rule Caption: Inseason Closure to Commercial Dungeness Crab Fishing from Cape Blanco South to the Rogue River.
Adm. Order No.: DFW 161-2010(Temp)
Filed with Sec. of State: 12-9-2010
Certified to be Effective: 12-10-10 thru 2-16-11
Notice Publication Date:
Rules Amended: 635-005-0045
Subject: This amended rule implements an inseason closed area to commercial Dungeness crab from Cape Blanco to the mouth of the Rogue River from December 10, 2010 through January 15, 2011. The area closed is the area of known low quality to commercial crabbing. This closure will protect the portion of the fishing fleet that chooses to wait to fish the closed area by implementing a 30-day fair start provision.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0045
Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30.

(2) It is *unlawful* prior to January 1 to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, except as provided in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) The area from 42º 25' 00" N. Lat. (mouth of the Rogue River) south to the Oregon/California border is open at 12:01 a.m. on December 1, 2010.

(b) The area from 42º 50' 00" N. Lat. (at Cape Blanco) north to the Oregon/Washington border is open at 12:01 a.m. on December 1, 2010.

(c) The area between 42º 50' 00" N. Lat. (Cape Blanco) south to 42º 25' 00" (mouth of the Rogue River) is closed at 12:01 a.m. on December 10, 2010 until 12:01 a.m., January 15, 2011.

(d) It is unlawful for commercial purposes inside the area defined in section (3)(c) to:

(i) Deploy, retrieve or have present in the water Dungeness crab fishing gear as defined in 635-005-0055; or

(ii) Take, land, sell or buy Dungeness crab.

(e) Oregon Dungeness crab permitted vessels electing to fish in the area defined in section (3)(c) must not have fished, taken, landed or possessed Dungeness crab from Oregon, Washington or California waters before 12:01 a.m. on January 15, 2011.

(f) Oregon Dungeness crab permitted vessels electing to fish in areas defined in section (3)(a), (3)(b) or waters off Washington or California may not take, land or sell Dungeness crab in the area defined in section (3)(c) before 12:01 a.m. on February 15, 2011.

(4) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

(5) Notwithstanding OAR 635-006-1095(7), the transfer of a permit from one vessel to another is suspended until February 15, 2011, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 635-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11

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Rule Caption: Medical Transfers of Bay Clam Dive Permits Allowed.
Adm. Order No.: DFW 162-2010(Temp)
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 12-15-10 thru 6-12-11
Notice Publication Date:
Rules Amended: 635-006-1095

Subject: This amended rule allows the transfer of all commercial Bay Clam Dive permits, both individual and vessel, due to current medical conditions of the permit holder. Rules previously allowed transfers due to medical conditions for Individual Bay Clam Dive Permits only. Transfers are allowed for up to 90 days upon petition by the permittee.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-1095
Transferability of Permits

Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

(1) Gillnet salmon — see ORS 508.793.

(2) Troll salmon — see ORS 508.822.

(3) Shrimp — see ORS 508. 907.

(4) Scallop — see ORS 508.864.

(5) Roe-herring:

(a) A permit is transferable to:

(A) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void;

(B) The purchaser of the vessel when the vessel is sold.

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 1996, and ending two years from that date. When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

(b) If the Department, or the Board, after review of a denial by the Department, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (6)(a), request the Department to transfer the permit back to the original permit holder. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (6)(a), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (6)(a) of this rule;

(c) The total landings of sea urchins by all transferees of a permit shall not exceed the greater of either of the following amounts:

(A) Up to 5,000 pounds per 90-day period, not to exceed 5,000 pounds annually; or

(B) Twenty-five percent of the amount landed by the original permit holder in the previous season's catch, for each 90-day period.

(d) Combination Permit Transfers: If the number of permits is at 31 or more, the Department may transfer permits from one person to another as follows:

(A) The individual receiving the transferred permit (the purchaser) obtains no more than three total permits, each of which is valid for the current year in which the permit is purchased, from existing permit holders;

(B) The Department combines the three permits into a single new permit issued to the purchaser; and

(C) No transferred permit is valid for harvesting sea urchins until conditions (6)(d)(A) and (6)(d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (6)(d)(A) the individual to whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

(e) When the total number of permits reaches 30 or less, the Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year;

(f) Lottery-issued permit transfers: No permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

(7) Ocean Dungeness crab — see ORS 508.936 and:

(a) The vessel permit is transferable once in any 18-month period provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab into Oregon in each of two crab fishing seasons in the last five crab seasons which includes landings made during any season open at the time of application. Crab fishing season means ocean Dungeness crab season. However, the Board may waive the landing requirement as well as the 18-month waiting period for transfers, if the Board finds that strict adherence to these requirements would create undue hardship to the individual seeking to transfer a permit. The board also may delegate to the Department its authority to waive these requirements in such specific instances as the Board sets forth in a letter of delegation to the Department;

(b) The vessel permit is transferable:

(A) To another vessel; or

(B) To the purchaser of the vessel when the vessel is sold.

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (7)(e):

(A) Shall not be more than 10 feet longer than the vessel which held the permit on January 1, 2006, and

(B) Shall not be more than 99 feet in length.

(d) For the purpose of (7)(c)(A), the Commercial Fishery Permit Review Board may waive the boat length restriction if it finds that strict adherence would create undue hardship. For this purpose, undue hardship means significant adverse consequences caused by death, permanent disability injury or serious illness requiring extended care by a physician.

(e) Permits obtained as a result of qualifying under section (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

(f) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.957.

(9) Brine shrimp fishery: Permits are transferable.

(10) Bay clam dive fishery:

(a) The permittee may request the Department to transfer, to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued, a bay clam dive permit up to two times per calendar year.

(b) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit.

(c) The Department may authorize transfer of a Bay Clam Dive permit for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the permit to the original permit holder or to a new transferee, provided that the original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 2006, and ending two years from that date.

(D) If the Department, after review of a denial by the Commission, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (10)(c), request the Department reinstate the permit back to their possession. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified

in (10)(c), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (10)(c) of this rule.

(11) Sardine Fishery:

(a) Permits are transferable up to two times in one calendar year.

(b) Applications to transfer a sardine fishery permit shall only be accepted to vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting sardines are not eligible for transfer.

Stat. Auth.: ORS 506.109

Stats. Implemented: ORS 506.109, 506.129, 508.760 & 508.762

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 94-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 95-2006(Temp), f. & cert. ef. 9-8-06 thru 11-24-06; Administrative correction 12-16-06; DFW 23-2007(Temp), f. 4-9-07, cert. ef. 4-17-07 thru 10-13-07; Administrative correction 10-16-07; DFW 114-2007, f. & cert. ef. 10-25-07; DFW 162-2010(Temp), f. & cert. ef. 12-15-10 thru 6-12-11

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Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: Define "dangerousness" and "grave disability"; and add to the definition of "good cause" in OAR 309-114.
Adm. Order No.: MHS 13-2010(Temp)
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 11-19-10 thru 5-18-11
Notice Publication Date:
Rules Amended: 309-114-0005, 309-114-0020, 309-114-0030, 309-114-0040, 309-114-0050, 309-114-0060, 309-114-0070
Subject: Oregon State Hospital has requested that the Addictions & Mental Health Division amend the "Informed Consent treatment and Significant Procedures in State Institutions" rules in order to define the terms "dangerousness" and "grave disability" in OAR 309-114-0005 and to add to the current definition of "good cause" in OAR 309-114-0020.
Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0005
Definitions

As used in these rules:

(1) "Authorized Representative" or "representative" means an individual who is an employee of the system described in ORS 192.517(1) and who may represent a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar and employed by the same system described in 192.517(1).

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Dangerousness" means either:

(a) A substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats, including verbal threats or attempts to commit suicide or inflict physical harm on him or her self. Evidence of substantial risk may include information about historical patterns of behavior that resulted in serious harm being inflicted by an individual upon him or herself as those patterns relate to the current risk of harm;

(b) A substantial risk that physical harm will be inflicted by an individual upon another individual, as evidenced by recent acts, behavior or threats, including verbal threats, which have caused such harm or which would place a reasonable person in reasonable fear of sustaining such harm. Evidence of substantial risk may include information about historical patterns of behavior that resulted in physical harm being inflicted by a person upon another person as those patterns relate to the current risk of harm; or

(c) A substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(4) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(5) "Guardian" means a legal guardian who is an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated individual.

(6) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(7) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes and metabolic changes.

(8) "Medication Educator" means a Qualified Mental Health Professional (QMHP) who provides information about the proposed significant procedures to patients.

(9) "Patient" means an individual who is receiving care and treatment in a state institution for the mentally ill.

(10) Patient with a "grave disability" means a patient who:

(a) Is in danger of serious physical harm to his or her health or safety absent the proposed significant procedures; or

(b) Manifests severe deterioration in routine functioning evidenced by loss of cognitive or volitional control over his or her actions which is likely to result in serious harm absent the proposed significant procedures.

(11) "Person Committed to the Division" means a patient committed under ORS 161.327, 161.370, 426.130, or 427.215.

(12) "Psychiatric Nurse Practitioner," means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(13) "Qualified Mental Health Professional" (QMHP) means any individual meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(14) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing and hygiene.

(15) "Significant Procedure" means a diagnostic or treatment modality and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, human immunodeficiency virus (HIV) testing shall be considered a significant procedure.

(16) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure.

(a) For purposes of these rules, medications listed in subsections 14(a)(A) through 14(a)(F) of this rule will be considered the same or similar class of medication as other medications in the same subsection:

(A) All medications used under current clinical practice as antipsychotic medications, including typical and atypical antipsychotic medications;

(B) All medications used under current clinical practice as mood stabilizing medications;

(C) All medications used under current clinical practice as antidepressants;

(D) All medications used under current clinical practice as anxiolytics;

(E) All medications used under current clinical practice as psychostimulants; and

(F) All medications used under current clinical practice as dementia cognitive enhancers.

(b) Significant procedures of the same or similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(17) "State Institution" or "Institution" means all Oregon State Hospital campuses and the Blue Mountain Recovery Center.

(18) "Superintendent" means the executive head of the state institution listed in section (15) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 183.458; 426.070 & 426.385
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2009, f. & cert. ef. 12-28-09; MHS 5-2010(Temp), f. & cert. ef. 3-12-10 thru 9-8-10; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0020
Good Cause for the Involuntary Administration of Significant Procedures

Good cause exists to administer a significant procedure to an individual committed to the Division without informed consent if in the opinion of the treating physician or psychiatric nurse practitioner after consultation with the treatment team each of the following factors are satisfied:

(1) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented on the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form and include the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment, including but not limited to all relevant factors listed in 309-114-0010(3)(a).

(2) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or his or her representative at the hearing.

(3) The proposed significant procedure is the most appropriate treatment for the patient's condition according to current clinical practice, and all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) were considered. This factor is established conclusively for purposes of a hearing under 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or his or her representative at the hearing.

(4) The institution made a conscientious effort to obtain informed consent from the patient, as detailed in OAR 309-114-0010. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the medication educator's form or progress note, unless this factor is affirmatively raised as an issue by the patient or his or her representative at the hearing. If the institution has reason to believe a patient has limited English language proficiency or the patient requests it, then the institution will make reasonable accommodations to provide the patient with meaningful access to the informed consent process, such as providing the patient with the opportunity to have an interpreter orally translate written materials into the patient's native language and provide translation during the treating physician's or psychiatric nurse practitioner's attempts to obtain informed consent and the medication educator's attempt to provide information about the significant procedure. A "conscientious effort" to obtain informed consent means the following:

(a) The patient's treating physician or psychiatric nurse practitioner made at least two good faith attempts to obtain informed consent by attempting to explain the procedure to the patient and documenting those efforts in the patient's record; and

(b) The medication educator made at least one good faith attempt to provide the information required in OAR 309-114-0010(3)(a), and explain and discuss the proposed procedure with the patient.

(5) Because of the preliminary nature of their commitment, the following additional findings must be made for patients committed under ORS 161.370 jurisdiction:

(a) Medication is not requested for the sole purpose of restoring trial competency; and

(b) The patient is being medicated because of the patient's dangerousness or to treat the patient's grave disability.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2010(Temp), f. & cert. ef. 3-24-10 thru 9-20-10; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0030
Independent Evaluation and Documentation for Determination of Good Cause

(1) Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer shall:

(a) Obtain consultation and approval from an independent examining physician, or

(b) If a patient refuses to be examined, document that an independent examining physician made at least two good faith attempts to examine the patient.

(2) The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list.

(a) The independent examining physician shall:

(A) Not be an employee of the Division and

(B) Be a board-eligible psychiatrist and

(C) Have been subjected to review by the medical staff executive committee as to qualifications to make such an examination and

(D) Have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0030 and

(E)Have participated in a training program regarding these rules, their meaning and application.

(3) The superintendent or chief medical officer shall provide written advance notice of the intent to seek consultation and approval of an independent examining physician for the purpose of administering the procedure without the patient's consent to a patient to whom a significant procedure is proposed to be administered.

(4) The physician selected to conduct the independent consultation shall:

(a) Review the patient's medical chart, including the records of efforts made to obtain the person's informed consent, and

(A) Personally examine the patient at least one time; or

(B) If the patient refuses to be examined, the physician shall make two good faith attempts to examine the patient. If the patient refuses to be examined during these two good faith attempts, the independent consultation and approval requirement outlined in subsection (4)(a)(A) and (4)(b) of this rule shall be deemed to be fulfilled.

(b) Discuss the matter with the patient to determine the extent of the need for the procedure and the nature of the patient's refusal, withholding, or withdrawal or inability to consent to the significant procedure.

(c) This determination must be documented in the patient's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(d) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the patient or anyone on behalf of thepatient; and

(e) Make a determination whether the factors required under these rules exist for the particular patient or that one or more factors are not present and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The patient to whom a significant procedure is proposed to be administered, with a copy being made part of the patient's record.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0040
Superintendent's Determination

(1) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a patient committed to the Division based on good cause, provided that if the examining

physician or psychiatric nurse practitioner found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure. If the superintendent or chief medical officer does not approve the significant procedure. it shall not be performed;

(2) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure or significant procedure of a similar class during the term of a patient's commitment, but in no case longer than 180 days. Disapproval shall be only for as long as no substantial change occurs in the patient's condition during the term of commitment, but in no case longer than 180 days.

(3) Written notice of the superintendent's or chief medical officer's determination shall be provided to the patient and made part of the patient's record. This notice must:

(a) Be delivered to the patient and fully explained by facility medical staff and

(b) Include a clear statement of the decision to treat without informed consent and

(c) Provide the specific basis for the decision and

(d) State what evidence was relied on to make the decision and

(e) Include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient disagrees with the decision and

(f) Include the attached form with a simple procedure to request a hearing.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0050
Contested Case Hearing

(1) The patient indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing pursuant to OAR 309 114 0025.

(2) The patient shall have 48 hours to request a contested case hearing after receiving the notice in 309-114-0040(3). If the patient does not request a hearing within the 48 hour period or the patient subsequently withdraws his initial hearing request and is not already receiving the significant procedure, the institution may involuntarily administer the significant procedure.

(3) A patient retains the right to request, at any time, an initial hearing on the decision to administer a significant procedure without informed consent.

(4) If the patient withdraws his or her initial request for a hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient had never requested a hearing.

(5) If a dismissal order is issued, the patient may request a second hearing. If the patient withdraws his or her second request for a hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a proposed order by default. The institution will then issue a final order by default.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0060
Records of the Informed Consent and Significant Procedure Processes

(1) Records of all reports by independent examining physicians and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(a) Each type of proposed significant procedure for which consultation with an independent examining physician was sought; and

(b) The number of times consultation was sought from a particular independent examining physician for each type of proposed significant procedure; and

(c) The number of times each independent examining physician approved and disapproved each type of proposed significant procedure; and

(d) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure.

(2) The summaries referred to in subsection (5)(e) of this rule shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS Chapter 192. (3) When treatment is being administered without informed consent, the ward physician or psychiatric nurse practitioner will write a progress note addressing any changes in patient's capacity to give informed consent every 60 days.

(4) At any time that a patient's condition changes so that there appears to his or her treating physician or psychiatric nurse practitioner to be a substantial improvement in the patient's capacity to consent to or refuse treatment, a formal re assessment of the patient's capacity to consent shall occur, as described in OAR 309-114-0010 and 309-114-0020. No order to administer treatment without informed consent in non emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re establishing the need for the order by following the procedures described in 309-114-0010 and 309-114-0020.

(5) When a patient is transferred to a state institution from a community hospital or another state institution where he or she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309-114-0000 through 309-114-0030 no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in 309-114-0010 through 309-114-0030 have already been applied and all necessary documentation is in the patient's file.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

309-114-0070
Notice to Patients, Residents, and Employees

(1) Upon a patient's admission, the state institutions shall inform the patient, orally and in writing, of the rights, policies and procedures set forth in these rules. In addition, a clear and simple summary of the contents, including the title, number and purpose of these rules and instructions on how to obtain a copy of the rules and advice about their content shall be prominently displayed in areas frequented by patients in all state institutions.

(2) All employees of state institutions involved in patient care shall be notified in writing at the commencement of his or her employment or for present employees, within a reasonable time after the effective date of these rules, of the rights, policies and procedures set forth in these rules. These employees shall participate in a training program regarding the rules, their meaning and application.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11

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Department of Human Services, Division of Medical Assistance Programs
Chapter 410

Rule Caption: 2011 – Client copayments; tobacco cessation; CAWEM Program.
Adm. Order No.: DMAP 31-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 410-123-1000, 410-123-1220, 410-123-1260, 410-123-1540
Rules Repealed: 410-123-1085
Subject: The Dental Services Program administrative rules govern Division payment for services to certain clients. The Division amended rules to reference client co-payments addressed in General Rules Program OAR 410-120-1230; to reference the updated "Covered and Non-Covered Services document"; to change language regarding billing for tobacco cessation, which coincides with 2011 Dental Care Organization contract language; to clarify language regarding the Citizen/Alien-Waived Emergency Medical (CAWEM) program and add clarification regarding the dental coverage for clients under the

Children's Health Insurance Program (CHIP) Pilot Project prenatal coverage; and other minor clarifications.

The Division repealed 410-123-1085 (Client co-payments) as these policies are covered in General Rules Program rule (OAR 410-120-1230).

The Division amended rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and help facilitate provider compliance with eligibility, service coverage and limitations, and billing requirements.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1000
Eligibility, Providing Services and Billing

(1) Eligibility:

(a) Providers are responsible to verify client eligibility and must do so before providing any service or billing the Division of Medical Assistance Programs (Division) or any Oregon Health Plan (OHP) Prepaid Health Plan (PHP);

(b) The Division may not pay for services provided to an ineligible client even if services were authorized. Refer to General Rules OAR 410-120-1140 (Verification of Eligibility) for details.

(2) Co-payments for OHP clients may be required for certain services. See General Rules OAR 410-120-1230 for specific information on co-pays.

(3) Billing:

(a) Providers must follow the Division rules in effect on the date of service. All Division rules are intended to be used in conjunction with the Division's General Rules Program (chapter 410, division 120), the OHP Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant Division OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement;

(b) Third Party Resources: A third party resource (TPR) is an alternate insurance resource, other than the Division, available to pay for medical/dental services and items on behalf of OHP clients. Any alternate insurance resource must be billed before the Division or any OHP PHP can be billed. Indian Health Services or Tribal facilities are not considered to be a TPR pursuant to the Division's General Rules Program rule (OAR 410-120-1280);

(c) Fabricated Prosthetics:

(A) If a dentist or denturist provides an eligible client with fabricated prosthetics that require the use of a dental laboratory, the date of the final impressions must have occurred:

(i) Prior to the client's loss of eligibility; and

(ii) For dentures for non-pregnant adults, no later than six months from the date of the last extraction from the jaw for which the denture is being provided;

(B) The dentist/denturist should use the date of final impression as the date of service only when criteria in (A) is met and the fabrication extends beyond:

(i) The client's OHP eligibility; or

(ii) Six months after the extractions (for dentures for non-pregnant adults);

(C) The date of delivery must be within 45 days of the date of the final impression and the date of delivery must also be indicated on the claim. These are the only exceptions to the Division's General Rules Program rule (OAR 410-120-1280). All other services must be billed using the date the service was provided;

(d) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA). Refer to OAR 410-123-1100 for information regarding dental services that require providers to submit reports for review ("by report" — BR) prior to reimbursement;

(e) The client's records must include documentation to support the appropriateness of the service and level of care rendered;

(f) The Division shall only reimburse for dental services that are dentally appropriate as defined in OAR 410-123-1060;

(g) Refer to OAR chapter 410, division 147 for information about reimbursement for dental services provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC);

(4) Treatment Plans: Being consistent with established dental office protocol and the standard of care within the community, scheduling of appointments is at the discretion of the dentist. The agreed upon treatment plan established by the dentist and patient shall establish appointment sequencing. Eligibility for medical assistance programs does not entitle a client to any services or consideration not provided to all clients.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11

410-123-1220
Coverage According to the Prioritized List of Health Services

This rule incorporates by reference the "Covered and Non-Covered Dental Services" document, dated January 1, 2011, and located on the Department of Human Services Web site at: www.dhs.state.or.us/policy/healthplan/guides/dental/main.html.

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Services Commission (HSC) Prioritized List of Health Services (HSC Prioritized List) and the client's specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the HSC Prioritized List.

(2) Changes to services funded on the HSC Prioritized List are effective on the date of the HSC Prioritized List change:

(a) The Division of Medical Assistance Programs (Division) administrative rules (chapter 410, division 123) will not reflect the most current HSC Prioritized List changes until they have gone through the Division rule filing process;

(b) For the most current HSC Prioritized List, refer to the HSC Web site at www.oregon.gov/OHPPR/HSC/current_prior.shtml;

(c) In the event of an alleged variation between a Division-listed code and a national code, the Division shall apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the HSC Prioritized List. Examples of limitations include frequency and client's age.

(4) The HSC Prioritized List does not include or fund the following general categories of dental services and the Division does not cover them for any client. Several of these services are considered elective or "cosmetic" in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Mastique or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular joint dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11

410-123-1260
OHP Plus Dental Benefits

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Services Commission Prioritized List of Health Services (HSC Prioritized List); and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Department of Human Services Web site in the Dental Services Supplemental Information document at www.dhs.state.or.us/policy/healthplan/guides/dental/main.html;

(b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result; or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children (under 19 years of age):

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) —The Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(C) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division does not reimburse dental exams when furnished by a dental hygienist (with or without a limited access permit);

(b) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older — a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

(3) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children (under 19 years of age) — Limited to twice per 12 months;

(B) For adults (19 years of age and older) — Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis — Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis — Child) — Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults (19 years of age and older) — Limited to once every 12 months;

(B) For children (under 19 years of age) — Limited to twice every 12 months;

(C) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(iii) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(c) Sealants:

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(4) RESTORATIVE SERVICES:

(a) Restorations — amalgam and composite:

(A) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(B) The Division limits payment to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(C) Combine and bill one line per tooth using the appropriate code. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(D) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(E) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(F) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(G) The Division reimburses for posterior composite restorations at the same rate as amalgam restorations;

(H) The Division limits payment for replacement of posterior composite restorations to once every five years;

(b) Crowns:

(A) Acrylic heat or light cured crowns (D2970) — allowed only for anterior permanent teeth;

(B) The following types of crowns are covered only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) — allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931) — allowed only for posterior teeth, permanent or primary;

(iii) Prefabricated stainless steel crowns with resin window (D2933) — allowed only for anterior teeth, permanent or primary;

(C) Permanent crowns (resin-based composite — D2710, and porcelain fused to metal (PFM) — D2751 and D2752):

(i) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;

(ii) Up to four (4) permanent crowns allowed in a seven-year period;

(iii) A replacement of a crown previously covered under OHP is included in the maximum limit of 4 permanent crowns, and would need to meet the criteria for a replacement crown;

(iv) Only allowed for clients at least 16 years and under 21 years of age or who are pregnant; and

(v) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vi) PFM crowns (D2751 and D2752) must also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 (Services Reviewed by the Division of Medical Assistance Programs);

(IV) The client has documented stable periodontal status with pocket depths within 1–3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(D) The fee for the crown includes payment for preparation of the gingival tissue;

(E) The Division limits payment for retention pins to four per tooth;

(F) Prefabricated post and core in addition to crowns (D2954 and D2957) is only covered for clients under 21 years of age or who are pregnant;

(G) The Division covers crowns only when there is significant loss of clinical crown and no other restoration will restore function:

(i) The Division shall cover crowns if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(ii) The following is not covered:

(I) Endodontic therapy alone (with or without a post);

(II) Aesthetics (cosmetics);

(III) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(H) The Division limits permanent crown replacement to once every seven years and all other crown replacement to once every five years per tooth and only when dentally appropriate. The Division may make exceptions to this limitation for crown damage due to acute trauma, based on the following factors:

(i) Extent of crown damage;

(ii) Extent of damage to other teeth or crowns;

(iii) Extent of impaired mastication;

(iv) Tooth is restorable without other surgical procedures; and

(v) If loss of tooth would result in coverage of removable prosthetic.

(5) ENDODONTIC SERVICES:

(a) Pulp capping:

(A) The Division includes direct and indirect pulp caps in the restoration fee; no additional payment shall be made for clients with the OHP Plus benefit package;

(B) The Division covers direct pulp caps as a separate service for clients with the OHP Standard benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic therapy:

(A) Endodontic therapy (D3230, D3240, D3330) is covered only for clients under 21 years of age or who are pregnant;

(B) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(c) Endodontic retreatment and apicoectomy/periradicular surgery:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(d) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(e) The Division does not cover root canal therapy for third molars;

(f) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(g) Apexification/recalcification procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification procedures are covered only for clients under 21 years of age or who are pregnant;

(h) Canal preparation and fitting of preformed dowel or post (D3950) should not be reported in conjunction with D2952, D2953, D2954, or D2957 by the same practitioner.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services (includes six months routine postoperative care):

(A) D4210 and D4211 — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(B) The Division covers the following services only for clients under 21 years of age or who are pregnant:

(i) D4240, D4241, D4260 and D4261 — allowed once every three years unless there is a documented medical/dental indication;

(ii) D4245 and D4268;

(b) Non-surgical periodontal services:

(A) D4341 and D4342 — allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(B) D4355 — allowed only once every 2 years;

(c) Other periodontal services — D4910 — limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure — four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure — one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

(7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for non-pregnant clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) The client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age or who are pregnant — the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For non-pregnant clients 21 years of age and older — the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for non-pregnant clients 21 years of age and older:

(A) A maximum of 4 times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture — each tooth (D5520);

(iii) Replacing broken tooth on a partial denture — each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Denture rebase procedures:

(A) Rebase should only be done if a reline may not adequately solve the problem. The Division limits payment for rebase to once every three years;

(B) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(h) Denture reline procedures:

(A) The Division limits payment for reline of complete or partial dentures to once every three years;

(B) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(C) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) Are limited to once every three years;

(i) Interim partial dentures (D5820-D5821, also referred to as "flippers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(j) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Maxillofacial prosthetics are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220;

(b) Bill for maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format:

(A) For clients receiving services through an FCHP or PCO, bill maxillofacial prosthetics to the FCHP or PCO;

(B) For clients receiving medical services through FFS, bill the Division.

(9) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon's office):

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the HSC Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

(C) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410–D7415);

(j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoloplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320) only for clients under 21 years of age or who are pregnant.

(10) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase individually (separately);

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

(11) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and/or sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Office visit for observation (D9430):

(A) Is covered only for clients under 21 years of age or who are pregnant; and

(B) The Division reimburses a maximum of three visits per year;

(e) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division or the FCHP/PCO for these codes using the professional claim format.

Stat. Auth.: ORS 409.050, 414.065, 414.707

Stats. Implemented: ORS 414.065, 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11

410-123-1540
Citizen/Alien-Waived Emergency Medical

(1) The Citizen/Alien-Waived Emergency Medical (CAWEM) program provides treatment of emergency medical conditions, including delivery of newborns. CAWEM is defined in OAR 410-120-0000 and further explained in OAR 410-120-1210 of the Division of Medical Assistance Programs (Division) General Rules:

(a) People covered under the CAWEM program are NOT Oregon Health Plan (OHP) clients. They DO NOT receive the OHP Plus or Standard Benefit Packages and ARE NOT enrolled into managed care plans;

(b) Refer to General Rules 410-120-1140 (Verification of Eligibility) for details regarding verifying client eligibility for services;

(c) Providers must bill emergency services provided for anyone eligible under the CAWEM program directly to the Division;

(d) Dental services provided outside of an emergency department hospital setting are not covered for CAWEM clients. See OAR 410-120-1210.

(2) Children's Health Insurance Program (CHIP) Pilot project prenatal coverage (Benefit Package identifier — CWX):

(a) Eligible pregnant women residing in the participating pilot counties receive expanded services as detailed in General Rules Program OAR 410-120-0030, which includes dental services that are covered for OHP Plus pregnant clients;

(b) This population is exempt from managed care enrollment and providers must bill the Division directly for dental services provided.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: January 2011 – Hospital Acquired Conditions, present on admission indicator reporting.
Adm. Order No.: DMAP 32-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Adopted: 410-125-0450
Rules Amended: 410-125-0047, 410-125-0080, 410-125-0085, 410-125-0140, 410-125-0360, 410-125-0410, 410-125-1020, 410-125-2000, 410-125-2020, 410-125-2030
Rules Repealed: 410-125-0100
Subject: The Hospital Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division adopted 410-125-0450 to implement Hospitals acquired conditions and the present on admission indicator; repealed 410-125-0100 as the QIO service contract will be terminated; and, amended other rules as follows:

• 410-125-0410 (15-day readmission): clarifies which claim will be paid if claims are combined;

• 410-125-0360: clarifies that inpatient claims are paid based on admission date;

• 410-125-1020: clarifies that inpatient rehabilitation facilities are not cost settled;

• 410-125-0047, 410-125-0080, 410-125-0085, 410-125-0140, 410-125-2000, 410-125-2020 and 410-125-2030: to reflect the Division's responsibility for prior authorization currently performed by contracted QIO.

• Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0047
Limited Hospital Benefit for the OHP Standard Population

(1) The Oregon Health Plan (OHP) Standard population has a limited hospital benefit for urgent or emergent inpatient and outpatient services. Inpatient and outpatient hospital services are limited to the ICD-9 CM Diagnoses codes listed on the 'Standard Population Limited Hospital Benefit Code List.'

(2) The limited hospital benefit includes the ICD-9 CM codes listed in the OHP Standard Population — Limited Hospital Benefit Code List. This rule incorporates by reference the OHP Standard Population — Limited Hospital Benefit Code List. This list includes diagnoses requiring prior authorization indicated by the letters for prior authorization (PA) next to the code number. The archived and the current list is available on the web site (www.dhs.state.or.us/policy/healthplan/guides/hospital), or contact the Division of Medical Assistance Programs (Division) for a hardcopy. The document dated:

(a) August 1, 2004, is effective for dates of service August 1, 2004 through August 31, 2004;

(b) September 1, 2004, is effective for dates of service September 30, 2004 through June 30, 2008; and

(c) July 1, 2008 is effective for dates of service July 1, 2008 forward.

(3) The Division shall reimburse hospitals for inpatient (diagnostic and treatment) services, outpatient (diagnostic and treatment services) and emergency room (diagnostic and treatment) based on the following:

(a) For treatment, the diagnosis must be listed in the OHP Standard Population — Limited Hospital Benefit Code List;

(b) For treatment the diagnosis must be above the funding line on The Health Services Commission Prioritized List of Health Services (OAR 410-141-0520);

(c) The diagnosis (ICD-9) must pair with the treatment (CPT code); and

(d) Prior authorization (PA) must be obtained for codes indicated in the OHP Standard Population — Limited Hospital Benefit Code List. PA request should be directed to the Division and will follow the present (current) PA process. PAs must be processed as expeditiously as the client's health condition requires;

(e) Medically appropriate services required to make a definitive diagnosis are a covered benefit.

(4) Some non-diagnostic outpatient hospital services (e.g. speech, physical or occupational therapy, etc.) are not covered benefits for the OHP Standard population (see the individual program for coverage) in the hospital setting.

(5) For benefit implementation process and PA requirements for the client enrolled in a Fully Capitated Health Plan (FCHP) and/or Mental Health Organization (MHO), contact the client's FCHP or MHO. The FCHP and/or MHO may have different requirements than the Division.

Stat. Auth.: ORS 414.025 & 414.065
Stats. Implemented: ORS 414.065
Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 52-2004(Temp), f. & cert. ef. 9-1-04 thru 2-15-05; OMAP 84-2004, f. & cert. ef. 11-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0080
Inpatient Services

(1) Elective (not urgent or emergent) admission:

(a) Fully-Capitated Health Plan (FCHP) and Mental Health Organization (MHO) clients — contact the client's MHO or FCHP. The health plan may have different prior authorization (PA) requirements than the Division of Medical Assistance Programs (Division);

(b) Medicare clients — The Division does not require PA for inpatient services provided to clients with Medicare Part A or B coverage;

(c) For Division clients covered by the Oregon Health Plan (OHP) Plus Benefit Package:

(A) For a list of medical and surgical procedures that require PA, see the Medical-Surgical Service rules, specifically OAR 410-130-0200, table 130-0200-1, unless they are urgent or emergent defined in OAR 410-125-0401.

(B) For PA contact the Division unless otherwise indicated in the Medical Surgical Service rules, specifically OAR 410-130-0200, Table 130-0200-1;

(d) Division clients covered by the OHP Standard Benefit Package have a limited hospital benefit package. Specific coverage and PA requirements are referenced in OAR 410-125-0047 and listed in the Division's Hospital Services Supplemental Information at http://www.dhs.state.or.us/healthplan/guides/hospital.

(2) Transplant services:

(a) Complete rules for transplant services are in the Division's Transplant Services Program administrative rules (chapter 410, division 124);

(b) Clients are eligible for transplants covered by the Oregon Health Services Commission's Prioritized List of Health Services. See the Transplant Services Program administrative rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in a FCHP, contact the Division's Medical Director's office.

(3) Out-of-state non-contiguous hospitals:

(a) All non-emergent/non-urgent services provided by hospitals more than 75 miles from the Oregon border require PA;

(b) Contact the Division's Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-state contiguous hospitals: services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, are prior authorized following the same rules and procedures as in-state providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in the Medical Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1, e.g., inpatient physical rehabilitation care, require PA — contact the Division-contracted QIO;

(b) Transfers to a long term acute care hospital, skilled nursing facility, intermediate care facility or swing bed — contact Seniors and People with Disabilities (SPD). SPD reimburses nursing facilities and swing beds through contracts with the facilities. For FCHP clients — transfers require authorization and payment (for first 20 days) from the FCHP;

(c) Transfers for the same or lesser level inpatient care to a general acute care hospital — the Division shall cover transfers, including back transfers, which are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social/psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven days) and the extent to which the transfer locates the patient closer to familial support;

(B) Transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require PA;

(B) In-state or contiguous non-emergency transfers for the purpose of providing care that is unavailable in the transferring hospital do not require PA unless the planned service is listed in Medical Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1;

(C) All non-urgent transfers to out-of-state non-contiguous hospitals require PA.

(6) Dental procedures provided in a hospital setting:

(a) The Division shall reimburse for hospital services when covered dental services are provided in a hospital setting for clients not enrolled in a FCHP, when a hospital setting is medically appropriate:

(b) For prior authorization for fee-for-service clients, contact the Division's Dental Services Program analyst.

(c) For clients enrolled in a FCHP, contact the client's FCHP;

(d) Emergency dental services do not require PA.

Stat. Auth.: ORS 409.010, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0085
Outpatient Services

(1) Outpatient services that may require prior authorization include (see the individual program rules):

(a) Physical Therapy (chapter 410, division 131);

(b) Occupational Therapy (chapter 410, division 131);

(c) Speech Therapy (chapter 410, division 129);

(d) Audiology (chapter 410, division 129);

(e) Hearing Aids (chapter 410, division 129);

(f) Dental Procedures (chapter 410, division 123);

(g) Drugs (chapter 410, division 121);

(h) Apnea monitors, services, and supplies (chapter 410, division 131);

(i) Home Parenteral/Enteral Therapy (chapter 410, division 148);

(j) Durable Medical Equipment and Medical supplies (chapter 410, division 122);

(k) Certain hospital services.

(2) The National Drug Code (NDC) must be included on the electronic (837I) and paper (UB 04) claims for physician administered drug codes required by the Deficit Reduction Act of 2005.

(3) Outpatient surgical procedures:

(a) Fully-Capitated Health Plan (FCHP) clients: Contact the client's FCHP. The health plan may have different prior authorization requirements than the Division of Medical Assistance Programs (Division). Some services are not covered under FCHP contracts and require prior authorization from the Division, or the Division's Dental Program analyst.

(b) Medicare clients enrolled in FCHPs: These services must be authorized by the plan even if Medicare is the primary payer. Without this authorization, the provider shall not be paid beyond any Medicare payments (see also OAR 410-125-0103).

(c) For the Plus benefit package Division clients:

(A) Surgical procedures listed in OAR 410-125-0080 require prior authorization when performed in an outpatient or day surgery setting, unless they are urgent or emergent.

(B) Contact the Division for authorization (unless indicated otherwise in OAR 410-125-0080). (d) For the Standard benefit package Division client's outpatient surgical procedures: see OAR 410-125-0047 and the OHP Standard Population — Limited Hospital Benefit Package Code List (www.dhs.state.or.us/policy/healthplan/guides/hospital), or contact the Division for a hardcopy, for coverage and prior authorization requirements.

(e) Out-of-State services — Outpatient services provided by hospitals located less than 75 miles from the border of Oregon do not require prior authorization unless specified in these rules. All non-urgent or non-emergent services provided by hospitals located more than 75 miles from the border of Oregon require prior authorization. For clients enrolled in an FCHP, contact the plan for authorization. For clients not enrolled in a prepaid health plan, contact the Division's Medical Director's office.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 414.025, 414.727 & 414.743

Stats. Implemented: ORS 414.065

Hist.: HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0140
Prior Authorization Does Not Guarantee Payment

(1) Prior authorization (PA) is valid for the date range approved only as long as the client remains eligible for services. For example, a client may become ineligible after the prior authorization has been granted but before the actual date of service, or a client's hospital benefit days may be used prior to the time the claim for the prior authorized service is submitted to the Division of Medical Assistance Programs (Division) for payment.

(2) All prior authorized treatment is subject to retrospective review. If the information provided to obtain prior authorization cannot be validated in a retrospective review, payment shall be denied or recovered.

(3) Hospitals should develop their own internal monitoring system to determine if the admitting physician has received prior authorization for the service from the Division.

(4) For the Plus Benefit Package PA information refer to the prior authorization chart in the Hospital Services Program OAR 410-125-0080.

(5) For the Standard Benefit Package PA information refer to the Standard Population — Limited Hospital Benefit Package Covered Code List at the website www.dhs.state.or.us/policy/healthplan/guides/hospital.

(6) Hospitals may also verify PA requirements by calling the Division's Provider Services Unit or the RN Benefit Hotline (contact phone numbers are located on the Division's website).

Stat. Auth.: ORS 184.750, 409.010, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0220; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0360
Definitions and Billing Requirements

(1) Total days on an inpatient claim must equal the number of accommodation days. Do not count the day of discharge when calculating the number of accommodation days.

(2) Inpatient services are reimbursed based on the admission date and discharge diagnosis.

(3) Inpatient services are services to patients who typically are admitted to the hospital before midnight and listed on the following day's census, with the following exceptions:

(a) A patient admitted and transferred to another acute care hospital on the same day is considered an inpatient;

(b) A patient who expires on the day of admission is an inpatient; and

(c) Births.

(4) Outpatient services:

(a) Outpatient services are services to patients who are treated and released the same day;

(b) Outpatient services also include services provided prior to midnight and continuing into the next day if the patient was admitted for ambulatory surgery, admitted to a birthing center, a treatment or observation room, or a short term stay bed;

(c) Outpatient observation services are services provided by a hospital, including the use of a bed and periodic monitoring by hospital nursing or other staff for the purpose of evaluation of a patient's medical condition. A maximum of 48 hours of outpatient observation shall be reimbursed. An outpatient observation stay that exceeds 48 hours must be billed as inpatient; and

(d) Outpatient observation services do not include the following:

(A) Services provided for the convenience of the patient, patient's family or physician but which are not medically necessary;

(B) Standard recovery period; and

(C) Routine preparation services and recovery for diagnostic services provided in a hospital outpatient department.

(5) Outpatient and inpatient services provided on the same day: If a patient receives services in the emergency room or in any outpatient setting and is admitted to an acute care bed in the same hospital on the same day, combine the emergency room and other outpatient charges related to that admission with the inpatient charges. Bill on a single UB-04 for both inpatient and outpatient services provided under these circumstances:

(a) If on the day of discharge, the client uses outpatient services at the same hospital, these must be billed on the UB-04 along with other inpatient charges, regardless of the type of service provided or the diagnosis of the client. Prescription medications provided to a patient being discharged from the hospital may be billed separately as outpatient Take Home Drugs if the patient receives more than a three-day supply.

(b) Inpatient and outpatient services provided to a client on the same day by two different hospitals shall be reimbursed separately. Each hospital shall bill for the services provided by that hospital.

(6) Outpatient procedures which result in an inpatient admission: If, during the course of an outpatient procedure, an emergency develops requiring an inpatient stay, place a "1" in the Type of Admission field. The principal diagnosis should be the condition or complication that caused the admission. Bill charges for the outpatient and inpatient services together.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 414.025, 414.065 & 414.743

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 37-1983 (Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0055; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0330, 461-015-0340 & 461-015-0380; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0380 & 410-125-0460; HR 22-1993 (Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0410
Readmission

(1) A patient whose readmission for surgery or follow-up care is planned at the time of discharge must be placed on leave of absence status, and both admissions must be combined into a single billing. The Division of Medical Assistance Programs (Division) will make one payment for the combined service. Examples of planned readmissions include, but are not limited to, situations where surgery could not be scheduled immediately, a specific surgical team was not available, bilateral surgery was planned, or when further treatment is indicated following diagnostic tests but cannot begin immediately.

(2) A patient whose discharge and readmission to the hospital is within fifteen (15) days for the same or related diagnosis must be combined into a single billing. Division shall make one payment for the amount appropriate for the combined service.

(3) This rule does not apply to:

(a) Readmissions for an unrelated diagnosis;

(b) Readmissions occurring more than 15 days after the date of discharge;

(c) Readmissions for a diagnosis that may require episodic (a series) acute care hospitalizations to stabilize the medical condition such as, but not limited to: diabetes, asthma, or chronic obstructive pulmonary disease.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 36-1993, f. & cert. ef. 12-1-93; ; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-0450
Hospital Acquired Conditions

(1) The agency shall no longer cover "hospital-acquired conditions" (HAC) for inpatient hospital claims with dates of admission on or after January 1, 2011.

(2) A hospital-acquired condition is a condition that is reasonably preventable and was not present or identified at the hospital admission.

(3) A "present on admission" (POA) indicator is a status code the hospital uses on an inpatient claim that indicates if a condition was present at the time the order for inpatient admission occurs. A POA indicator can also identify a condition that developed during an outpatient encounter. This includes, but not limited to the emergency department, observation and outpatient surgery.

(4) The agency shall use the most recent list of conditions identified as non-payable by Medicare. The agency may revise through addition or deletion the selected conditions at any time during the fiscal year.

(5) For clients with both Medicare and Medicaid (duals) the agency shall not act as secondary payer for Medicare non-payment of hospital acquired conditions.

(6) Diagnosis-related groups (DRG) and percentage paid hospitals are required to submit a POA indicator for the principal diagnosis and every secondary diagnosis code. A valid POA indicator is required on all inpatient hospital claims. Claims without a valid POA indicator shall be denied.

(7) The following hospitals are exempt from reporting:

(a) Critical access hospitals (CAH)

(b) Maryland waiver hospitals

(c) Children's inpatient facilities

(d) Federally qualified health centers

(e) Inpatient psychiatric hospitals

(f) Veterans Administration/Department of Defense hospitals

(g) Long-term care hospitals (LTCH)

(h) Cancer hospitals

(i) Rural health clinics

(j) Religious non-medical health care institutions

(k) Inpatient rehabilitation facilities

(8) For a complete list of HACs and billing instructions please see the hospital supplemental guide.

Stat. Auth.: ORS 409.025, 409.040, 409.505, 414.025, 414.727 & 414.743

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-1020
Filing of Cost Statement

(1) The hospital must file an annual Calculation of Reasonable Cost (DMAP 42), covering the latest fiscal period of operation of the hospital with Division of Medical Assistance Programs (Division):

(a) A Calculation of Reasonable Cost statement is filed for less than an annual period only when necessitated by the hospital's termination of their agreement with the Division, a change in ownership, or a change in the hospital's fiscal period;

(b) The hospital must use the same fiscal period for the Division 42 as that used for its Medicare report. If it doesn't have an agreement with Medicare, the hospital must use the same fiscal period it uses for filing its federal tax return;

(c) The report must be filed for both inpatient and outpatient services, even if the service is paid under a prospective payment system or fee schedule (e.g., Diagnosis-Related Groups (DRG) payments, outpatient clinical laboratory, etc.);

(d) In the absence of an agreement with Medicare, the hospital must use the same fiscal period as that used for filing their Federal tax return.

(2) Twelve months after the hospital's fiscal year end, the Division will send the hospital a computer printout listing all transactions between the hospital and the Division during that auditing period. The Calculation of Reasonable Cost statement (DMAP 42) is due within 90 days of receipt

by the hospital of the computer printout. Failure to file within 90 days may result in a 20 percent reduction in the payment rate:

(a) Hospitals without an agreement with Medicare may be subject to a field audit;

(b) Hospitals without an agreement with Medicare are required to submit a financial statement giving details of all assets, liabilities, income, and expenses, audited by a Certified Public Accountant.

(3) Improperly completed or incomplete Calculation of Reasonable Cost statements will be returned to the hospital for proper completion. The statement is not considered to be filed until it is received in a correct and complete form.

(4) If a hospital knowingly, or has reason to know, files a cost statement containing false information, such action constitutes cause for termination of its agreement with the Division. Hospitals filing false reports may also be referred to prosecution under applicable statutes.

(5) Each Calculation of Reasonable Cost statement submitted to the Division must be signed by the individual who normally signs the hospital's Medicare reports, federal income tax return, and other reports. If the hospital has someone, other than an employee prepare the cost statement, that individual will also sign the statement and indicate his or her status with the hospital.

(6) Notwithstanding subsection (1) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until the Division determines all necessary federal approvals have been obtained. The hospital must file with the Division, an annual Calculation of Reasonable Cost (DMAP 42), covering the latest fiscal period of operation of the hospital:

(a) A Calculation of Reasonable Cost statement is filed for less than an annual period only when necessitated by the hospital's termination of their agreement with the Division, a change in ownership, or a change in the hospital's fiscal period;

(b) The hospital must use the same fiscal period for the DMAP 42 as that used for its Medicare report. If it doesn't have an agreement with Medicare, the hospital must use the same fiscal period it uses for filing its federal tax return;

(c) The report must be filed for both inpatient and outpatient services, even if the service is paid under a prospective payment system or fee schedule (e.g., DRG payments, outpatient clinical laboratory, etc.);

(d) In the absence of an agreement with Medicare, the hospital must use the same fiscal period as that used for filing their Federal tax return.

(7) Inpatient rehabilitation facilities are exempt from filing an annual calculation of reasonable Cost (DMAP 42) and not cost settled.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 414.025 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Former (2) thru (5) Renumbered to 461-015-0121 thru 461-015-0124; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1987, f. & ef. 10-1-87; AFS 39-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0105, 461-015-0120 & 461-015-0122; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0650; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-2000
Access to Records

(1) Providers must furnish requested medical and financial documentation within 30 calendar days from the date of request. Failure to comply within 30 calendar days shall result in recovery of payment(s) made by the Division for services being reviewed.

(2) The Division conducts post payment review of admissions and claim records. The Division may request records from a hospital or may request access to records while at the hospital.

(3) The hospital has 30 days to provide the Division with copies of records. In some cases, there may be a more urgent need to review records.

(4) The Medical Payment Recovery Unit (MPRU) conducts recovery activities for the Division involving third party liability resources. MPRU may request records from the hospital. This unit has the same right to medical and financial information as the Division.

Stat. Auth.: ORS 184.750, 184.770 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 60-1982, f. & ef. 7-1-82; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0040; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0690; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-2020
Post Payment Review

(1) All services provided by a hospital in the inpatient or outpatient setting are subject to post-payment review by the Division. Both emergency and non-emergency services may be reviewed. Claims for services may be reviewed to determine:

(a) The medical necessity of the admission or outpatient services provided;

(b) The appropriateness of the length of stay;

(c) The appropriateness of the plan of care;

(d) The accuracy of the ICD-9 coding and DRG assignment;

(e) The appropriateness of the setting selected for service delivery;

(f) The quality of care of the services provided;

(g) The nature of any service coded as emergent;

(h) The accuracy of the billing;

(i) The care furnished is appropriately documented.

(2) If the Division determines that a hospital service was not within Division coverage parameters, the hospital and attending physician shall be notified in writing and will have twenty days to provide additional written documentation to support the medical necessity of the admission and/or procedure(s).

(3) If the recommendation for denial is upheld by the Division, the hospital and/or practitioner may request a reconsideration of the denial within 30 days of the receipt of the denial.

(4) If the reconsidered decision is to uphold the denial, payment to all providers of service shall be recovered.

(5) The hospital and/or practitioner may appeal any final decision through the Division administrative appeals process.

(6) No payment shall be made by the Division for inpatient services if the Division or Medicare has determined the service is not medically necessary and/or appropriate.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 1-1984, f. & ef. 1-9-84; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0090; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0700; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

410-125-2030
Recovery of Payments

(1) Payments made by the Division of Medical Assistance Programs (Division) shall be recovered for:

(a) Services identified by the provider as emergent or urgent, but determined on retrospective review not to have been emergent or urgent. Payment shall also be recovered from the admitting and/or performing physician;

(b) Services determined by the Division that the readmission to the same hospital was the result of a premature discharge;

(c) Services were billed but not provided;

(d) Services provided at an inappropriate level of care, which includes the setting selected for service delivery;

(e) The Division non-covered services;

(f) Services, which were covered by a third party payer or other resources; or

(g) Services denied by a third party payer as not medically necessary.

(2) Payment to a physician and other providers of service for inpatient non-urgent or non-emergent services requiring prior authorization is subject to recovery by the Division if recovery is made from the hospital.

(3) If review by the Division results in a denial, the hospital may appeal any final decision through the Division Administrative Appeals process. See Administrative Hearings (chapter 410, division 120).

(4) As part of the Utilization Review Program, the Division shall develop and maintain a data system profiling the patterns of practice of institutions and practitioners. As a result of these profiles, the Division may initiate focused reviews. Any practitioner or hospital subject to a focused review shall be notified in advance of the review.

(5) All providers having a pattern of inappropriate utilization or inappropriate quality of care according to the current standards of the medical community and/or abuse of the Division rules or procedures shall be subject to corrective action. Actions taken shall be those determined appropriate by the Division, or sanctions established under the Oregon Revised Statues (ORS) or Oregon administrative rule and/or referral to a State or Federal authority, licensing body or regulatory agency for appropriate action.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 42-1991, f. & cert. ef. 10-1-91; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: 2008–09 Legislated current rate methodology, federal requirements, and language.
Adm. Order No.: DMAP 33-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 410-127-0020, 410-127-0060, 410-127-0065, 410-127-0080
Subject: The Home Health Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division amended the rules listed above to incorporate the current home health rate methodology, implement federal requirements, clarify language and take care of non-substantive "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-127-0020
Definitions

(1) Acquisition Cost — The purchase price plus shipping.

(2) Custodial Care — Care that is not related to a plan of care. Supervision is not required.

(3) Department — The Department of Human Services (Department) which includes Children, Adults and Families (CAF), Seniors and People with Disabilities (SPD) and Health Services (HS). Included in HS is Health Planning and Community Relations, Public Health Systems, Family Health Services, Disease Prevention and Epidemiology, Division of Medical Assistance Programs (Division), Oregon State Public Health Laboratories, and the Addictions and Mental Health Division (AMH).

(4) Home — A place of temporary or permanent residence used as a person's home. This does not include a hospital, nursing facility, or intermediate care facility, but does include assisted living facilities, residential care facilities and adult foster care homes.

(5) Home Health Agency — Any public or private agency which establishes, conducts or represents itself to the public as a home health agency or organization providing coordinated skilled home health services for compensation on a home visiting basis, and licensed by Health Services, Health Care Licensure and Certification as a Home Health Agency, and certified by Medicare Title XVIII. Home health agency does not include:

(a) Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with tenets and practices of a recognized church or religious denomination;

(b) Health services offered by county health departments that are not formally designated and funded as home health agencies within the individual departments;

(c) Personal care services that do not pertain to the curative, rehabilitative or preventive aspect of nursing.

(6) Home Health Aide — A person who meets the criteria for Home Health Aide defined in the Medicare Conditions of Participation 42 CFR 484.36 and certified by the Board of Nursing.

(7) Home Health Aide Services — Services of a Home Health Aide must be provided under the direction and supervision of a registered nurse or licensed therapist. The focus of care shall be to provide personal care and/or other services under the plan of care which supports curative, rehabilitative or preventive aspects of nursing. These services are provided only in support of skilled nursing, physical therapy, occupational therapy, or speech therapy services. These services do not include custodial care.

(8) Home Health Services — Only the services described in the Division of Medical Assistance Programs (Division) Home Health Services provider guide.

(9) Medicaid Home Health Provider — A Home Health Agency licensed by Health Services, Health Care Licensure and Certification certified for Medicare and enrolled with the Division as a Medicaid provider.

(10) Medical Supplies — Supplies prescribed by a physician as a necessary part of the plan of care being provided by the Home Health Agency.

(11) Occupational Therapy Services — Services provided by a registered occupational therapist or certified occupational therapy assistant supervised by a registered occupational therapist, due to the complexity of the service and client's condition. The focus of these services shall be curative, rehabilitative or preventive and must be considered specific and effective treatments for a client's condition under accepted standards of medical practice. Teaching the client, family and/or caregiver task oriented therapeutic activities designed to restore function and/or independence in the activities of daily living is included in this skilled service. Occupational Therapy Licensing Board ORS 675.210-675.340 and the Uniform Terminology for Occupational Therapy established by the American Occupational Therapy Association, Inc. govern the practice of occupational therapy.

(12) Physical Therapy Services — Services provided by a licensed physical therapist or licensed physical therapy assistant under the supervision of a licensed physical therapist, due to the inherent complexity of the service and the client's condition. The focus of these services shall be curative, rehabilitative or preventive and must be considered specific and effective treatments for a patient's condition under accepted standards of medical practice. Teaching the client, family and/or caregiver the necessary techniques, exercises or precautions for treatment and/or prevention of illness or injury is included in this skilled service. Physical Therapy Licensing Board ORS 688.010 to 688.235 and Standards for Physical Therapy as well as the Standards of Ethical Conduct for the Physical Therapy Assistant established by the American Physical Therapy Association govern the practice of physical therapy.

(13) Plan of Care — Written instructions explaining how the client is to be cared for. The plan is initiated by the treating practitioner with assistance from Home Health Agency nurses and therapists. The plan must include but is not limited to:

(a) All pertinent diagnoses;
(b) Mental status;
(c) Types of services;
(d) Specific therapy services;
(e) Frequency of service delivery;
(f) Supplies and equipment needed;
(g) Prognosis;
(h) Rehabilitation potential;
(i) Functional limitations;
(j) Activities permitted;
(k) Nutritional requirements;
(l) Medications and treatments;
(m) Safety measures;
(n) Discharge plans;
(o) Teaching requirements;
(p) Goals;
(q) Other items as indicated.

(14) Practitioner — A person licensed pursuant to Federal and State law to engage in the provision of health care services within the scope of the practitioner's license and certification.

(15) Responsible Unit — The agency responsible for approving or denying payment authorization.

(16) Skilled Nursing Services — The client care services pertaining to the curative, restorative or preventive aspects of nursing performed by a registered nurse or under the supervision of a registered nurse, pursuant to the plan of care established by the prescribing practitioner in consultation with the Home Health Agency staff. Skilled nursing emphasizes a high level of nursing direction, observation and skill. The focus of these services shall be the use of the nursing process to diagnose and treat human responses to actual or potential health care problems, health teaching, and health counseling. Skilled nursing services include the provision of direct client care and the teaching, delegation and supervision of others who provide tasks of nursing care to clients, as well as phlebotomy services. Such services will comply with the Nurse Practice Act and administrative rules of the Oregon State Board of Nursing and Health Division — division 27 — Home Health Agencies, which rules are by this reference made a part hereof.

(17) Speech and Language Pathology Services — Services provided by a licensed speech-language pathologist due to the inherent complexity of the service and the patient's condition. The focus of these services shall be curative, rehabilitative or preventive and must be considered specific and effective treatment for a patient's condition under accepted standards of medical practice. Teaching the client, family and/or caregiver task oriented therapeutic activities designed to restore function, and/or compensatory techniques to improve the level of functional communication ability is included in this skilled service. Speech-Language Pathology and Audiologist Licensing Board ORS 681.205 to 681.991 and the Standards of Ethics established by the American Speech and Hearing Association, govern the practice of speech and language pathology.

(18) Title XVIII (Medicare) — Title XVIII of the Social Security Act.

(19) Title XIX (Medicaid) — Title XIX of the Social Security Act.

(20) OASIS (Outcome and Assessment Information Set) — a client specific comprehensive assessment that identifies the client's need for home care and that meets the client's medical, nursing, rehabilitative, social and discharge planning needs.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 411-075-0001; HR 12-1991, f. & cert. ef. 3-1-91; HR 14-1992, f. & cert. ef. 6-1-92; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 4-1998(Temp), f. & cert. ef. 2-5-98 thru 7-15-98; OMAP 24-1998, f. & cert. ef. 7-15-98; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 36-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. f. 2-1-03; DMAP 33-2010, f. 12-15-10, cert. ef. 1-1-11

410-127-0060
Reimbursement and Limitations

(1) Reimbursement. The Division of Medical Assistance Programs (Division) reimburses home health services on a fee schedule by type of visit (see home health rates and copayment chart on the DHS website at: http://www.dhs.state.or.us/policy/healthplan/guides/homehealth/main.htm)

(2) The Division recalculates its home health services rates every other year. The Division will reimburse home health services at a level of 75% of Medicare costs reported on the audited or most recently accepted (pending CMS approval) Medicare Cost Reports prior to the rebase date.

(3) The Division will request the Medicare Cost Reports from home health agencies with a due date, and will recalculate rates based on the Medicare Cost Reports received by the requested due date. It is the responsibility of the home health agency to submit requested cost reports by the date requested.

(4) The Division reimburses only for service which is medically appropriate.

(5) Limitations:

(a) Limits of covered services:

(A) Skilled nursing visits are limited to two visits per day with payment authorization;

(B) All therapy services are limited to one visit or evaluation per day for physical therapy, occupational therapy or speech and language pathology services. Therapy visits require payment authorization;

(C) The Division will authorize home health visits for clients with uterine monitoring only for medical problems, which could adversely affect the pregnancy and are not related to the uterine monitoring;

(D) Medical supplies must be billed at acquisition cost and the total of all medical supplies revenue codes may not exceed $75 per day. Only supplies that are used during the visit or the specified additional supplies used for current client/caregiver teaching or training purposes as medically necessary are billable. Client visit notes must include documentation of supplies used during the visit or supplies provided according to the current plan of care;

(E) Durable medical equipment must be obtained by the client by prescription through a durable medical equipment provider.

(b) Not covered service:

(A) Service not medically appropriate;

(B) A service whose diagnosis does not appear on a line of the Prioritized List of Health Services which has been funded by the Oregon Legislature (OAR 410-141-0520);

(C) Medical Social Worker service;

(D) Registered dietician counseling or instruction;

(E) Drug and or biological;

(F) Fetal non-stress testing;

(G) Respiratory therapist service;

(H) Flu shot;

(I) Psychiatric nursing service.

ED. NOTE: Tables referenced are available from the agency.
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 682, f. 7-19-74, ef. 8-11-74; PWC 798, f. & ef. 6-1-76; PWC 854(Temp), f. 9-30-77, ef. 10-1-77 thru 1-28-78; Renumbered from 461-019-0420 by Chapter 784, Oregon Laws 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 411-075-0010; HR 14-1992, f. & cert. ef. 6-1-92; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 77-2003, f. & cert. ef. 10.1.03; DMAP 16-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 33-2010, f. 12-15-10, cert. ef. 1-1-11

410-127-0065
Signature Requirements

(1) The Division of Medical Assistance Programs (Division) requires practitioners to sign for services they order. This signature shall be handwritten or electronic, and it must be in the client's medical record.

(2) The ordering practitioner is responsible for the authenticity of the signature.

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 38-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 33-2010, f. 12-15-10, cert. ef. 1-1-11

410-127-0080
Prior Authorization

(1) Home health providers must obtain prior authorization (PA) for services as specified in rule.

(2) Providers must request PA as follows (see the Home Health Supplemental Information booklet for contact information):

(a) For Medically Fragile Children's Unit (MFCU) clients, from the Department of Human Services (Department) MFCU;

(b) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, from the MCM contractor;

(c) For clients enrolled in a prepaid health plan (PHP), from the PHP;

(d) For all other clients, from the Division of Medical Assistance Programs (Division).

(3) For services requiring authorization, providers must contact the responsible unit for authorization within five working days following initiation or continuation of services. The FAX or postmark date on the request will be honored as the request date. It is the provider's responsibility to obtain payment authorization. Authorization will be given based on medical appropriateness and appropriate level of care, cost and/or effectiveness as supported by submitted documentation.

(4) Payment authorization does not guarantee reimbursement (e.g. eligibility changes, incorrect identification number, provider contract ends).

(5) For rules related to authorization of payment, including retroactive eligibility, see General Rules, 410-120-1320.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 682, f. 7-19-74, ef. 8-11-74; PWC 798, f. & ef. 6-1-76; AFS 8-1979, f. 3-30-79, ef. 4-1-79; Renumbered from 461-019-0410 by Chapter 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 6-1986, f. & ef. 4-24-86; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 411-075-0005; HR 12-1991, f. & cert. ef. 3-1-91; HR 30-1992(Temp), f. & cert. ef. 9-25-92; HR 2-1993, f. 2-19-93, cert. ef. 2-20-93; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 15-1999, f. & cert. ef. 4-1-99; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 1-2003, f. 1-31-03, cert. f. 2-1-03; OMAP 91-2003, f. 12-30-03 cert. ef. 1-1-04; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 33-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: January 2011 benefit coverage elimination, language clarification, table and billing procedure updates.
Adm. Order No.: DMAP 34-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 410-130-0200, 410-130-0255, 410-130-0580, 410-130-0585, 410-130-0587
Subject: The Medical-Surgical Services program administrative rules govern Division payment for services to certain clients. The Division amended rules as follows:

• 410-130-0200-to add imaging codes that will need Prior Authorization;

• 410-130-0255-to clarify that the Division shall not reimburse providers for administration of privately purchased vaccines if those vaccines are available through the VFC program and clarify guidelines for immunization schedules;

• 410-130-0580-to clarify language that addresses sterilization consent form requirement;

• 410-130-0585-to clarify the name change for Family Planning Services and to clarify billing procedures;

• 410-130-0587-to clarify clinic billing procedures for Family Planning Services

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0200
Prior Authorization

(1) For fee-for-service clients prior authorization (PA) is required for all procedure codes listed in Table 130-0200-1 regardless of the setting they are performed in. For details on where to obtain PA: download a copy of the Medical-Surgical Services Supplemental Information booklet at:

http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/medsurgsupp1109.pdf

(2) For clients enrolled in a prepaid health plan (PHP), providers must obtain PA from the client's PHP.

(3) PA is not required:

(a) For clients with both Medicare and Medical Assistance Program coverage and the service is covered by Medicare. However, PA is still required for bariatric surgeries and evaluations and most transplants, even if they are covered by Medicare;

(b) For kidney and cornea transplants, unless they are performed out-of-state;

(c) For emergent or urgent procedures or services;

(d) For hospital admissions, unless the procedure requires PA.

(4) A second opinion may be requested by the Division of Medical Assistance Programs or the contractor before PA is given for a surgery.

(5) Treating and performing practitioners are responsible for obtaining PA.

(6) Refer to Table 130-0200-1 for all services/procedures requiring PA.

(7) **Table 130-0200-1**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11

410-130-0255

Immunizations and Immune Globulins

(1) Use standard billing procedures for vaccines that are not part of the Vaccines for Children (VFC) Program.

(2) The Division of Medical Assistance Programs (Division) covers Synagis (palivizumab-rsv-igm) only for high-risk infants and children as defined by the American Academy of Pediatric guidelines. Bill 90378 for Synagis.

(3) Providers are encouraged to administer combination vaccines when medically appropriate and cost effective.

(4) VFC Program:

(a) Under this federal program, vaccine serums are free for clients' ages 0 through 18. The Division will not reimburse the cost of privately purchased vaccines that are provided through the VFC Program. The Division also will not reimburse for the administration of privately purchased vaccines;

(b) Only providers enrolled in the VFC Program can receive free vaccine serums. To enroll as a VFC provider, contact the Public Health Immunization Program. For contact information, see the Medical-Surgical Supplemental Information found at http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/medsurgsupp1109.pdf

(c) The Division will reimburse providers for the administration of any vaccine provided by the VFC Program. Whenever a new vaccine becomes available through the VFC Program, administration of that vaccine is also covered by the Division;

(d) Refer to Table 130-0255-1 for immunization codes provided through the VFC Program. Recommendations as to who may receive influenza vaccines vary from season to season and may not be reflected in Table 130-0255-1;

(e) Providers shall follow the current Advisory Committee on Immunization Practices (ACIP) guidelines for immunization schedules. Exceptions include:

(A) On a case-by-case basis, provider may use clinical judgment in accordance with accepted medical practice to provide immunizations on a modified schedule;

(B) On a case-by-case basis, provider may modify immunization schedule in compliance with the laws of the State of Oregon, including laws relating to exemptions for immunizations due to religious beliefs or other requests.

(f) Use the following procedures when billing for the administration of a VFC vaccine:

(A) When the sole purpose of the visit is to administer a VFC vaccine, the provider should bill the appropriate vaccine procedure code with modifier -26 or -SL for each injection. Do not bill Current Procedural Terminology (CPT) code 90465-90474 or 99211;

(B) When the vaccine is administered as part of an Evaluation and Management service (e.g., well-child visit) the provider should bill the appropriate immunization code with modifier -26, or -SL for each injection in addition to the Evaluation and Management code. **Table 130-0255-1**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0800, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11

410-130-0580

Hysterectomies and Sterilization

(1) Refer to OAR 410-130-0200 Prior Authorization, Table 130-0200-1 and 410-130-0220 Not Covered/Bundled Services, Table 130-0220-1.

(2) Hysterectomies performed for the sole purpose of sterilization are not covered.

(3) All hysterectomies, except radical hysterectomies, require prior authorization (PA).

(4) A properly completed Hysterectomy Consent form (DMAP 741) or a statement signed by the performing physician, depending upon the following circumstances, is required for all hysterectomies:

(a) When a woman is capable of bearing children:

(A) Prior to the surgery, the person securing authorization to perform the hysterectomy must inform the woman and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing;

(B) The woman or her representative, if any, must sign the consent form to acknowledge she received that information.

(b) When a woman is sterile prior to the hysterectomy, the physician who performs the hysterectomy must certify in writing that the woman was already sterile prior to the hysterectomy and state the cause of the sterility;

(c) When there is a life-threatening emergency situation that requires a hysterectomy in which the physician determines that prior acknowledgment is not possible, the physician performing the hysterectomy must certify in writing that the hysterectomy was performed under a life-threatening emergency situation in which he or she determined prior acknowledgment was not possible and describe the nature of the emergency.

(5) In cases of retroactive eligibility:

The physician who performs the hysterectomy must certify in writing one of the following:

(a) The woman was informed before the operation that the hysterectomy would make her permanently incapable of reproducing;

(b) The woman was previously sterile and states the cause of the sterility;

(c) The hysterectomy was performed because of a life-threatening emergency situation in which prior acknowledgment was not possible and describes the nature of the emergency.

(6) Do not use the Consent to Sterilization form (DMAP 742A or B) for hysterectomies.

(7) Submit a copy of the Hysterectomy consent form with the claim.

(8) Sterilization Male & Female: A copy of a properly completed Consent to Sterilization form (DMAP 742 A or B), the consent form in the federal brochure DHHS Publication No. (05) 79-50062 (Male), DHHS Publication No. (05) 79-50061 (Female) or another federally approved form must be submitted to the Division for all sterilizations. The original consent form must be retained in the clinical records. Prior authorization is not required.

(9) Voluntary Sterilization:

(a) Consent for sterilization must be an informed choice. The consent is not valid if signed when the client is:

(A) In labor;

(B) Seeking or obtaining an abortion; or

(C) Under the influence of alcohol or drugs.

(b) Ages 15 years or older who are mentally competent to give informed consent:

(A) At least 30 days, but not more than 180 days, must have passed between the date of the informed written consent (date of signature) and the date of the sterilization except:

(i) In the case of premature delivery by vaginal or cesarean section the consent form must have been signed at least 72 hours before the sterilization is performed and more than 30 days before the expected date of confinement;

(ii) In cases of emergency abdominal surgery (other than cesarean section), the consent form must have been signed at least 72 hours before the sterilization was performed.

(B) The client must sign and date the consent form before it is signed and dated by the person obtaining the consent. The date of signature must meet the above criteria. The person obtaining the consent must sign the consent form anytime after the client has signed but before the sterilization is performed. If an interpreter is provided to assist the individual being sterilized, the interpreter must also sign the consent form on the same date as the client;

(C) The client must be legally competent to give informed consent. The physician performing the procedure, and the person obtaining the consent, if other than the physician, must review with the client the detailed information appearing on the Consent to Sterilization form regarding effects and permanence of the procedure, alternative birth control methods, and explain that withdrawal of consent at any time prior to the surgery will not result in any loss of other program benefits.

(10) Involuntary Sterilization — Clients who lack the ability to give informed consent and are 18 years of age or older:

(a) Only the Circuit Court of the county in which the client resides can determine that the client is unable to give informed consent;

(b) The Circuit Court must determine that the client requires sterilization;

(c) When the court orders sterilization, it issues a Sterilization Order. The order must be attached to the billing invoice. No waiting period or additional documentation is required.

(11) Submit the Consent to Sterilization Form (DMAP 742 A or B) along with the claim. The Consent to Sterilization form must be completed in full:

(a) Consent forms submitted to the Division without signatures and/or dates of signature by the client or the person obtaining consent are invalid;

(b) The client and the person obtaining consent may not sign or date the consent retroactively;

(c) The performing physician must sign the consent form. The date of signature must be either the date the sterilization was performed or a date following the sterilization.

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.010

Stats. Implemented: ORS 414.065

Hist.: PWC 803(Temp), f. & ef. 7-1-76; PWC 813, f. & ef. 10-1-76; PWC 834, f. 3-31-77, ef. 5-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 4-1979(Temp), f. & ef. 3-8-79; AFS 11-1979, f. 6-18-79, ef. 7-1-79; AFS 50-1981(Temp), f. & ef. 8-5-81; AFS 79-1981, f. 11-24-81, ef. 12-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 42-1985, f. & ef. 7-1-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; Renumbered from 461-014-0030, AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0840; HR 43-1991, f. & cert. ef. 10-1-91; HR 23-1992, f. 7-31-92, cert. ef. 8-1-92; HR 6-1994, f. & cert. ef. 2-1-94; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11

410-130-0585

Family Planning Services

(1) Family planning services are those intended to prevent or delay pregnancy, or otherwise control family size.

(2) The Division of Medical Assistance Programs (Division) covers family planning services for clients of childbearing age (including minors who are considered to be sexually active).

(3) Family Planning services include:

(a) Annual exams;

(b) Contraceptive education and counseling to address reproductive health issues;

(c) Laboratory tests;

(d) Radiology services;

(e) Medical and surgical procedures, including tubal ligations and vasectomies;

(f) Pharmaceutical supplies and devices.

(4) Clients may seek family planning services from any provider enrolled with the Division, even if the client is enrolled in a Prepaid Health Plan (PHP). Reimbursement for family planning services is made either by the client's PHP or the Division. If the provider is:

(a) A participating provider with the client's PHP, bill the PHP;

(b) An enrolled Division provider, but is not a participating provider with the client's PHP, bill the Division and add modifier –FP to the billed code.

(5) Family planning methods include natural family planning, abstinence, intrauterine device, cervical cap, prescriptions, sub-dermal implants, condoms, and diaphragms.

(6) Bill all family planning services with the most appropriate ICD-9-CM diagnosis code in the V25 series or V26.41-V26.49 (Contraceptive Management), the most appropriate CPT or HCPCS code and add modifier –FP.

(7) For annual family planning visits use the appropriate CPT code in the Preventative Medicine series (9938X-9939X) and add modifier -FP. These codes include comprehensive contraceptive counseling.

(8) When comprehensive contraceptive counseling is the only service provided at the encounter, use a CPT code from the Preventative Medicine, Individual Counseling series (99401-99404) and add modifier -FP.

(9) Bill contraceptive supplies with the most appropriate HCPCS codes.

(10) Where there are no specific CPT or HCPCS codes, use an appropriate unlisted code and add modifier -FP. Bill supplies at acquisition cost.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.040, 409.050 & 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.152 & 414.705

Hist.: HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11

410-130-0587

Family Planning Clinic Services

(1) This rule pertains only to Family Planning Clinics.

(2) To enroll with the Division of Medical Assistance Programs (Division) as a family planning clinic, a provider must also be enrolled with the Office of Family Health as an Oregon Contraceptive Care (CCare) provider.

(3) Family planning clinics must follow all applicable CCare and the Division rules.

(4) The Division will reimburse family planning clinics an encounter rate only when the primary purpose of the visit is for family planning.

(5) Bill HCPCS code T1015 "Clinic visit/encounter, all-inclusive; family planning" for all encounters where the primary purpose of the visit is contraceptive in nature:

(a) This encounter code includes the visit and any procedure or service performed during that visit including:

(A) Annual family planning exams;

(B) Family planning counseling;

(C) Insertions and removals of implants and IUDs;

(D) Diaphragm fittings;

(E) Dispensing of contraceptive supplies and contraceptive medications;

(F) Contraceptive injections.

(b) Do not bill procedures, such as IUD insertions, diaphragm fittings or injections, with CPT or HCPCS codes;

(c) Bill only one encounter per date of service;

(d) Reimbursement for educational materials is included in T1015. Educational materials are not billable separately.

(6) Reimbursement for T1015 does not include payment for family planning (FP) supplies and medications:

(a) Bill contraceptive supplies and contraceptive medications separately using HCPCS codes. Where there are no specific HCPCS codes, use an appropriate unspecified HCPCS code:

(A) Bill spermicide code A4269 per tube;

(B) Bill contraceptive pills code S4993 per monthly packet;

(C) Bill emergency contraception with code S4993 and bill per packet.

(b) Bill all contraceptive supplies and contraceptive medications at acquisition cost;

(c) Add modifier -FP after all codes for contraceptive services, supplies and medications;

(d) Non-contraceptive medications are not billable under this program.

(7) Reimbursement for T1015 does not include payment for laboratory tests:

(a) Clinics and providers who perform lab tests in their clinics and are CLIA certified to perform those tests may bill CPT and HCPCS lab codes in addition to T1015;

(b) Add modifier -FP after lab codes to indicate that the lab was performed during an FP encounter;

(c) Labs sent to outside laboratories, such as PAP smears, can be billed only by the performing laboratory.

(8) Encounters where the primary purpose of the visit is not contraceptive in nature, use appropriate CPT codes and do not add modifier -FP.

(9) When billing providers who are not participants in a Prepaid Health Plan (PHP) for services provided to clients enrolled in a PHP, add modifier –FP to the billed code.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.040, 409.050 & 414.065

Stats. Implemented: ORS 414.025, 414.065 & 414.152

Hist.: OMAP 78-2003, f. & cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Inclusion of transportation brokerages and necessary updates to comply with federal requirements.

Adm. Order No.: DMAP 35-2010

Filed with Sec. of State: 12-15-2010

Certified to be Effective: 1-1-11

Notice Publication Date: 11-1-2010

Rules Amended: 410-136-0030, 410-136-0040, 410-136-0045, 410-136-0050, 410-136-0060, 410-136-0070, 410-136-0080, 410-136-0140, 410-136-0160, 410-136-0180, 410-136-0200, 410-136-0220, 410-136-0240, 410-136-0300, 410-136-0320, 410-136-0340, 410-136-0350, 410-136-0440, 410-136-0800, 410-136-0820, 410-136-0840, 410-136-0860

Subject: The Medical Transportation Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division revised rules to include transportation brokerages and made non-substantial clarification revisions. Also, rule updates are required pursuant to federal requirements as conditions of acceptance of Federal 1915(b) waiver for non-emergent medical transportation.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-136-0030

Contracted Medical Transportation Services

(1) Contracts and intergovernmental agreements may be implemented for the provision of medical transportation services in order to achieve one or more of the following purposes:

(a) To reduce the cost of program administration or to obtain comparable services at a lesser cost to the Division of Medical Assistance Programs (Division);

(b) To ensure access to necessary medical services in areas where transportation may not otherwise be available or existing transportation would be at a higher cost to the Division;

(c) To more fully specify the scope, quantity or quality of the medical transportation services provided.

(2) The Division may implement intergovernmental agreements to establish Regional Transportation Brokerages to provide non-emergent medical transportation to eligible Oregon Health Plan (OHP) clients.

(3) Reimbursement for contracted medical transportation services shall be made according to the terms defined in the contract or intergovernmental agreement language.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 28-1994, f. & cert. ef. 9-1-94; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0040

Reimbursement

(1) The Division of Medical Assistance Programs (Division) reimburses for the following on a fee schedule (the fee schedule rates are updated monthly and posted at http://www.oregon.gov/Department/healthplan/data_pubs/feeschedule/main.shtml):

(a) Ambulance, air ambulance, stretcher car, wheelchair car or van:

(A) Base rate;

(B) Mileage;

(C) Modified base rate for each additional client, according to OAR 410-136-0080;

(D) Extra attendant;

(b) Aid call service or care is provided at the scene by the responding emergency ambulance provider and no transport of client was required;

(c) Taxi; and

(d) Secured transport.

(2) The provider may not bill the Division if:

(a) County or city ordinance prohibits any provider from charging for services identified in the Medical Transportation Services administrative rules;

(b) The provider does not charge the general public for such services;

(c) The provider did not provide transport, medical services, or treatment; or

(d) The provider is providing the transport through a transportation brokerage.

(3) The Division shall make payment for medical transportation when those services have been authorized by either the client's local branch office or the Division. The Division may recoup such payments if, on subsequent review, it is found that the provider did not comply with the Division's administrative rules. Non-compliance includes, but is not limited to, failure to adequately document the service and the need for the service.

(4) Reimbursement is based on the condition that the service to be provided at the point of origin or destination is a medical service covered under the Medical Assistance Programs and that the service billed is adequately documented in the provider's records prior to billing.

(5) The Division shall reimburse at the lesser of the amount charged the general public (public billing rate), the amount billed or the Division's maximum allowed, less any amount paid or payable by another party.

(6) The Division shall base reimbursement for transportation services covered by Medicare on the lesser of Medicare's allowed amount or the Division's maximum allowed, less any amount paid or payable by another party.

(7) The Division shall only reimburse for the mode of transportation authorized by the local branch office or the Division.

(8) The Division shall only reimburse when a transport of the client has occurred or in the case of aid calls where service or care was provided at the scene by an ambulance provider and no transport of the client occurred.

(9) The Division shall reimburse transportation brokerages according to the terms of the intergovernmental agreement.

(10) The Division reimbursement is payment in full.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: AFS 1-1981, f. 1-7-81, ef. 2-1-81; AFS 54-1981, f. 8-19-81, ef. 10-1-81; AFS 5-1984, f. & ef. 2-3-84; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0025 & 461-020-0026; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; HR 14-1996(Temp), f. & cert. ef. 7-1-96; HR 25-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 55-2002, f. & cert. ef. 10-1-02; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0045

Non-Emergent Medical Transportation for Standard Benefit Package

A client receiving the Oregon Health Plan Standard Benefit Package is not eligible for Non-Emergent Medical Transportation benefits. See the Division of Medical Assistance Programs' General Rules, 410-120-1230 for additional information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0050

Out-of-State Transportation

(1) Out-of-state transportation includes transportation to or from any location outside the state of Oregon, with the exception of contiguous area providers as defined in OAR 410-120-0000.

(2) The Division of Medical Assistance Programs (Division) may authorize and make payment for out-of-state transportation when all of the following three conditions are met:

(a) The medical service to be obtained out-of-state is covered under the client's benefit package;

(b) The service is not available in-state; and

(c) The service has been authorized in advance by the Division or the client's Prepaid Health Plan (PHP).

(3) The Division may also authorize out-of-state transportation when the Division deems it to be cost-effective.

(4) The least expensive mode of transportation that meets the medical needs of the client shall be authorized.

(5) Reimbursement may not be made for transportation out-of-state to obtain medical services that are not covered under the client's benefit package, even though the client may have Medicare or other insurance that covers the service being obtained.

(6) If a PHP arranges and authorizes services out-of-state and those services are available in-state, the PHP is responsible for all transportation, meals and lodging costs for the client and any required attendant (OAR 410-141-0420).

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0060
Taxi Services

(1) The Division of Medical Assistance Programs (Division) may not make payment to a taxi service provider for taxi services when provided in the service area of a transportation brokerage. The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

(2) The Division shall make payment to a taxi service provider for taxi services only when those services have been authorized by the branch office and provided outside the service area of a transportation brokerage.

(3) Reimbursement shall be made for the most cost-effective route from point of origin to point of destination and billing is limited to the actual meter charge. The Division definition of meter charge includes:

(a) A flag rate that does not exceed 110% of the usual and customary charges for the services within the area;

(b) Actual patient miles traveled at a rate that does not exceed 110% of the usual and customary charges for the services within the area;

(c) "In route" waiting time, such as red lights, railroad tracks, medical interval.

(4) Charges for assistance or "waiting time" incurred prior to the time the client enters the taxi or assistance after the client exits the taxi are not reimbursable.

(5) Meter charges that include "waiting time" billed to the Division for a medical interval must be clearly documented in the provider records. Medical interval is defined as any delay in a transport already in progress for events such as:

(a) Nausea, vomiting after dialysis or chemotherapy; or

(b) Pharmacy stop to obtain prescription; or

(c) Other medically appropriate episode.

(6) When client circumstance requires an escort or attendant or when a second client is transported from the same point of origin to the same destination, no additional charge beyond the meter charge is allowed. If more than one client is transported from a single pickup point to different destinations or from different pickup points to a single destination, only the meter charge incurred from the first pickup point to the final destination may be billed. No additional flag rate or duplicate miles traveled may be billed.

Stat. Auth.: ORS 409.050
Stats.Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; HR 30-1993, f. & cert. ef. 10-1-93; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0070
Wheelchair Car/Van Service

(1) The Division of Medical Assistance Programs (Division) may not make payment to a wheelchair car/van service provider for wheelchair car/van services when provided in the service area of a transportation brokerage. The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

(2) The Division shall make payment to a wheelchair car/van service provider for wheelchair car/van services only when those services have been authorized by the branch office and provided outside the service area of a transportation brokerage.

(3) Payment for wheelchair car/van services may not be made for transportation of ambulatory clients.

(4) Wheelchair car/vans may also provide stretcher car services if allowed by local ordinance and when those services have been authorized by the local branch office.

(5) A stretcher car/van must be capable of loading a stretcher or gurney into the vehicle.

(6) Reclining wheelchairs are not considered stretchers or gurneys and must not be billed as stretcher car/van services.

(7) Payment for stretcher car/van services may not be made for transporting wheelchair clients.

Stat. Auth.: ORS 409.050
Stats.Implemented: ORS 414.065
Hist.: OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0080
Additional Client Transport

(1) Ambulance, wheelchair car/van, stretcher car, taxi, and contract services (ambulatory). If two or more Medicaid clients are transported by the same mode (e.g. wheelchair van) at the same time, the Division of Medical Assistance Programs (Division) shall reimburse at no more than the full base rate for the first client and one-half the appropriate base rate for each additional client. If two or more Medicaid clients are transported by mixed mode (e.g. wheelchair, van and ambulatory) at the same time, the Division shall reimburse at the full base rate for the highest mode for the first client and one-half the base rate of the appropriate mode for each additional client.

(2) The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

(3) The Division may not reimburse for duplicated miles traveled.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: AFS 54-1981, f. 8-19-81, ef. 10-1-81; AFS 5-1984, f. & ef. 2-3-84; AFS 30-1985, f. 5-30-85, ef. 7-1-85; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0032; HR 30-1993, f. & cert. ef. 10-1-93; OMAP 55-2002, f. & cert. ef. 10-1-02; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0140
Conditions for Payment

(1) To qualify for reimbursement by the Division of Medical Assistance Programs (Division), a provider of ambulance, air ambulance, wheelchair car, stretcher car, taxi, secured transport or other medical transportation services must meet the following conditions:

(a) Establish rates to be charged to the general public, customarily charge the general public at those rates and routinely pursue payment of unpaid charges with the intent of collection unless prohibited by federal rules or regulations from charging for services. Any volunteer, community resource or other transportation service that operates without charge or provides services without charge to the community may not be reimbursed by the Division when those same services are provided to Division clients;

(b) If providing ground or air ambulance services, be in compliance with Oregon Revised Statutes 682.015 through 682.991 (and any rules and regulations pertinent thereto) and must be licensed by the Public Health Division of the Department of Human Services (Department) to operate as ground or air ambulance;

(c) An ambulance service provider located in a contiguous state that regularly provides transports for Division clients must be licensed by the Department's Public Health Division as well as by the state in which it is located;

(d) Be in compliance with all statutes, required certifications or regulations promulgated by any local, state or federal governmental entity with jurisdiction over the provider.

(2) In the absence of any local regulatory body, a provider must be enrolled with the Division as a provider of the level of service provided. If providing wheelchair transports, a provider in an unregulated area must be enrolled as a wheelchair transport provider and bill the Division using the specific codes defined in the Procedure Codes Section of the Medical Transportation Services Provider Guide.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: PWC 815, f. & ef. 10-1-76; AFS 1-1981, f. 1-7-81, ef. 2-1-81; AFS 54-1981, f. 8-19-81, ef. 10-1-81; AFS 5-1984, f. & ef. 2-3-84; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0060; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; OMAP 26-1998(Temp), f. 8-14-98, cert. ef. 8-17-98 thru 1-1-99; OMAP 36-1998, f. & cert. ef. 10-1-98; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0160
Non-Emergency Medical Transportation

(1) The Division of Medical Assistance Programs (Division) shall make payment for prior authorized non-emergency medical transportation, including client-reimbursed travel, when the client's branch office, the Division or transportation brokerage has determined the transport is appropriate.

(2) The Division may not make payment for transportation to or from an out-of-area provider based solely on client preference or convenience. If supporting documentation demonstrates inadequate or inappropriate services are being or have been provided by the only local treatment facility or practitioner, the Division may authorize transportation outside of the client's local area on a case-by-case basis.

(3) For purposes of authorizing non-emergency medical transportation, the medical service or practitioner must be within the local area. Local area is defined as within the accepted community standard and includes in the client's metropolitan area, city or town of residence, or, if the client does not reside in a metropolitan area, city or town, in the metropolitan area, city or town nearest the client's residence. If the service to be obtained is not available locally, transportation may be authorized to the nearest location where the service can be obtained or to a location deemed by the Division to be cost-effective.

(4) A Branch may not authorize and the Division may not make payment for non-emergency medical transportation outside a client's local area when the client has been non-compliant with treatment or has demonstrated other behaviors that result in a local provider or treatment facility's refusing to provide further service or treatment to the client and the provider or treatment facility is willing to reinstate the client with reasonable restrictions, including but not limited to the following:

(a) Requiring the client to comply with applicable Division rules or regulations; or

(b) Requiring the client to attend appointments with an escort approved by the provider.

(5) For a client who is threatening harm to providers or others in the vehicle, or whose health conditions create health or safety concerns to the provider or others in the vehicle, or whose other conduct or circumstances place the provider and others at risk of harm, the Division or transportation broker may impose certain reasonable restrictions on transportation services to that client, including but not limited to the following:

(a) Restricting the client to a single transportation provider, or

(b) Requiring the client to travel with an escort.

(6) Except for sections (4) and (5) above, the Division or transportation broker shall authorize non-emergent medical transportation to the nearest available appropriate provider when there is no other appropriate service available to the client under any circumstances in the client's local area.

(7) The client shall be required to utilize the least expensive mode of transportation that meets the client's medical needs or condition. Ride sharing by more than one client is considered to be cost effective and may be required unless written medical documentation in the branch or transportation broker record indicates ride sharing is not appropriate for a particular client. When more than one medical assistance client ride-shares to medical appointments, the Division shall reimburse mileage to only one client. The written documentation shall be made available for review upon request by the Division.

(8) The provider must submit billings for non-emergency ambulance transports provided to clients enrolled in Fully Capitated Health Plans (FCHP) to the FCHP. The FCHP must review for medical appropriateness prior to payment. Depending on the individual FCHP, the FCHP may or may not require authorization in advance of services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: PWC 815, f. & ef. 10-1-76; AFS 54-1981, f. 8-19-81, ef. 10-1-81; AFS 6-1982(Temp), f. 1-22-82, ef. 2-1-82; AFS 73-1982, f. & ef. 7-22-82; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0020; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 27-1998(Temp), f. & cert. ef. 8-26-98 thru 2-1-99; OMAP 37-1998, f. & cert. ef. 10-1-98; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 7-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0180
Base Rate

(1) Ambulance — All inclusive. The Division of Medical Assistance Programs (Division) reimbursement for ambulance base rate includes any procedures/services performed, all medications, non-reusable supplies and/or oxygen used, all direct or indirect costs including general operating costs, personnel costs, neonatal intensive care teams employed by the ambulance provider, use of reusable equipment, and any other miscellaneous medical items or special handling that may be required in the course of transport. Reimbursement of the first ten miles is included in the payment for the base rate.

(2) Wheelchair car/van — Stretcher car (including stretcher car services provided by an ambulance). The Division reimbursement of the first ten miles of a transport is included in the payment for the base rate. A service from point of origin to point of destination (one-way) is considered a "transport."

(3) The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0200
Emergency Medical Transportation (With Need for an Emergency Medical Technician)

(1) The Division of Medical Assistance Programs (Division) shall reimburse emergency ambulance transport when:

(a) The client's condition meets the definition of an emergency under OAR 410-120-0000, 410-120-1210, or 410-141-0000 and;(b) All other client eligibility criteria are met.

(2) When transport occurs, the client must be transported to the nearest appropriate facility able to meet the client's medical needs.

(3) Authorizations of, and billings for, emergency ambulance services provided to clients enrolled in Fully Capitated Health Plans (FCHPs) must be submitted to the FCHP. The FCHP will review for emergency medical condition using the prudent layperson standard as defined in OAR 410-141-0000 prior to payment.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: AFS 54-1981, f. 8-19-81, ef. 10-1-81; AFS 5-1984, f. & ef. 2-3-84; AFS 30-1985, f. 5-30-85, ef. 7-1-85; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0032; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 42-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0220
Air Ambulance Transport

The Division of Medical Assistance Programs (Division) shall only make payment for an air ambulance transport when at least one of the following conditions, in addition to all other requirements for medical transportation, is met:

(1) The client's medical condition is such that the length of time required to transport, current road conditions, the instability of transport by ground conveyance, or the lack of appropriate level of ground conveyance would further jeopardize or compromise the client's medical condition;

(2) The non-emergent service has been authorized by the client's branch office or the Division, after a written recommendation has been obtained by the attending physician indicating medical appropriateness; or

(3) The Division has determined the transportation is cost effective.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; HR 30-1993, f. & cert. ef. 10-1-93; OMAP 43-2001, f. 9-24-01, cert. ef. 10-1-01; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0240
Secured Transports

(1) The Division of Medical Assistance Programs (Division) may not make payment to a secured transport provider for secured transport services when provided in the service area of a transportation brokerage. The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

(2) The Division shall make payment to a secured transport provider for secured transport services only when those services have been requested by a medical provider, authorized by the branch office and provided outside the service area of a transportation brokerage.

(3) The Division shall reimburse for secured transports when the following conditions are met:

(a) The provider must be able to transport children and adults who are in crisis or at immediate risk of harming themselves or others due to mental or emotional problems or substance abuse;

(b) The Division must recognize the provider as a provider of secured transports. This requires written advance notice to the Division (prior to or at the time of enrollment) that the provider has met the requirements of the secure transport provider protocol as established in OAR 309-033-0200 through 309-033-0970.

(4) When medically appropriate (to administer medications, etc. in-route) or in cases where legal requirements must be satisfied, including, but not limited to when a parent, legal guardian or escort is required during transport, one additional person shall be allowed to escort at no additional charge to the Division. The Division's reimbursement shall be payment in full for the transport.

(5) The provider must submit a copy of all rates charged to the general public to the Division, provider enrollment, at the time of enrollment. The provider must submit any changes to those rates to the Division in writing within 30 days of the change. The notification must indicate the rate changes and effective date. If subsequent review by the Division discloses that the written notice is not accurate, the Division may recoup payments.

(6) The Division shall authorize reimbursement on an individual client basis in keeping with the Division's rules regarding level of transport needed, eligibility, cost effectiveness and medical appropriateness. If the provider gave transport on an emergent basis, the Division may authorize, when appropriate, after provision of service.

(7) In keeping with the guidelines set forth in OAR 410-136-0300, the Division shall reimburse for court ordered medical transportation for an OHP Plus client who is otherwise eligible for OHP medical transportation services.

(8) The Division's medical care identification (ID) does not guarantee eligibility. The provider must verify client eligibility prior to providing services. This includes determining if the Division or a managed care plan is responsible for reimbursement. The provider assumes full financial responsibility in serving a person who is not confirmed eligible by the Division as eligible for the service provided on the date of service. Refer to OAR 410-120-1140, Verification of Eligibility (also see the Division's General Rules Supplemental Information guide for instructions).

(9) The provider must transport the client to a Title XIX eligible or enrolled facility recognized by the Division as having the ability to treat the immediate medical, mental and emotional needs of a client in crisis.

(10) The Division must assume that a client being returned to place of residence is no longer in crisis or at immediate risk of harming him or herself or others, and is, therefore, able to utilize non-secured transport. In the event a secured transport is medically appropriate to return a client to place of residence, the branch must obtain written documentation stating the circumstances and the treating physician must sign the documentation. The branch must retain the documentation and a copy of the order in the branch record for Division review.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 28-1994, f. & cert. ef. 9-1-94; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 7-2009(Temp), f. 3-30-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 32-2009, f. 9-22-09, cert. ef. 9-25-09; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0300
Authorization

(1) For the purposes of the administrative rules governing provision of medical transportation services, authorization is defined to be authorization in advance of the service being accessed or provided.

(2) Retroactive authorization for medical transportation shall be made only under the following circumstances:

(a) "After hours" transports to obtain urgent medical care. Medical appropriateness shall be determined by the transportation brokerage, branch or the Division of Medical Assistance Programs' (Division) review;

(b) Secured transports provided to clients in crisis on weekends, holidays or after normal branch office hours. Medical appropriateness for secured transports shall be determined by the transportation brokerage, branch or Division review to ensure authorization is given and reimbursement made only for those transports that meet criteria set forth in 410-136-0240.

(3) Authorization of payment is required for the following:

(a) Non-emergency ambulance;

(b) Non-emergency air ambulance;

(c) Stretcher car (including stretcher car services provided by an ambulance);

(d) Wheelchair car/van;

(e) Taxi;

(f) Secured transport (including those arranged for or provided outside of normal branch office hours);

(g) Client reimbursed transportation (including medically appropriate meals, lodging, attendant);

(h) Fixed route public bus systems;

(i) All special/bid transports.

(4) Authorization shall be made for the services identified above when:

(a) The transport is medically appropriate considering the medical condition of the client;

(b) The destination is to a medical service covered under the Medical Assistance program, or a return home from a covered medical service;

(c) The client medical transportation eligibility screening indicates the client has no resources or that no alternative resource is available to provide appropriate transportation without cost or at a lesser cost to the Division; and

(d) The transport is the least expensive medically appropriate mode of conveyance available considering the medical condition of the client.

(5) Authorization may be provided by the branch, the Division, or a transportation brokerage according to the terms of its intergovernmental agreement.

(6) The Division's medical care identification (ID) does not guarantee eligibility. The provider must verify client eligibility prior to providing services. This includes determining if the Division or a managed care plan is responsible for reimbursement. The provider assumes full financial responsibility serving a person who is not confirmed eligible by the Division as eligible for the service provided on the date of service.

(7) Refer to OAR 410-120-1140 Verification of Eligibility (also see the Division's General Rules Supplemental Information guide for instructions).

(8) Authorization must be obtained in advance of service provision. A provider authorized by a branch to provide transportation shall receive a completed Medical Transportation Order (DMAP 405T or DMAP 406). All transportation orders, including any equivalent, must contain the following:

(a) Provider name or number;

(b) Client name and ID number;

(c) Pickup address;

(d) Destination name and address;

(e) Second (or more) destination name and address;

(f) Appointment date and time;

(g) Trip information, e.g., special client requirements;

(h) Mode of transportation, e.g., taxi;

(i) 1 way, round trip, 3-way;

(j) Current date;

(k) Branch number;

(l) Worker/clerk ID;

(m) Dollar amount authorized (if special/secured transport).

(9) If the Medical Transportation Order indicates 'on-going' transports have been authorized, the following information is also required:

(a) Begin and end dates;

(b) Appointment time;

(c) Days of week.

(10) Additional information identifying any special needs of the individual client must be indicated on the order in the "Comments" section. If the order is for a secured transport the name and telephone number of the medical professional requesting the transport, as well as information regarding the nature of the crisis is required.

(11) Authorization for non-emergency services after service provided:

(a) Occasionally a client may contact the provider directly "after hours", when the branch office or transportation broker is closed, and order an urgent care medical transport. Only in this case, is it appropriate for the provider to initiate the Medical Transportation Order. All required information (except the branch number, worker/clerk ID and dollars authorized) must be completed by the provider before submitting the order to the branch or transportation broker for authorization. The provider must also indicate on the order the time and day of week the client called. The partially completed authorization order must be received at the appropriate branch office or transportation broker within 30 calendar days following provision of the service;

(b) If the provider sends a Medical Transportation Order to a branch for review, then upon approval, the branch shall complete the branch number, dollars authorized (if special or secured transport) worker/clerk ID and current date, and return the order to the provider within 30 calendar days. The provider may not bill the Division until the final approved order is received;

(c) If the provider sends a Medical Transportation Order to a transportation broker for review, the transportation broker shall perform according to the terms of its intergovernmental agreement;

(d) A provider requesting authorization for "after hours" rides may not be reimbursed if the branch or transportation broker determines the ride

was not for the purpose of obtaining urgent medical services covered under the Medical Assistance Programs.

(12) Client reimbursed transportation:

(a) For client reimbursed transportation provided by a branch, the client must contact the branch office in advance of the travel. Once the transportation has been authorized, the branch is to provide assistance using the current guidelines and methodologies as indicated in the DHS Worker Guide;

(b) For client reimbursed transportation provided by a transportation broker, the client must contact the transportation broker in advance of the travel. Once the transportation has been authorized, the transportation broker must provide assistance according to the terms of its intergovernmental agreement.

(13) Authorization may not be made nor reimbursement provided:

(a) To return a client from any foreign country to any location within the United States even though the medical care needed by the client is not available in the foreign country;

(b) To return a client to Oregon from another state or provide mileage, meals or lodging to the client, unless the client was in the other state for the purpose of obtaining services or treatment approved by the Division or approved by the client's Prepaid Health Plan with subsequent Division approval for the travel. This does not apply when the client is at a contiguous area provider as defined in OAR 410-120-0000;

(c) For any secured medical transport provided to a person:

(A) In the custody of or under the legal jurisdiction of any law enforcement agency;

(B) Going to or from a court hearing, or to or from a commitment hearing;

(C) Who the Division has determined is an inmate of a public institution as defined in OAR 461-135-0950; and

(D) Whose OHP eligibility has been suspended by the Division pursuant to ORS 414.420 or ORS 414.424.

(14) Authorization does not guarantee reimbursement:

(a) Check eligibility on the date of service by calling the Automated Voice System (AVS) placing an eligibility verification request on the Medicaid Web Portal, checking the transportation broker DHS eligibility file, or requesting a copy of the client's Medical Care Identification;

(b) Ensure the service to be provided is currently a medical service covered under the Medical Assistance program;

(c) Ensure the claim is for the actual services and number of services provided.

(d) Pursuant to OAR 410-136-0280, for all claims submitted to the Division, the provider record must contain completed documentation pertinent to the service provided.

(15) The Division may not be billed for services or dollars in excess of the services or dollars authorized.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: AFS 7-1982, f. 1-22-82, ef. 2-1-82; AFS 21-1982(Temp), f. & ef. 3-23-82; AFS 92-1982, f. & ef. 10-8-82; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93, Renumbered from 461-020-0021; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 9-1995, f. 3-31-95, cert. ef. 4-1-95; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; HR 10-1997, f. 3-28-97, cert. ef. 4-1-97; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 55-2002, f. & cert. ef. 10-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 7-2009(Temp), f. 3-30-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 32-2009, f. 9-22-09, cert. ef. 9-25-09; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0320
Billing

(1) Medical transportation services not provided through a transportation broker must be billed using the billing instructions and procedure codes found in the Division of Medical Assistance Programs' Medical Transportation Services Program administrative rules and the Medical Transportation Services Supplemental Information.

(2) Medical transportation services provided through a transportation broker must be billed according to the terms of its intergovernmental agreement.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; OMAP 20-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0340
Billing for Clients Who Have Both Medicare and Medicaid Coverage

(1) For services provided to clients with both Medicare and coverage through the Division of Medical Assistance Programs (Division), bill Medicare first, except when the items are not covered by Medicare.

(2) Services not covered by Medicare must be billed directly to the Division.

(3) The Division shall reimburse the transportation broker according to the terms of its intergovernmental agreement.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; HR 14-1996(Temp), f. & cert. ef. 7-1-96; HR 25-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 66-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 20-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0350
Billing for Each Additional Client

(1) Billing for each additional client must be submitted to the Division of Medical Assistance Programs (Division) on a separate claim.

(2) Bill using the appropriate procedure code found in the Procedure Code Section of the Medical Transportation Services Provider Guide.

(3) All required billing information must be included on the claim for the additional client.

(4) Ensure a completed Transportation Order for the additional client has been forwarded by the branch for retention in the provider's record.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 30-1993, f. & cert. ef. 10-1-93; OMAP 20-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0440
Non-Emergency Medical Transportation Procedure Codes

(1) Ambulance Service — Bill the following codes using Type of Service "D."

(a) Basic Life Support (BLS) — Bill using the following procedure codes:

(A) A0428 — Ambulance service, BLS, non-emergency transport (BLS);

(B) S0215 — Ground mileage, per statute mile;

(C) A0424 — Extra ambulance attendant, ALS or BLS (requires medical review).

(b) Advanced Life Support (ALS) — Bill using the following procedure codes:

(A) A0426 — Ambulance Service, ALS, non-emergency transport, level 1 (ALS1);

(B) A0433 — Ambulance Service, ALS, non-emergency transport, level 2 (ALS2);

(C) S0215 — Ground mileage, per statute mile;

(D) A0424 — Extra ambulance attendant, ALS or BLS (requires medical review).

(c) Air Ambulance — Bill using the following procedure codes:

(A) A0430 — Ambulance service, conventional air services, transport, one-way (fixed wing);

(B) A0431 — Ambulance service, conventional air services, transport, one-way (rotary wing).

(d) Wheelchair Car/Van — Bill using the following procedure codes:

(A) A0130 — Non-emergency transportation, wheelchair car/van base rate;

(B) S0209 — Ground mileage, per statute mile;

(C) T2001 — Extra Attendant (each).

(e) Stretcher Car/Van — Bill using the following procedure codes:

(A) T2005 — Non-emergency transportation, stretcher car/van base rate;

(B) T2002 — Ground mileage, per statute mile, stretcher car/van

(C) T2001 — Extra Attendant (each);

(D) T2003 — Non-emergency transportation, stretcher car service provided by ambulance base rate;

(E) T2049 — Ground mileage, per statute mile, stretcher car/van by ambulance.

(f) Taxi — Bill using A0100 (all inclusive);

(g) Secured Transport (all inclusive) — Bill using A0434. Attach a copy of the Medical Transportation Order to all billings submitted for secured transports;

(h) Transportation broker (all inclusive) — Bill using A0999 and according to the terms of the intergovernmental agreement.

(2) All non-emergency medical transportation requires authorization in advance of service provision.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 9-1995, f. 3-31-95, cert. ef. 4-1-95; HR 25-1995, f. 12-29-95,

cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 14-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 55-2002, f. & cert. ef. 10-1-02; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0800
Prior Authorization of Client Reimbursed Mileage, Meals and Lodging

(1) The regional transportation brokerage or the client's local branch office must authorize all reimbursement for client mileage, meals and lodging in advance of the client's travel in order to qualify for reimbursement. A client may request reimbursement up to 30 days after their medical appointment provided the expenditure was authorized in advance of the travel. Reimbursement under the amount of $10 may be accumulated and held by the transportation brokerage or branch until the minimum of $10 is reached.

(2) A client must demonstrate medical necessity before the Division of Medical Assistance Programs (Division) authorizes reimbursement for mileage, meals or lodging. The Division shall only reimburse to access medical services covered under the Oregon Health Plan.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 9-1998, f. & cert. ef. 4-1-98; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0820
Qualifying Criteria for Meals/Lodging/Attendant

(1) Payment for meals may be made when a client, with or without attendant, is required to travel a minimum of four hours round trip out of their geographic area, but only if the course of travel spans the recognized "normal meal time." The following criteria apply:

(a) Breakfast allowance — travel must begin before 6 am;

(b) Lunch allowance — travel must span the entire period from 11:30 am through 1:30 pm;

(c) Dinner allowance — travel must end after 6:30 pm.

(2) Payment for lodging may be made when a client would otherwise be required to begin travel prior to 5 am in order to reach a scheduled appointment, or when travel from a scheduled appointment would end after 9 pm, or when there is documentation of medical need. If lodging is available below the Division of Medical Assistance Program's (Division) current allowable rate, payment shall be made for only the actual cost of the lodging.

(3) When medically necessary, payment for meals or lodging may be made for one attendant to accompany the client. At least one of the following conditions or circumstances must be met:

(a) The client is a minor child and unable to travel without an attendant; or

(b) The client's attending physician has forwarded to the client's branch office a signed statement indicating the reason an attendant must travel with the client; or

(c) The client is mentally or physically unable to reach his or her medical appointment without assistance; or

(d) The client is or would be unable to return home without assistance after the treatment or service.

(4) Only one attendant, including parents, may be eligible for reimbursement for meals or lodging.

(5) No reimbursement shall be made for the attendant's time or services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 9-1998, f. & cert. ef. 4-1-98; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0840
Common Carrier and Public Transportation

When deemed cost effective and if the client can safely travel by common carrier or public transportation, reimbursement may be made either directly to the client for purchase of fare or the branch or transportation broker may purchase the fare directly and disburse the ticket and other appropriate documents directly to the client.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 9-1998, f. & cert. ef. 4-1-98; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

410-136-0860
Overpayments — Client Mileage/Per Diem

(1) The following situations are considered to be overpayments:

(a) Client mileage or per diem monies were paid to the client directly for the purpose of traveling to medical appointments and reimbursement for the same travel was provided by another resource;

(b) Monies paid directly to the client for the purpose of traveling to medical appointments and the monies were subsequently not used by the client for the intended purpose;

(c) Monies were paid directly to the client for the purpose of traveling to medical appointments but the client ride-shared with another client who had also received mileage reimbursement;

(d) Monies were paid directly to the client for the purpose of traveling to medical appointments but the client subsequently failed to keep the appointment;

(e) Common carrier or public transportation tickets or passes were provided to the client for the purpose of traveling to medical appointments but were sold or otherwise transferred to another person for use.

(2) All overpayments for client reimbursed travel relating to medical appointments shall be recovered from the client by the Department of Human Services Office of Payment Accuracy and Recovery.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 9-1998, f. & cert. ef. 4-1-98; DMAP 35-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Federal and state requirements to incorporate current federal requirements for concurrent care for children receiving hospice care services and language clarification.
Adm. Order No.: DMAP 36-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Adopted: 410-142-0110
Rules Amended: 410-142-0020, 410-142-0100, 410-142-0200, 410-142-0225, 410-142-0240, 410-142-0280, 410-142-0300
Subject: The Hospice Services Program administrative rules govern Division of Medical Assistance Programs payments for services provided to certain clients. The Division amended the rules listed above to incorporate current federal and state requirements for concurrent care for children receiving hospice care services, clarify language and take care of non-substantive "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-142-0020
Definitions

(1) Accredited/Accreditation: A designation by an accrediting organization that a hospice program has met standards that have been developed to indicate a quality program.

(2) Ancillary staff: Staff that provides additional services to support or supplement hospice care.

(3) Assessment: Procedures by which strengths, weaknesses, problems, and needs are identified and addressed.

(4) Attending physician: A physician who is a doctor of medicine or osteopathy and is identified by the client, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the client's medical care.

(5) Bereavement counseling: Counseling services provided to the client's family after the client's death. Bereavement counseling is a required, non-reimbursable hospice service.

(6) Client-family unit includes a client who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the client.

(7) Conditions of Participation: The applicable federal regulations that hospice programs are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(8) Coordinated: When used in conjunction with the phrase "hospice program," means the integration of the interdisciplinary services provided by client-family care staff, other providers and volunteers directed toward meeting the hospice needs of the client.

(9) Coordinator: A registered nurse designated to coordinate and implement the care plan for each hospice client.

(10) Counseling: A relationship in which a person endeavors to help another understand and cope with problems as a part of the hospice plan of care.

(11) Curative: Medical intervention used to ameliorate the disease.

(12) Dying: The progressive failure of the body systems to retain normal functioning, thereby limiting the remaining life span.

(13) Family: The relatives and/or other significantly important persons who provide psychological, emotional, and spiritual support of the

client. The "family" need not be blood relatives to be an integral part of the hospice care plan.

(14) Hospice: A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill clients, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Department of Human Services, Public Health Division.

(15) Hospice continuity of care: Services that are organized, coordinated and provided in a way that is responsive at all times to client/family needs, and which are structured to assure that the hospice is accountable for its care and services in all settings according to the hospice plan of care.

(16) Hospice home care: Formally organized services designed to provide and coordinate hospice interdisciplinary team services to client/family in the place of residence. The hospice will deliver at least 80 percent of the care in the place of residence.

(17) Hospice philosophy: Hospice recognizes dying as part of the normal process of living and focuses on maintaining the quality of life. Hospice exists in the hope and belief that through appropriate care and the promotion of a caring community sensitive to their needs, clients and their families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(18) Hospice Program: A coordinated program of home and inpatient care, available 24 hours a day, that uses an interdisciplinary team of personnel trained to provide palliative and supportive services to a client-family unit experiencing a life threatening disease with a limited prognosis. A hospice program is an institution for purposes of ORS 146.100.

(19) Hospice Program registry: A registry of all licensed hospice programs maintained by the Department of Human Services, Public Health Division.

(20) Hospice services: Items and services provided to a client/family unit by a hospice program or by other clients or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include home care, inpatient care for acute pain and symptom management or respite, and bereavement services provided to meet the physical, psychosocial, emotional, spiritual and other special needs of the client/family unit during the final stages of illness, dying and the bereavement period.

(21) Illness: The condition of being sick, diseased or with injury.

(22) Interdisciplinary team: A group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the client-family unit, the client's attending physician or clinician and one or more of the following hospice program personnel: Physician, nurse practitioner, nurse, hospice aide (nurse's aide), occupational therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor, and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker.

(23) Medical director: The medical director must be a hospice employee who is a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of the hospice's client care program.

(24) Medicare certification: Licensed and certified by the Department of Human Services, Public Health Division as a program of services eligible for reimbursement.

(25) Pain and Symptom Management: For the hospice program, the focus of intervention is to maximize the quality of the remaining life through the provision of palliative services that control pain and symptoms. Hospice programs recognize that when a client/family is faced with terminal illness, stress and concerns may arise in many aspects of their lives. Symptom management includes assessing and responding to the physical, emotional, social and spiritual needs of the client/family.

(26) Palliative services: Comfort services of intervention that focus primarily on reduction or abatement of the physical, psychosocial and spiritual symptoms of terminal illness. Palliative therapy:

(a) Active: Is treatment to prolong survival, arrest the growth or progression of disease. The person is willing to accept moderate side-effects and psychologically is fighting the disease. This person is not likely to be a client for hospice;

(b) Symptomatic: Is treatment for comfort, symptom control of the disease and improves the quality of life. The person is willing to accept minor side-effects and psychologically wants to live with the disease in comfort. This person would have requested and been admitted to a hospice.

(27) Period of crisis: A period in which the client requires continuous care to achieve palliation or management of acute medical symptoms.

(28) Physician designee: Means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical director when the medical director is not available.

(29) Primary caregiver: The person designated by the client or representative. This person may be family, a client who has personal significance to the client but no blood or legal relationship (e.g., significant other), such as a neighbor, friend or other person. The primary caregiver assumes responsibility for care of the client as needed. If the client has no designated primary caregiver the hospice may, according to client program policy, make an effort to designate a primary caregiver.

(30) Prognosis: The amount of time set for the prediction of a probable outcome of a disease.

(31) Representative: An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill client who is mentally or physically incapacitated.

(32) Terminal illness: An illness or injury which is forecast to result in the death of the client, for which treatment directed toward cure is no longer believed appropriate or effective.

(33) Terminally Ill means that the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(34) Volunteer: An individual who agrees to provide services to a hospice program without monetary compensation.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 409.010
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 18-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0100
Election of Hospice Care

(1) An individual who meets the eligibility requirements of OAR 410-142-0040 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative may file the election statement.

(2) The election statement must include the following:

(a) Identification of the particular hospice that will provide care to the individual;

(b) The individual's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as related to the individual's terminal illness;

(c) Except for children (see 410-124-0110), acknowledgment that certain otherwise covered services are waived by the election. Election of a hospice benefit means that the Division of Medical Assistance Programs will only reimburse the hospice for those services included in the hospice benefit;

(d) The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement;

(e) The signature of the individual or representative.

(3) Re-election of hospice benefits. If an election has been revoked in accordance with OAR 410-142-0160, the individual (or his or her representative if the individual is mentally or physically incapacitated) may at any time file an election, in accordance with this section, for any other election period that is still available to the individual.

(4) File the election statement in the medical record.

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 28-1997, f. 12-31-97, cert. ef. 1-1-98; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0110
Concurrent Care for Children

(1) Under Section 2302 of the Affordable Care Act, Medicaid or Children's Health Insurance Program (CHIP) eligible children are eligible to receive curative treatment upon the election of the hospice benefit.

(2) The criteria for receiving hospice services does not change for children eligible for Medicaid and CHIP programs. However these children may now receive hospice services without forgoing any other service to which the child is entitled under Medicaid for treatment of the terminal condition.

(3) All other eligibility, coverage, and hospice rules for the Division of Medical Assistance Programs apply.

Stat. Auth.: ORS 409.040, 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0200
Interdisciplinary Group

The hospice must designate an interdisciplinary group or groups composed of individuals who provide or supervise the care and services offered by the hospice:

(1) Composition of group. The hospice must have an interdisciplinary group or groups composed of or including at least the following individuals who are employees of the hospice, or, in the case of a doctor, be under contract with the hospice:

(a) A doctor of medicine or osteopathy;

(b) A registered nurse;

(c) A social worker;

(d) A pastoral or other counselor.

(2) Role of interdisciplinary group. Members of the group interact on a regular basis and have a working knowledge of the assessment and care of the patient/family unit by each member of the group. The interdisciplinary group is responsible for:

(a) Participation in the establishment of the plan of care;

(b) Provision or supervision of hospice care and services;

(c) Periodic review and updating of the plan of care for each individual receiving hospice care; and

(d) Establishment of policies governing the day-to-day provision of hospice care and services.

(3) If a hospice has more than one interdisciplinary group, it must document in advance the group it chooses to execute the functions described in section (2) of this rule;

(4) Coordinator. The hospice must designate a registered nurse to coordinate the implementation of the plan of care for each patient.

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 28-1997, f. 12-31-97, cert. ef. 1-1-98; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0225
Signature Requirements

(1) The Division of Medical Assistance Programs requires practitioners to sign for services they order. This signature shall be handwritten or electronic, (or facsimiles of original written or electronic signatures for terminal illness for hospice) and it must be in the client's medical record.

(2) The ordering practitioner is responsible for the authenticity of the signature.

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 37-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0240
Hospice Core Services

The following services are covered hospice services when consistent with the plan of care and must be provided in accordance with recognized standards of practice:

(1) Nursing services. The hospice must provide nursing care and services by or under the supervision of a registered nurse:

(a) Nursing services must be directed and staffed to assure that the nursing needs of the patient are met;

(b) Patient care responsibilities of nursing personnel must be specified;

(c) Services must be provided in accordance with recognized standards of practice.

(2) Medical social services. Medical social services must be provided by a qualified social worker, under the direction of a physician;

(3) Physician services. In addition to palliative and management of terminal illness and related conditions, physician employees, contractors or volunteers of the hospice, including the physician member(s), of the interdisciplinary group, must also meet the general medical needs of the patient to the extent these needs are not met by the attending physician:

(a) Reimbursement for physician or nurse practitioner supervisory and interdisciplinary group services for those physicians or nurse practitioners employed by the hospice agency is included in the rate paid to the agency;

(b) Reimbursement of attending physician or nurse practitioner services for those physicians not employed by the hospice agency is according to the Division of Medical Assistance Programs (Division) fee schedule. These physicians or nurse practitioners must bill the Division for their services;

(c) Reimbursement of attending physician or nurse practitioner services (not including supervisory and interdisciplinary group services) for those physicians or nurse practitioners employed by the hospice agency is according to the Division fee schedule. These physicians or nurse practitioners must bill the Division for their services;

(d) Reimbursement of the hospice for consulting physician services furnished by hospice employees or by other physicians under arrangements by the hospice is included in the rate paid to the agency.

(4) Counseling services. Counseling services must be available to both the patient and the family. Counseling includes bereavement counseling provided after the patient's death as well as dietary, spiritual and any other counseling services for the patient and family provided while the individual is enrolled in the hospice;

(5) Short-term inpatient care. Inpatient care must be available for pain control, symptom management and respite purposes;

(6) Medical appliances and supplies:

(a) Includes drugs and biologicals as needed for the palliation and management of the terminal illness and related conditions;

(b) Drugs prescribed for conditions other than for the palliation and management of the terminal illness are not covered under the hospice program.

(7) Hospice aide and homemaker services;

(8) Physical therapy, occupational therapy, and speech-language pathology services;

(9) Other services. Other services specified in the plan of care that are covered by the Oregon Health Plan (OHP).

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 28-1997, f. 12-31-97, cert. ef. 1-1-98; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0280
Recipient Benefits

An individual who has elected to receive hospice care remains entitled to receive other services not included in the hospice benefit. These services are subject to the same rules as for non-hospice clients. Typical services used that are not covered by the hospice benefit include:

(1) Attending physician care (e.g. office visits, hospital visits, etc.);

(2) Medical transportation;

(3) Any services, drugs or supplies for a condition other than the recipient's terminal illness or a related condition (e.g. broken leg, pre-existing diabetes).

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 28-1997, f. 12-31-97, cert. ef. 1-1-98; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

410-142-0300
Hospice Reimbursement and Limitations

(1) The Division of Medical Assistance Programs (Division) recalculates its hospice rates annually. When billing for hospice services, the provider must bill the usual charge or the rate based upon the geographic location in which the care is furnished, whichever is lower. See hospice rates on the Department of Human Services (DHS) website at: http://www.dhs.state.or.us/policy/healthplan/guides/hospice/main.html

(2) Rates:

(a) The Division bases its rates on the methodology used in setting Medicare rates, adjusted to disregard cost offsets attributable to Medicare coinsurance amounts;

(b) Under the Medicaid hospice benefit regulations, the Division cannot impose cost sharing for hospice services rendered to Medicaid recipients;

(c) The Division sets rates no lower than the rates used under Part A of Title XVIII of the Social Security Act (Medicare);

(d) The Division uses prospective hospice rates;

(e) The Division makes no retroactive adjustments other than the optional application of the cap on overall payments and the limitation on payments for inpatient care, if applicable.

(3) With the exception of payment for physician services, the Division reimburses providers of hospice services for each day of care at one of five predetermined rates. Rates are based on intensity and type of care, which the Division defines as:

(a) Routine home care. The Division pays the hospice the routine home care rate for each day that the client is under the care of the hospice and that the Division does not reimburse at another rate. The Division pays this rate without regard to the volume or intensity of services provided on any given day;

(b) Continuous home care. The Hospice must provide a minimum of eight hours of continuous home care per day to receive the continuous home care rate:

(A) The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate;

(B) The Division pays the hospice for every hour or part of an hour of continuous care furnished up to a maximum of 24 hours a day.

(c) Inpatient respite care. The Division pays the hospice at the Inpatient Respite Care rate for each day on which the client is in an approved inpatient facility and is receiving respite care:

(A) The Division pays for inpatient respite care for a maximum of five days at a time, including the date of admission but not counting the date of discharge;

(B) The Division pays for the sixth and any subsequent days at the routine home care rate.

(d) General inpatient care. The Division pays providers at the general inpatient rate when general inpatient care is provided;

(e) In-home respite care. An in-home respite care day is a day on which short-term in-home care is provided to the client only when necessary to relieve the family members or other persons caring for the client at home. Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time. In-home respite care will be provided at the level necessary to meet the client's need, with a minimum of eight hours of care provided in a 24-hour day, which begins and ends at midnight. Hospice aide/CNA or homemaker services or both may be utilized for providing in-home respite care.

(4) On the day of discharge from an inpatient unit, the Division pays the appropriate home care rate unless the client dies as an inpatient. When the client is discharged deceased, the Division pays the appropriate inpatient rate (general or respite) for the discharge date.

Stat. Auth.: ORS 409.040, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 47-1998, f. & cert. ef. 12-1-98; OMAP 40-1999, f. & cert. ef. 10-1-99; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 55-2001(Temp) f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 65-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 41-2002(Temp), f. & cert. ef. 10-1-02 thru 3-15-03; OMAP 15-2003, f. & cert. ef. 2-28-03; OMAP 80-2003(Temp), f. & cert. ef. 10-10-03 thru 3-15-04; OMAP 86-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 66-2004, f. 9-13-04, cert. ef. 10-1-04; OMAP 79-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; OMAP 90-2004, f. 11-24-04 cert. ef. 12-16-04; OMAP 43-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 34-2006, f. 9-15-06; DMAP 36-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Jan. '11 – Update rule references and clarify Maternity Case Management reimbursement and Targeted Case Management services.
Adm. Order No.: DMAP 37-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 410-146-0021, 410-146-0085, 410-146-0086, 410-146-0120
Rules Repealed: 410-146-0140
Subject: The American Indian/Alaska Native Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division amended rules listed above to update rule references, clarify maternity case management reimbursement and correct language related to case management services. As a continued effort to make administrative rules more efficient, the Division repealed rule 410-146-0140 as text is included in OARs 410-130-0190 (governing tobacco dependence) and 410-146-0085.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0021
American Indian/Alaska Native (AI/AN) Provider Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (Division) requirements for Indian Health Service (IHS) and Tribal 638 clinics to enroll as American Indian/Alaska Native (AI/AN) providers (refer to OAR 410-120-1260, Provider Enrollment).

(2) An IHS or Tribal 638 clinic that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. For specific information, refer to OAR chapter 410, division 121, Pharmaceutical Services Program; OAR chapter 410, division 122, DME-POS Program; and OAR chapter 410, division 138, TCM Program.

(3) To enroll with the Division as an AI/AN provider, a health center must be one of the following:

(a) An IHS direct health care services facility established, operated, and funded by IHS; or

(b) A Tribally-owned and operated facility funded by Title I or V of the Indian Self Determination and Education Assistance Act (Public Law 93-638, as amended) and is referenced throughout these rules as a "Tribal 638" provider;

(A) A Tribal 638 facility that has administrative control, operation, and funding for health programs transferred to AI/AN tribal governments under a Title I contract with IHS;

(B) A Tribal 638 facility that assumes autonomy for the provision of the tribe's own health care services under a Title V compact with IHS.

(4) Eligible IHS and Tribal 638 providers who want to enroll with the Division as an AI/AN provider must submit the following information:

(a) Completed Department of Human Services (Department) provider enrollment forms with attachments as required in OAR 407-0120-0300 through -0320;

(b) A Tribal facility must submit documentation verifying they are a 638 provider:

(A) A letter from IHS, applicable-Area Office or Central Office, indicating that the facility (identified by name and address) is a 638 facility;

(B) A written assurance from the Tribe that the facility (identified by name and site address) is owned or operated by the Tribe or a Tribal organization with funding directly obtained under a 638 contract or compact. A copy of the relevant provision of the Tribe's current 638 contract or compact must accompany the written assurance;

(c) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services;

(d) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services;

(e) A list of all Prepaid Health Plan (PHP) contracts;

(f) A list of all practitioners contracted with or employed by the IHS or Tribal 638 Facility including names, legacy Division provider numbers, National Provider Identifier (NPI) numbers and associated taxonomy codes; and

(g) A list of all clinics affiliated or owned by the IHS or Tribal 638 Facility including business names, legacy Division provider numbers, National Provider Numbers (NPI) and associated taxonomy codes.

Stat. Auth.: 409.050, 414.065
Stats. Implemented: ORS 414.065, 430.010
Hist.: OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 46-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 37-2010, f. 12-15-10, cert. ef. 1-1-11

410-146-0085
Encounter and Recognized Practitioners

(1) The Division of Medical Assistance Programs (Division) will reimburse enrolled American Indian/Alaska Native (AI/AN) providers as follows:

(a) For services, items and supplies that meet the criteria of a valid encounter in sections (5) through (7) of this rule;

(b) Reimbursement is limited to the Division's Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by the Division.

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon administrative rule (OAR) 410-147-0120, Encounter and Recognized Practitioners, in the Division's Federally Qualified Health Centers and Rural Health Clinics Program.

(3) AI/AN providers reimbursed according to the IHS rate are subject to the requirements of this rule.

(4) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) and Qualified Medicare Beneficiary (QMB) only clients are not billed according to encounter criteria and not reimbursed at the IHS encounter rate (refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System).

(5) For the provision of services defined in Titles XIX and XXI, and provided through an IHS or Tribal 638 facility, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (7) of this rule outlines limitations for telephone contacts that qualify as encounters.

(6) An encounter includes all services, items and supplies provided to a client during the course of an office visit, and "incident-to" services (except as excluded in section (15) of this rule). The following services are inclusive of the visit with the core provider meeting the criteria of a reimbursable valid encounter and are not reimbursed separately:

(a) Drugs or medication treatments provided during the clinic visit, with the exception of contraception supplies and medications as costs for these items are excluded from the IHS encounter rate calculation (refer to OAR 410-146-0200, Pharmacy);

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace); and

(c) Venipuncture for laboratory tests.

(7) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and OAR 410-130-0190, Tobacco Cessation (refer to OAR 410-120-1200). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(8) The following services may be Medicaid-covered services according to an OHP client's benefit package as a stand-alone service; however, when furnished as a stand-alone service, are not reimbursable:

(a) Case management services for coordinating care for a client;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported employment, or skills training and activity therapy to promote community integration and job readiness.

(9) AI/AN providers may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment and that require separate enrollment (see OAR 410-146-0021, AI/AN Provider Enrollment). These services include:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (DMEPOS) (e.g. diabetic supplies) not generally provided during the course of a clinic visit (refer to OAR chapter 410, division 122, DMEPOS);

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to the Division through the pharmacy program (refer to OAR chapter 410, division 121, Pharmaceutical Services);

(c) Targeted case management (TCM) services. For specific information, refer to OAR chapter 410, division 138, TCM...

(10) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. For exceptions to this rule, see OAR 410-146-0086 for reporting multiple encounters.

(11) For claims that require a procedure and diagnosis code the provider must bill as instructed in the appropriate Division program rules and must use the appropriate HIPAA procedure Code Set established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided (refer to OARs 410-120-1280, Billing and 410-146-0040, ICD-9-CM Diagnosis Codes and CPT/HCPCs Procedure Codes).

(12) Services furnished by AI/AN enrolled providers that may meet the criteria of a valid encounter (refer to individual program administrative rules for service limitations.):

(a) Medical (OAR chapter 410, division 130);

(b) Diagnostic: The Division covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Oregon Health Services Commission's Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, the Division will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-130-0190);

(d) Dental (OAR 410-146-0380 and OAR chapter 410, division 123);

(e) Vision (OAR chapter 410, division 140);

(f) Physical Therapy (OAR chapter 410, division 131);

(g) Occupational Therapy (OAR chapter 410, division 131);

(h) Podiatry (OAR chapter 410, division 130);

(i) Mental Health (refer to the Division of Addiction and Mental Health (AMH) for appropriate OARs);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 410-146-0021). Requires a letter or licensure of approval by AMH (refer to AMH for appropriate OARs);

(k) Maternity Case Management (OAR 410-146-0120);

(l) Speech (OAR 410 Division 129);

(m) Hearing (OAR 410 Division 129);

(n) The Division considers a home visit for assessment, diagnosis, treatment or maternity case management (MCM) as an encounter. The Division does not consider home visits for MCM as home health services;

(o) Professional services provided in a hospital setting;

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and the Division's administrative rules.

(13) The following practitioners are recognized by the Division:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed physician assistants;

(c) Nurse practitioners;

(d) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by the Division in this section and who is authorized to independently diagnose and treat according to appropriate State of Oregon's Board of Nursing OARs;

(e) Nurse midwives;

(f) Dentists;

(g) Dental hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. For more information, refer to the section on Limited Access Permits in Oregon Revised Statute (ORS) 680.200 and the appropriate Oregon Board of Dentistry OARs;

(h) Pharmacists;

(i) Psychiatrists;

(j) Licensed Clinical Social Workers;

(k) Clinical psychologists;

(l) Acupuncturists — refer to OAR chapter 410, division 130 for service coverage and limitations;

(m) Licensed professional counselor;

(n) Licensed marriage and family therapist; and

(o) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(A) Their individual provider's certification or license; or

(B) A clinic's mental health certification or alcohol and other drug program approval or licensure by AMH (see OAR 410-146-0021).

(14) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (including drugs and biologicals) furnished on a part-time or intermittent basis to home-bound AI/AN clients residing on tribal land and any other ambulatory services covered by the Division are also reimbursable as permitted within the clinic's scope of services (see OAR 410-146-0080).

(15) The Division reimburses the following services fee-for-service outside of the IHS all-inclusive encounter rate and according to the physician fee schedule:

(a) Laboratory and/or radiology services;

(b) Contraception supplies and medications (see OAR 410-146-0200, Pharmacy);

(c) Administrative medical examinations and report services (refer to OAR chapter 410, division 150);

(d) Death with Dignity services (refer to OAR 410-130-0670); and

(e) Comprehensive environmental lead investigation (refer to OAR 410-130-0245, Early and Periodic Screening, Diagnostic and Treatment Program).

(16) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances the Division will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing the Division (refer to OAR 410-120-1140, Verification of Eligibility).

(17) When a provider receives a payment from any source prior to the submission of a claim to the Division, the amount of the payment must be shown as a credit on the claim in the appropriate field (refer to OARs 410-120-1280, Billing and 410-120-1340, Payment).

Stat. Auth.: ORS 409.050, 414.065 .

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 21-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 46-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 37-2010, f. 12-15-10, cert. ef. 1-1-11

410-146-0086
Multiple Encounters

(1) An "encounter" is defined in Oregon Administrative Rule (OAR) 410-146-0085.

(2) The following services may be considered as multiple encounters when two or more service encounters are provided on the same date of service with distinctly different diagnoses (see OAR 410-146-0085 and individual program rules listed below for specific service requirements and limitations):

(a) Medical (section (3) of this rule, and OAR chapter 410, division 130);

(b) Dental (OAR 410-146-0380 and chapter 410, division 123);

(c) Mental Health — f a client is also seen for a medical office visit and receives a mental health diagnosis, then the client contacts are a single encounter (refer to the Division of Addictions and Mental Health (AMH) for the appropriate OARs);

(d) Addiction, Alcohol and Chemical Dependency - If a client is also seen for a medical office visit and receives an addiction diagnosis, then the client's contacts are a single encounter (refer to the Division of Addictions and Mental Health (AMH) for the appropriate OARs);

(e) Ophthalmology - fitting and dispensing of eyeglasses are included in the encounter when the practitioner performs a vision examination. (OAR chapter 410, division 140);

(f) Maternity Case Management (MCM) (OAR 410-146-0120);

(g) Physical or occupational therapy (PT/OT) - If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter (OAR chapter 410, division 131);

(h) Immunizations — if no other medical office visit occurs on the same date of service; and

(i) Tobacco cessation — if no other medical, dental, mental health or addiction service encounter occurs on the same date of service (OAR 410-130-0190).

(3) Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and that share the same or like diagnoses constitute a single encounter, except when one of the following conditions exist:

(a) After the first medical service encounter, the patient suffers a distinctly different illness or injury requiring additional diagnosis or treatment. More than one office visit with a medical professional within a 24-hour period and receiving distinctly different diagnoses may be reported as two encounters. This does not imply that if a client is seen at a single office visit with multiple problems that the provider can bill for multiple encounters;

(b) The patient has two or more encounters as described in section (2) of this rule.

(4) A mental health encounter and an addiction and alcohol and chemical dependency encounter provided to the same client on the same date of service will only count as multiple encounters when provided by two separate health professionals and each encounter has a distinctly different diagnosis.

(5) Similar services, even when provided by two different health care practitioners are considered a single encounter, and not multiple encounters. Services that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(a) A well child check and an immunization;

(b) A well child check and fluoride varnish application in a medical setting;

(c) A mental health and addiction encounter with similar diagnoses;

(d) A prenatal visit and a delivery procedure;

(e) A cesarean delivery and surgical assist; and

(f) Any time a client receives only a partial service with one provider and partial service from another provider.

(6) A clinic may not develop clinic procedures that routinely involve multiple encounters for a single date of service.

(7) Clinics may not "unbundle" services that are normally rendered during a single visit for the purpose of generating multiple encounters:

(a) Clinics are prohibited from asking the patient to make repeated or multiple visits to complete what is considered a reasonable and typical office visit, unless it is medically necessary to do so;

(b) Medical necessity must be clearly documented in the patient's record.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 37-2010, f. 12-15-10, cert. ef. 1-1-11

410-146-0120
Maternity Case Management Services

(1) The Division of Medical Assistance Programs (Division) will reimburse American Indian/Alaska Native (AI/AN) providers for maternity case management (MCM) services according to their encounter rate.

(2) MCM service is optional coverage for Prepaid Health Plans (PHPs). Before providing MCM services to client enrolled in an PHP, determine if the PHP covers MCM services:

(a) If the PHP does not cover MCM services, the provider can bill the Division directly per the clinic's encounter rate. Prior authorization is not required if the PHP does not provide coverage for MCM services;

(b) If the PHP does cover MCM services, and services were furnished to a:

(A) Non-AI/AN client, the provider needs to request the necessary authorizations from the PHP;

(B) AI/AN client enrolled with a PHP with which the AI/AN provider does not have an agreement, the AI/AN provider can bill the Division directly.

(3) Clients records' must clearly document all MCM services provided including all mandatory topics. For specific requirements, refer to the Medical-Surgical Services Program OAR 410-130-0595, Maternity Case Management.

(4) The primary purpose of the MCM program is to optimize pregnancy outcomes including the reduction of low birth weight babies. MCM services are intended to target pregnant women early during the prenatal period and can only be initiated when the client is pregnant.

(a) MCM services cannot be initiated the day of delivery, during postpartum or for newborn evaluation;

(b) Clients are not eligible for MCM services if the provider has not completed the MCM initial evaluation prior to the day of delivery;

(c) No other MCM service can be performed until an initial assessment has been completed.

(5) Multiple MCM contacts in a single day do not qualify as multiple encounters.

(6) A medical/prenatal visit encounter and an MCM encounter can qualify as two separate encounters when furnished on the same day only when the MCM service is:

(a) The initial evaluation to receive MCM services; or

(b) A nutritional counseling MCM service provided after the initial evaluation visit. See section (7) of this rule for limitations.

(7) MCM Services limitations:

(a) The Division reimburses the initial evaluation one time per pregnancy per provider;

(b) The Division reimburses nutritional counseling one time per pregnancy if a client meets the criteria in OAR 410-130-0595(14); and

(c) DMAP will reimburse a maximum of ten MCM services/visits in addition to (a) and (b) above, providing visits/services are furnished in compliance with OAR 410-130-0595.

(8) Case management services must not duplicate services for case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time. This includes the Division's Maternity Case Management Program (OAR chapter 410, division 130) and any Targeted Case Management (TCM) Program outlined in OAR chapter 410, division 138.

(9) Community health representatives may be eligible to provide specific MCM services, with the exclusion of the initial assessment (G9001), while working under the supervision of a licensed health care practitioner listed in OAR 410-130-0595(7)(a). Refer to OAR 410-130-0595(7)(d).

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 37-2010, f. 12-15-10, cert. ef. 1-1-11

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Rule Caption: Jan. '11 – Update references and clarify Maternity Case Management reimbursement and Targeted Case Management services.
Adm. Order No.: DMAP 38-2010
Filed with Sec. of State: 12-15-2010

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Rules Repealed: 410-147-0220, 410-147-0610
Subject: The Federally Qualified Health Centers and Rural Health Clinics Services Program rules govern the Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division amended rules listed above to update rule references, clarify maternity case management reimbursement and correct language related to case management services. As a continued effort to make administrative rules more efficient, the Division repealed rule 410-147-0220 as text is included in OARs 410-130-0190 (governing tobacco dependence) and 410-147-0120.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0120
Division Encounter and Recognized Practitioners

(1) The Division of Medical Assistance Programs (Division) reimburses Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) services according to the Prospective Payment System (PPS) as follows:

(a) When the service(s) meet the criteria of a valid encounter as defined in Sections (2) through (4) of this rule;

(b) Reimbursement is limited to the Division's Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by the Division.

(2) For the provision of services defined in Titles XIX and XXI and provided through an FQHC or RHC, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (4) of this rule outlines limitations for telephone contacts that qualify as encounters.

(3) An encounter includes all services, items and supplies provided to a client during the course of an office visit (except as excluded in Sections (6) and (12) of this rule) and those services considered "incident-to." These services are inclusive of the visit with the core provider meeting the criteria a valid encounter and reimbursed at the PPS all-inclusive encounter rate. These services include:

(a) Drugs or medication treatments provided during a clinic visit are inclusive of the encounter, with the exception of contraception supplies and medications as costs for these items are excluded from the PPS encounter rate calculation (see OAR 410-147-0280 Drugs and OAR 410-147-0480 Cost Statement (DMAP 3027) Instructions);

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace) are inclusive of an office visit;

(c) Laboratory and/or radiology services (even if performed on another day);

(d) Venipuncture for lab tests. The Division does not deem a visit for lab test only to be a clinic encounter;

(4) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and 410-130-0190, Tobacco Cessation (see also OAR 410-120-1200). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(5) Extended care services furnished under a contract between a county Community Mental Health Program (CMHP) of the FQHC and Addictions and Mental Health Division (AMH) are reimbursed outside of the PPS. Extended care services are those services provided under AMH's licensure requirements and reimbursed under AMH's terms and conditions...

(6) Some Division Medicaid-covered services are not reimbursable when furnished according to Oregon Health Plan (OHP) client's benefit package as a stand alone service. Although costs incurred for furnishing these services are inclusive of the PPS all-inclusive rate calculation, visits where these services were furnished as a stand-alone service were excluded from the denominator for the PPS rate calculation (see OAR 410-147-0480, Cost Statement (DMAP 3027) Instructions). The following services when furnished as a stand-alone service are not reimbursable:

(a) Case management services, including case management by a Primary Care Manager (PCM) as defined in OHP administrative rules (OAR 410-141-0700) and previously provided under a PCM contract;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported housing and employment, or skills training and activity therapy to promote community integration and job.

(7) FQHCs and RHCs may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment, and requires separate enrollment (see OAR 410-147-0320(1)(b) Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment). These services include:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (DMEPOS) (e.g. diabetic supplies) not generally provided during the course of a clinic visit (refer to OAR chapter 410, division 122, DMEPOS);

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to DMAP through the pharmacy program (refer to OAR chapter 410, division 121, Pharmaceutical Services);

(c) Targeted case management (TCM) services (refer to OAR chapter 410, division 138).

(8) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single encounter. For exceptions to this rule, see OAR 410-147-0140 for reporting multiple encounters.

(9) Providers are advised to include all services that can appropriately be reported using a procedure code on the claim and bill as instructed in the appropriate Division program rules and must use the appropriate HIPAA procedure code set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual provider rules (refer to OAR 410-120-1280 Billing and see OAR 410-147-0040 ICD-9-CM Diagnosis and CPT/HCPCs Procedure Codes).

(10) FQHC and RHC services that may meet the criteria of a valid encounter are (refer to individual program administrative rules for service limitations.):

(a) Medical (OAR chapter 410, division 130);

(b) Diagnostic: The Division covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, the Division will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-130-0190);

(d) Dental (see to OAR 410-147-0125, and refer to OAR chapter 410, division 123);

(e) Vision (OAR chapter 410, division 140);

(f) Physical Therapy (OAR chapter 410, division 131);

(g) Occupational Therapy (OAR chapter 410, division 131);

(h) Podiatry (OAR chapter 410, division 130);

(i) Mental Health (Refer to the Division of Addiction and Mental Health (AMH) for appropriate OARs);

(j) Alcohol, Chemical Dependency, and Addiction services (see also OAR 410-147-0320). Requires a letter or licensure of approval by AMH (refer to AMH for appropriate OARs);

(k) Maternity Case Management (MCM) (OAR 410-147-0200);

(l) Speech (OAR chapter 410, division 129);

(m) Hearing (OAR chapter 410, division 129);

(n) The Division considers a home visit for assessment, diagnosis, treatment or MCM as an encounter. The Division does not consider home visits for MCM as home health services;

(o) Professional services provided in a hospital setting; and

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and the Division's administrative rules.

(11) The following practitioners are recognized by the Division:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Dentists;

(d) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. For more information, refer to the section on Limited Access Permits, ORS 680.200 and the appropriate Oregon Board of Dentistry OARs;

(e) Pharmacists;

(f) Nurse Practitioners;

(g) Nurse Midwives;

(h) Other specialized nurse practitioners;

(i) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by the Division in this section and who is authorized to independently diagnose and treat according to appropriate State of Oregon's Board of Nursing OARs;

(j) Psychiatrists;

(k) Licensed Clinical Social Workers;

(l) Clinical psychologists;

(m) Acupuncturists — Refer to OAR chapter 410, division 130 for service coverage and limitations;

(n) Licensed professional counselor;

(o) Licensed marriage and family therapist; or

(p) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(A) Their individual provider's certification or license; or

(B) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH) (see OAR 410-147-0320).

(12) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound clients (limited to areas in which the Secretary has determined that there is a shortage of home health agencies — Code of Federal Regulations 42 § 405.2417), and any other ambulatory services covered by the Division are also reimbursable as permitted within the clinic's scope of services (see OAR 410-147-0020).

(13) FQHCs and RHCs may furnish services that are reimbursed outside of the PPS all-inclusive encounter rate and according to the physician fee schedule. These services include:

(a) Administrative medical examinations and report services (refer to OAR chapter 410, division 150);

(b) Death with Dignity services (refer to OAR 410-130-0670);

(c) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) clients (refer to OARs 410-120-1210, 461-135-1070 and 410-130-0240);

(d) Services provided to Qualified Medicare Beneficiary (QMB) only clients (refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System). Specific billing information is located in the FQHC and RHC Supplemental Information billing guide; and

(e) Comprehensive environmental lead investigation (refer to OAR 410-130-0245, Early and Periodic Screening, Diagnostic and Treatment Program).

(14) OHP benefit packages and delivery system are described in OAR 410-120-1210. Most OHP clients have prepaid health services, contracted for by the Department of Human Services (the Department) through enrollment in a Prepaid Health Plan (PHP). Non-PHP-enrolled clients, receive services on an "open card" or "fee-for-service" (FFS) basis.

(a) The Division is responsible for making payment for services provided to open card clients. The provider will bill the Division the clinic's encounter rate for Medicaid-covered services provided to these clients according to their OHP benefit package (see OAR 410-147-0360, Encounter Rate Determination).

(b) A PHP is responsible to provide, arrange and make reimbursement arrangements for covered services for their Division members (refer to OAR 410-120-0250, and OAR chapter 410, division 141, OHP administrative rules governing PHPs). The provider must bill the PHP directly for services provided to an enrolled client (See also OARs 410-147-0080, Prepaid Health Plans, and 410-147-0460, PHP Supplemental Payment). Clinics must not bill the Division for PHP-covered services provided to eligible OHP clients enrolled in PHPs. Exceptions include:

(A) Family planning services provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060); and

(B) HIV/AIDS prevention provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060).

(15) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances the Division will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing the Division (refer to OAR 410-120-1140 Verification of Eligibility).

(16) When a provider receives a payment from any source prior to the submission of a claim to the Division, the amount of the payment must be shown as a credit on the claim in the appropriate field (refer to OARs 410-120-1280 Billing and 410-120-1340 Payment).

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 71-1-93; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0390; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0150; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 38-2010, f. 12-15-10, cert. ef. 1-1-11

410-147-0140

Multiple Encounters

(1) An encounter is defined in OAR 410-147-0120.

(2) The following services may be considered as multiple encounters when two or more service encounters are provided on the same date of service with distinctly different diagnoses (see OAR 410-147-0120 and individual program rules listed below for specific service requirements and limitations):

(a) Medical section (3) of this rule and OAR chapter 410, division 130);

(b) Dental (OAR 410-147-0125, and OAR chapter 410, division 123);

(c) Mental Health — If a client is also seen for a medical office visit and receives a mental health diagnosis, then the client contacts are a single encounter (Refer to the Division of Addictions and Mental Health (AMH) for the appropriate OARs);

(d) Addiction and Alcohol and Chemical Dependency — If a client is also seen for a medical office visit and receives an addiction diagnosis, then the client contacts area single encounter (Refer to AMH's OARs);

(e) Ophthalmologic services — fitting and dispensing of eyeglasses are included in the encounter when the practitioner performs a vision examination. (OAR chapter 410, division 140);

(f) Maternity Case Management MCM (OAR 410-147-0200);

(g) Physical or occupational therapy (PT/OT) — If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter (OAR chapter 410, division 131);

(h) Immunizations — if no other medical office visit occurs on the same date of service; and

(i) Tobacco cessation — if no other medical, dental, mental health or addiction service encounter occurs on the same date of service (refer to OAR 410-130-0190).

(3) Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and that share the same or like diagnoses constitute a single encounter, except when one of the following conditions exist:

(a) After the first medical service encounter, the patient suffers a distinctly different illness or injury requiring additional diagnosis or treatment. More than one office visit with a medical professional within a 24-hour period and receiving distinctly different diagnoses may be reported as two encounters. This does not imply that if a client is seen at a single office visit with multiple problems that the provider can bill for multiple encounters;

(b) The patient has two or more encounters as described in section (2) of this rule.

(4) A mental health encounter and an addiction and alcohol and chemical dependency encounter provided to the same client on the same date of service will only count as multiple encounters when provided by two separate health professionals and each encounter has a distinctly different diagnosis.

(5) Similar services, even when provided by two different health care practitioners, are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(a) A well child check and an immunization;

(b) A well child check and fluoride varnish application in a medical setting;

(c) A mental health and addiction encounter with similar diagnoses;

(d) A prenatal visit and a delivery procedure;

(e) A cesarean delivery and surgical assist;

(f) Any time a client receives only a partial service with one provider and partial service from another provider, this would be considered a single encounter.

(6) A clinic may not develop clinic procedures that routinely involve multiple encounters for a single date of service. A recipient may obtain medical, dental or other health services from any provider approved by the Division, and/or contracts with the recipient's PHP, if the FQHC/RHC is not the recipient's primary care manager.

(7) Clinics may not "unbundle" services that are normally rendered during a single visit for the purpose of generating multiple encounters:

(a) Clinics are prohibited from asking the patient to make repeated or multiple visits to complete what is considered a reasonable and typical office visit, unless it is medically necessary to do so;

(b) Medical necessity must be clearly documented in the patient's record.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 8-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 19-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0520; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0155; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 38-2010, f. 12-15-10, cert. ef. 1-1-11

410-147-0200
Maternity Case Management Services

(1) The Division of Medical Assistance Programs (Division) will reimburse federally qualified health centers (FQHCs) and rural health clinics (RHCs) for maternity case management (MCM) services.

(2) MCM service is optional coverage for Prepaid Health Plans (PHPs). Before providing MCM services to a client enrolled in a PHP, determine if the PHP covers MCM services:

(a) If the PHP does not cover MCM services, the provider can bill the Division directly per the clinic's PPS encounter rate. Prior authorization is not required if the PHP does not provide coverage for MCM services;

(b) If the PHP does cover MCM services, the provider needs to request the necessary authorizations from the PHP.

(3) Clients' records must clearly document all MCM services provided including all mandatory topics. Refer to OAR 410-130-0595, Maternity Case Management for specific requirements.

(4) The primary purpose of the MCM program is to optimize pregnancy outcomes, including the reduction of low birth weight babies. MCM services are intended to target pregnant women early during the prenatal period and can only be initiated when the client is pregnant.

(a) MCM services cannot be initiated the day of delivery, during postpartum or for newborn evaluation;

(b) Clients are not eligible for MCM services if the provider has not completed the MCM initial evaluation the day before delivery;

(c) No other MCM service can be performed until an initial assessment has been completed.

(5) Multiple MCM contacts in a single day do not qualify as multiple encounters.

(6) A medical/prenatal visit encounter and an MCM encounter can qualify as two separate encounters when furnished on the same day only when the MCM service is:

(a) The initial evaluation to receive MCM service; or

(b) A nutritional counseling MCM service provided after the initial evaluation visit. See Section (7) of this rule for limitations.

(7) MCM services limitations:

(a) The Division reimburses the initial evaluation one time per pregnancy per provider;

(b) The Division reimburses nutritional counseling one time per pregnancy if a client meets the criteria in OAR 410-130-0595(14); and

(c) The Division will reimburse a maximum of ten MCM services/visits in addition to (a) and (b) above, providing visits/services are furnished in compliance with OAR 410-130-0595.

(8) Case management services must not duplicate services for case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time. This includes Maternity Case Management, and any Targeted Case Management (TCM) Programs outlined in OAR chapter 410, division 138.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0560; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0180; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 38-2010, f. 12-15-10, cert. ef. 1-1-11

410-147-0320
Federally Qualified Health Center Rural Health Clinics Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (Division) enrollment requirements for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) (Refer also to OARs 410-120-1260 and 407-120-0320, Provider Enrollment).

(a) For outpatient health programs or facilities operated by an American Indian tribe under the Indian Self-Determination Act (Public Law 93-638), providers should refer to the program rules for American Indian/Alaska Native (AI/AN) Services, OAR chapter 410, division 146, for enrollment details;

(b) An FQHC or RHC that operates a retail pharmacy; provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. For specific information, refer to OAR chapter 410, division 121, Pharmaceutical; OAR chapter 410, division 122, DMEPOS; and OAR chapter 410, division 138, TCM.

(c) A county Community Mental Health Program (CMHP) furnishing extended care services under contract with Department of Human Services (Department) Addictions and Mental Health Division (AMH) should refer to AMH for licensure and reimbursement requirements.

(2) To enroll with the Division as an FQHC, a health center must comply with one of the following:

(a) Receive Public Health Service (PHS) grant funds under the authority of Section 330;

(b) Have received FQHC Look-Alike designation from the Centers for Medicare and Medicaid Services (CMS), based on the recommendation of the Health Resources and Services Administration (HRSA)/Bureau of Primary Health Care (BPHC); or

(c) Be an Urban Indian Health Program (UIHP) clinic (under Title V of the Indian Health Care Improvement Act, Public Law 94-437). In the Omnibus Reconciliation Act (OBRA) of 1993, Title V programs were added to the list of specific programs automatically eligible for FQHC designation.

(3) Eligible FQHCs who want to enroll with the Division as an FQHC, and receive reimbursement under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed Department provider enrollment forms with attachments as required in OARs 407-0120-0300 through 410-120-0320;

(b) National Provider Identifier (NPI) number and associated taxonomy code(s) obtained for the FQHC with the provider enrollment form (refer to OAR 407-120-0320);

(c) Completed Cost Statement(s) (DMAP 3027):

(A) One each for medical, dental and mental health (including addiction, alcohol and chemical dependency) (see also OAR 410-147-0360);

(B) One for each FQHC-designated site, unless specifically exempted in writing by the Division to file a consolidated cost report (see also OAR 410-147-0340 Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC)/provider numbers);

(d) Completed copy of the grant proposal submitted to HRSA/BPHC detailing the clinic's service and geographic scope;

(e) Copy of the HRSA Notice of Grant Award Authorization for Public Health Services Funds under Section 330, or a copy of the letter from CMS designating the facility as a "Look Alike" FQHC;

(f) A copy of the clinic's trial balance (see OAR 410-147-0500, Total Encounters for Cost Reports);

(g) Audited financial statements (refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations");

(h) Depreciation schedules;

(i) Overhead cost allocation schedule;

(j) A copy of the clinic's AMH certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse

practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services;

(k) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services;

(l) A list of all Prepaid Health Plan (PHP) contracts;

(m) A list including names and NPI numbers of individual practitioners enrolled with the Division and contracted with or employed by the FQHC; and

(n) A list including business names, addresses and facility NPI numbers for all Division-enrolled clinics affiliated or owned by the FQHC including any clinics that do not have FQHC status.

(4) For enrollment with the Division as an RHC, a clinic must:

(a) Be designated by CMS as an RHC.

(b) Maintain Medicare certification and be in compliance with all Medicare requirements for certification.

(5) Eligible RHCs who want to enroll with the Division as an RHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed the Department provider enrollment forms with attachments as required in OARs 407-0120-0300 through -0320;

(b) National Provider Identifier (NPI) number and any associated taxonomy codes obtained for the RHC with the provider enrollment form (refer to OAR 407-120-0320);

(c) Copy of Medicare's letter certifying the clinic as an RHC;

(d) Medicare Cost Report for RHC or completed Cost Statement(s) (DMAP 3027) (see OAR 410-147-0360). Complete a cost statement for each RHC-designated site, unless specifically exempted in writing by the Division to file a consolidated cost report (see OAR 410-147-0340):

(A) The Division will accept an uncertified Medicare Cost Report;

(B) If the clinic's Medicare Cost Report, provided to the Division, does not include all covered Medicaid costs provided by the clinic, the clinic must submit additional cost information. The Division will include these costs when determining the PPS encounter rate;

(C) An RHC can submit the Cost Statement (DMAP 3027) as a substitute to the Medicare Cost Report.

(e) A copy of the clinic's trial balance (see OAR 410-147-0500, Total Encounters for Cost Reports only if completing Cost Statement DMAP 3027);

(f) Audited financial statements (refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" if completing Cost Statement DMAP 3027);

(g) Depreciation schedules (only if completing Cost Statement DMAP 3027);

(h) Overhead cost allocation schedules (only if completing Cost Statement DMAP 3027);

(i) A copy of the clinic's AMH certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services;

(j) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services;

(k) A list of all Prepaid Health Plan (PHP) contracts;

(l) A list including names and NPI numbers of individual practitioners enrolled with the Division and contracted with or employed by the RHC; and

(m) A list including business names, addresses and facility NPI numbers for all Division-enrolled clinics affiliated or owned by the RHC including any clinics that do not have RHC status.

(6) The FQHC/RHC Program Manager, upon receipt of the required items as listed in Section (3) of this rule for FQHCs and Section (5) of this rule for RHCs, will review all documents for compliance with program rules, completeness and accuracy.

(7) The Division prohibits an established, enrolled FQHC or RHC that adds or opens a new clinic site from submitting claims for services rendered at the new site under their FQHC or RHC Division enrollment, and according to the PPS encounter rate, prior to the Division's acknowledgment. An FQHC or RHC is required to immediately submit to the attention of the FQHC/RHC Program Manager, Division of Medical Assistance Programs:

(a) For FQHCs only, a copy of the recent HRSA Notice of Grant Award including the new site under the main FQHC's scope;

(b) For RHCs only, a copy of Medicare's letter certifying the new clinic as an RHC;

(c) A recent list of all Prepaid Health Plan (PHP) contracts; and

(d) A recent list of names and NPI numbers for all individual practitioners enrolled with the Division and contracted with or employed by the new FQHC or RHC site.

(8) If an established and enrolled RHC or FQHC changes ownership, the new owner must submit:

(a) Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated; or in writing, a letter advising adoption of the PPS encounter rate calculated under the former ownership (see OAR 410-147-0360);

(b) Notice of a change in tax identification number;

(c) A recent list of all Prepaid Health Plan (PHP) contracts;

(d) A recent list of names and NPI numbers for all individual practitioners enrolled with the Division and contracted with or employed by the FQHC or RHC; and

(e) A recent list including business names, addresses, NPI numbers and associated taxonomy codes for all Division-enrolled clinics affiliated or owned by the FQHC or RHC including any clinics that do not have FQHC or RHC status.

(9) FQHCs that are involved with a sub-recipient must provide documentation. Sub-recipient contracts with an FQHC must enroll as an FQHC and submit the same required documentation as outlined under the enrollment sections of this rule.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0010; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 38-2010, f. 12-15-10, cert. ef. 1-1-11

410-147-0480

Cost Statement Instructions

(1) The Division of Medical Assistance Programs (Division) requires federally qualified health centers (FQHC) to submit Cost Statements (DMAP 3027).

(2) Rural health clinics (RHCs) can choose to submit either their Medicare Cost Report or the Cost Statement (DMAP 3027). If the RHC files a Medicare Cost Report, the Division may request additional information.

(3) The Division reimburses some services, items and supplies fee-for-service, outside of a FQHC or RHC's Prospective Payment System (PPS) encounter rate. For this reason, clinics must exclude the costs for the following items from the cost statement:

(a) Contraceptive supplies and contraceptive medications (see OAR 410-147-0280);

(b) Pharmacy. Requires separate enrollment, refer to OAR chapter 410, division 121, Pharmaceutical Services Program Rulebook for specific information;

(c) Durable medical equipment and supplies. Requires separate enrollment, refer to OAR chapter 410, division 122, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS);

(d) Targeted case management (TCM) services. Requires separate enrollment, see OAR 410-147-0610, and refer to OAR chapter 410, division 138, Targeted Case Management for specific information; and.

(e) Comprehensive environmental lead investigation (refer to OAR 410-130-0245, Early and Periodic Screening, Diagnostic and Treatment Program).

(4) Payment for services provided by FQHCs and RHCs is in accordance with 42 USC 1396a (bb). In general, a Prospective Payment System (PPS) encounter rate is calculated on a per visit basis that is equal to the average of reasonable and allowable costs incurred by a clinic for furnishing services included in the State Plan under Title XIX and XXI of the Social Security Act. The rate is calculated by dividing the total costs incurred by an FQHC or RHC for furnishing services by the total number of clinic encounters as defined in OAR 410-147-0500. A clinic must submit a Cost Statement (DMAP 3027) to the Division:

(a) For established clinics during an adjustment to the clinic's rate based on a change in scope of clinic services (see OAR 410-147-0360);

(b) For new clinics (see OAR 410-147-0360); or

(c) If there is a change of ownership, the new owner can submit the Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated (see also OAR 410-147-0320 (8).

(5) The Cost Statement (DMAP 3027) must include all documents required by OAR 410-147-0320.

(6) Each section must be completed if applicable.

(7) Page 1 — Statistical Information:

(a) Enter the full name of the FQHC or RHC, the address and telephone number, the fiscal reporting period, legacy Division provider number, current NPI numbers and associated taxonomy code(s); the name of the persons or organizations having legal ownership of the FQHC or RHC; and all provider and health care practitioners as defined on the DMAP 3027 Cost Statement.

(b) The Cost Statement (DMAP 3027) must be prepared, signed and dated by both the FQHC or RHC accountant and an authorized responsible officer.

(8) Page 2 — Part A — FQHC or RHC Practitioner Staff and Visits:

(a) FTE Personnel: List the total number of staff by position;

(b) Encounters: List the number of on-site and off-site encounters by staff (see OAR 410-147-0500, Total Encounters for Cost Reports). Exclude the following types of encounters from your total encounters:

(A) Out-stationed outreach workers;

(B) Administration; and

(C) Support staff, or any staff members who do not meet the criteria of OAR 410-147-0120(6) or the qualification or certification requirements under a clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH) (see OAR 410-147-0320).

(9) Pages 3-4 — Reclassification and adjustment of trial balance of expenses:

(a) Record the expenses for covered health care costs, non-reimbursable program costs, allowable overhead costs, and non-reimbursable overhead costs:

(A) Covered health care (program) costs include all necessary and proper costs that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. Whether the Division allows the costs is subject to the regulations prescribing the treatment of specific items under the Medicaid program (see OAR 410-147-0020 Professional Services). Covered health care (program) and direct health care costs include but are not limited to:

(i) Personnel costs, including Medical record and medical receptionist costs;

(ii) Administrative costs;

(iii) Employee pension plan costs;

(iv) Normal standby costs;

(v) Medical practitioner salaries; and

(vi) Malpractice insurance costs;

(B) Non-reimbursable program costs are costs that are not related to patient care and which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Costs that are not necessary include costs that usually are not common or accepted occurrences in the field of the provider's activity. Non-reimbursable program costs include, but are not limited to:

(i) Women, Infants and Children (WIC);

(ii) Community services/housing projects (refer to OAR 410-120-1200);

(iii) Environmental external maintenance costs (e.g. landscaping, pesticide application);

(iv) Research;

(v) Public education; and

(vi) Outside services;

(C) Allowable overhead costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Below are examples of overhead costs:

(i) Administrative costs;

(ii) Billing department expenses;

(iii) Audit costs;

(iv) Reasonable data processing expenses (not including computers, software or databases not used solely for patient care or clinic administration purposes);

(v) Space costs (rent and utilities); and

(vi) Liability insurance costs;

(D) Non-reimbursable overhead costs:

(i) Entertainment;

(ii) Fines and penalties;

(iii) Fundraising;

(iv) Goodwill;

(v) Gifts and contributions;

(vi) Political contributions;

(vii) Bad debts;

(viii) Other interest expense;

(ix) Advertising;

(x) Membership dues for public relations purposes, including country or fraternal club memberships;

(xi) Cost of personal use of motor vehicles;

(xii) Cost of travel incurred in connection with non-patient care related purposes; and

(xiii) Costs applicable to services, facilities, and supplies furnished by a related organization (related party transactions) in excess of the lower of cost to the related organization, or the price of comparable service as rendered by a non-related entity (see OAR 410-147-0540);

(b) Attach expense documentation from financial accounting records and an explanation for allocations, and allocation method used;

(c) Enter any reclassified expenses, adjustments (increase/decrease) of actual expenses in accordance with the FQHC and RHC administrative rules on allowable costs. A schedule of any reported reclassification of trial balance expense, whether an increase or decrease, must include:

(A) A reference to the line number on either page 3 or 4;

(B) A description of the reclassification or adjustment;

(C) The amount of the debit or credit; and

(D) The total for each debit and credit;

(d) Net expenses must equal the combined reclassified trial balance taking into account the adjustment amount on each detail line;

(e) Enter the totals from each column in the "Total" fields.

(10) Page 5 — Determinations — Determination of overhead applicable to FQHC and RHC services:

(a) Parts A and B: Enter all totals from the previous pages of the Cost Statement (DMAP 3027) as requested under overhead applicable to FQHC or RHC services and FQHC or RHC rate;

(b) Part C: If applicable, complete by entering the wages for Out-stationed Outreach Workers on line C1, divide the wages by the number of billable Division encounters to determine the rate per encounter (see also OAR 410-147-0400).

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0400; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 38-2010, f. 12-15-10, cert. ef. 1-1-11

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Department of Human Services,
Public Health Division
Chapter 333

Rule Caption: Changes to hospital and ambulatory surgical center rules in response to passage of SB 158.
Adm. Order No.: PH 26-2010
Filed with Sec. of State: 12-14-2010
Certified to be Effective: 12-15-10
Notice Publication Date: 11-1-2010
Rules Adopted: 333-076-0250, 333-076-0255, 333-076-0260, 333-076-0265, 333-076-0270, 333-500-0031, 333-501-0060
Rules Amended: 333-076-0101, 333-076-0106, 333-076-0108, 333-076-0109, 333-076-0111, 333-076-0114, 333-076-0115, 333-076-0125, 333-076-0130, 333-076-0135, 333-076-0140, 333-076-0145, 333-076-0155, 333-076-0160, 333-076-0165, 333-076-0170, 333-076-0175, 333-076-0180, 333-076-0190, 333-500-0005, 333-500-0010, 333-500-0020, 333-500-0025, 333-500-0030, 333-500-0034, 333-500-0040, 333-500-0065, 333-501-0010, 333-501-0015, 333-501-0035, 333-501-0040, 333-501-0045, 333-501-0055, 333-505-0005, 333-505-0020, 333-505-0030, 333-505-0033, 333-505-0050
Subject: The Oregon Health Authority, Public Health Division is proposing to adopt and amend Oregon Administrative Rules relating to hospitals and ambulatory surgical centers (ASCs) in response to the passage of SB 158 during the 2009 legislative session. These rules address new fees, classification of ASCs, inspections, complaint investigations, disclosure and consent provisions, care of patients, and quality assessment and performance improvement.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-076-0101
Definitions

As used in OAR chapter 333, division 76 unless the context requires otherwise, the following definitions apply:

(1) "Ambulatory Surgical Center" (ASC) means:

(a) A facility or portion of a facility that operates exclusively for the purpose of providing surgical services to patients who do not require hospitalization and for whom the expected duration of services does not exceed 24 hours following admission.

(b) Ambulatory surgical center does not mean:

(A) Individual or group practice offices of private physicians or dentists that do not contain a distinct area used for outpatient surgical treatment on a regular and organized basis, or that only provide surgery routinely provided in a physician's or dentist's office using local anesthesia or conscious sedation; or

(B) A portion of a licensed hospital designated for outpatient surgical treatment.

(2) "Authentication" means verification that an entry in the patient medical record is genuine.

(3) "CMS" means Centers for Medicare and Medicaid Services.

(4) "Certified ambulatory surgical center" means a facility that is licensed by the Division and is deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C.

(5) "Certified Nurse Anesthetist" (CRNA) means a registered nurse certified by the Council on Certification of Nurse Anesthetists and licensed by the Oregon State Board of Nursing.

(6) "Conditions of Participation" mean the applicable federal regulations that ASCs are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(7) "Conscious sedation" means an induced controlled state of minimally depressed consciousness in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(8) "Deemed" means a health care facility that has been inspected by an approved accrediting organization and has been approved by the CMS as meeting CMS Conditions of Participation.

(9) "Deep sedation" means an induced controlled state of depressed consciousness in which the patient experiences a partial loss of protective reflexes, as evidenced by the inability to respond purposefully either to physical stimulation or to verbal command but the patient retains the ability to independently and continuously maintain an airway.

(10) "Direct ownership" has the meaning given the term 'ownership interest' in 42 CFR 420.201.

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

(12) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(13) "General anesthesia" means an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command.

(14) "Governing body" means the body or person legally responsible for the direction and control of the operation of the facility.

(15) "Health Care Facility" (HCF) has the meaning given the term in ORS 442.015.

(16) "Health Care Facility Licensing Law" means ORS 441.015-441.990 and rules thereunder.

(17) "High complexity non-certified" means a facility that is licensed by the Division, is not deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C, and performs surgical procedures involving deep sedation or general anesthesia.

(18) "Hospital" has the meaning given that term in ORS 442.015.

(19) "Indirect ownership" has the meaning given the term 'indirect ownership interest' in 42 CFR 420.201.

(20) "Licensed" means that the person or facility to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a health care facility means that the facility is currently and has been duly and regularly licensed by the Division.

(21) "Licensed Nurse" means a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(22) "Licensed Practical Nurse" (LPN) means a person licensed under ORS chapter 678 to practice practical nursing.

(23) "Local anesthesia" means the administration of an agent that produces a transient and reversible loss of sensation in a circumscribed portion of the body.

(24) "Moderate complexity non-certified" means a facility licensed by the Division, is not deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C, and performs procedures requiring not more than conscious sedation.

(25) "New construction" means a new building or an addition to an existing building.

(26) "NFPA" means National Fire Protection Association.

(27) "Nursing Assistant" means a person certified as meeting the educational requirements established by the Oregon State Board of Nursing (OSBN). Responsibilities shall be limited to functions included in a course curricula approved by OSBN.

(28) "Patient audit" means review of the medical record and/or physical inspection of a patient.

(29) "Person" means an individual, a trust or estate, or a partnership or corporation (including associations, joint stock companies and insurance companies, a state or a political subdivision or instrumentality including a municipal corporation).

(30) "Physician" means a person licensed under ORS chapter 677 to practice medicine by the Oregon Medical Board.

(31) "Podiatrist" means a person licensed under ORS chapter 677 to practice podiatry.

(32) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in subsection (2) of ORS 441.055 and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Oregon Medical Board. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(33) "Registered Nurse" (RN) means a person licensed as a Registered Nurse under ORS chapter 678.

Stat. Auth.: ORS 441.025 & 441.057
Stats. Implemented: ORS 441.020, 441.025, 441.057, 441.098, & 442.015
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06;PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0106
Issuance of License and Fees

(1) Application for a license to operate an ASC shall be in writing on a form provided by the Division, including demographic, ownership and administrative information. The form shall specify such information required by the Division.

(2) For purposes of determining the correct license fee required under ORS 441.020 and this rule:

(a) "Procedure room" means a room where surgery or invasive procedures are performed; and

(b) "Invasive procedure" means a procedure requiring insertion of an instrument or device into the body through the skin or a body orifice for diagnosis or treatment, and operative procedures in which skin or mucous membranes and connective tissue are incised, or an instrument is introduced through a natural body orifice.

(3) Upon receipt of an application and the license fee as described in ORS 441.020, the Division shall review the application and conduct an onsite inspection of the ASC.

(4) In lieu of an onsite inspection required under section (3) of this rule, the Division may accept:

(a) CMS certification by a federal agency or accrediting organization; or

(b) A survey conducted within the previous three years by an accrediting organization approved by the Division, if:

(A) The certification or accreditation is recognized by the Division as addressing the standards and condition of participation requirements of the CMS and other standards set by the Division and an ASC provides the Division with a letter from CMS indicating its deemed status;

(B) The ASC notifies the Division of any exit interview conducted by the federal agency or accrediting body and permits the Division to participate; and

(C) The ASC provides copies of all documentation concerning the certification or accreditation requested by the Division.

(5) If the deemed status of an ASC changes, the ASC administrator must notify the Division.

(6) No person or ASC licensed pursuant to the provisions of ORS chapter 441, shall in any manner or by any means assert, represent, offer,

provide or imply that such person or facility is or may render care or services other than that which is permitted by or which is within the scope of the license issued to such person or facility by the Division nor shall any service be offered or provided which is not authorized within the scope of the license issued to such person or facility.

(7) The Division shall issue a license to an ASC that:

(a) Submits a completed application as described in section (1) of this rule;

(b) Submits the license fee as described in ORS 441.020;

(c) Successfully completes the survey requirements established in this rule or provides documentation acceptable to the Division under section (4) of this rule; and

(d) Is found by the Division to be in compliance with applicable statutes and these rules.

(8) In determining whether to license an ASC pursuant to ORS 441.025, the Division shall consider only factors relating to the health and safety of individuals to be cared for therein and the ability of the operator of the ASC to safely operate the facility, and shall not consider whether the ASC is or will be a governmental, charitable, or other nonprofit institution or whether it is or will be an institution for profit.

(9) The license shall be conspicuously posted in the area where patients are admitted.

(10) A facility license that has been suspended or revoked may be reissued after the Division determines that compliance with HCF laws has been achieved satisfactorily.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.022 & 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0108
Expiration and Renewal of License

Each license to operate an ASC shall expire on December 31 following the date of issue, and if a renewal is desired, the licensee shall make application at least 30 days prior to the expiration date upon a form prescribed by the Division as described in OAR 333-076-0106.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0109
Denial or Revocation of a License

(1) A license for any ASC may be denied, suspended or revoked by the Division when the Division finds that there has been a substantial failure to comply with the provisions of Health Care Facility licensing law.

(2) A person or persons in charge of an ASC shall not permit, aid or abet any illegal act affecting the welfare of the license.

(3) A license shall be denied, suspended or revoked in any case where the State Fire Marshal certifies that there was failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(4) A license may be suspended or revoked for failure to comply with a Division order arising from an ASC's substantial lack of compliance with the rules or statutes.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025 & 441.030
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0111
Classification

(1) Ambulatory surgical centers shall be classified as follows:

(a) Certified;

(b) High complexity non-certified; and

(c) Moderate complexity non-certified.

(2) The classification of each ASC shall be so designated on the license.

(3) ASCs licensed by the Division shall neither assume a descriptive title nor be held out under any descriptive title other than the classification title established by the Division and under which the facility is licensed. This not only applies to the name on the facility but where stationery, advertising and other representations are involved.

(4) No change in the licensed classification of any ASC, as set out in this rule, shall be allowed by the Division unless such facility shall file a new application, accompanied by the required license fee, with the Division. If the Division finds that the applicant and facility comply with HCF laws and the regulations of the Division relating to the new classification for which application for licensure is made, the Division shall issue a license for such classification.

Stat. Auth.: ORS 441.025 & 441.086
Stats. Implemented: ORS 441.025 & 441.086
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0114
Inspections and Complaint Investigations

(1) Complaints:

(a) Any person may make a complaint to the Division regarding violation of health care facility laws or regulations. A complaint investigation will be carried out as soon as practicable and may include but not be limited to, as applicable to facts alleged: interviews of the complainant, patient(s), witnesses, and ASC management and staff; observations of the patient(s), staff performance, patient environment and physical environment; and review of documents and records;

(b) An ASC shall post a notice in the facility, in a prominent place and size that must include, but is not limited to the following: "If you have concerns about this ambulatory surgical center and the services provided here, contact the Public Health Division, Health Care Regulation and Quality Improvement Program: 800 NE Oregon Street, Suite 305, Portland OR 97232; 971-673-0540."

(c) Information obtained by the Division during an investigation of a complaint or reported violation is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the Division may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any patient at the ASC.

(d) The Division may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of an ASC, and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 675.160 as that information pertains to a licensee of the board.

(2) Inspections:

(a) The Division will, in addition to any inspections conducted pursuant to complaint investigations, conduct at least one general inspection of each ASC to determine compliance with HCF laws at least once every three years and at such other times as the Division deems necessary. The Division may accept certificates from accrediting organizations approved by the Division as evidence of compliance with acceptable standards in lieu of ASC inspections;

(b) Facilities providing approved accrediting organization certificates as evidence of compliance shall also be required to provide to the Division (or to have previously provided) with each license application (and license renewal application):

(A) All approved accrediting organizations survey and inspection reports; and

(B) Written evidence of all corrective actions underway, or completed, in response to approved accrediting organizations recommendations; including all progress reports.

(c) Inspections will include but not be limited to those procedures stated in subsection (1)(a) of this rule;

(d) The inspection may include a patient audit, the results of which shall be summarized on the licensing survey form;

(e) When documents and records are requested under section (1) or (2) of this rule, the ASC shall make the requested materials available to the investigator for review and copying.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025, 441.060 & 441.086
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0115
Governing Body Responsibility

The governing body of each ASC shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(1) Insure that all health care personnel for whom state licenses or registration are required are currently licensed or registered;

(2) Insure that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(3) Insure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(4) Insure that physicians admitted to practice in the facility are organized into a medical staff insofar as applicable in such a manner as to

effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care; and

(5) Insure that a physician is not denied medical staff membership or privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another ASC.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025 & 441.055
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(1)(a) & (b); PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0125
Personnel

(1) As used in this rule, "person" means any:

(a) ASC employee;

(b) ASC contractor;

(c) Health care practitioner granted privileges by the ASC; or

(d) ASC volunteer or student.

(2) The facility shall maintain a sufficient number of qualified personnel to provide effective patient care and all other related services.

(3) There shall be written personnel policies and procedures which shall be made available to personnel.

(4) Provisions shall be made for orientation.

(5) Provisions shall be made for an annual continuing education plan.

(6) There shall be a job description for each position which delineates the qualifications, duties, authority and responsibilities inherent in each position.

(7) There shall be an annual work performance evaluation for each employee with appropriate records maintained.

(8) There shall be an employee health screening program for the purpose of protecting patients and employees from communicable diseases, including but not limited to requiring tuberculosis testing for employees in accordance with section (10) of this rule.

(9) An ASC shall restrict the work of employees with restrictable diseases in accordance with OAR 333-019-0010.

(10) Each ASC shall formally assess the risk of tuberculosis transmission among ASC employees, contractors, health care practitioners granted privileges by the ASC, volunteers or students, and shall comply with the "*Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings*," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, vol. 54, number RR-17, December 30, 2005 or by following recommendations otherwise approved by the Division.

(11) An ASC shall obtain documentation that tuberculosis (TB) testing has been conducted in a manner consistent with the CDC guidelines for any person who enters an ASC and who has contact with patients, enters rooms that patients may enter, or who handles clinical specimens or other material from patients or their rooms.

(a) An ASC shall require documentation of baseline TB screening conducted in accordance with the CDC Guidelines, within six weeks of the date of hire, date of executed contract or date of being granted ASC credentials.

(b) For persons hired, contracted with or granted ASC privileges prior to December 15, 2010, an ASC shall obtain documentation of compliance with CDC Guidelines by February 1, 2011.

(12) An ASC that is classified as "potential ongoing transmission" under CDC Guidelines shall consult with the Oregon TB control program within the Division, for guidance on the extent of TB testing required.

(13) If an ASC learns that a person or a patient at the hospital is diagnosed with communicable TB, the ASC shall notify the local public health authority and conduct an investigation to identify contacts. If the Division or local public health authority conducts its own investigation, an ASC shall cooperate with that investigation and provide the Division or local public health authority with any information necessary for it to conduct its investigation.

(14) An ASC shall notify the local public health administrator of its intent to discharge a patient known to have active TB disease.

(15) The actions taken under this rule and all results thereof shall be fully documented for each employee. Such documentation is subject to review by authorized representatives of the Division.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 433.411, 441.025, 441.057, 441.162, 678.362
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0130
Policies and Procedures

The governing body shall have a formal organizational plan with written policies, procedures and by-laws that are enforced and that clearly set forth the organizational plan with written responsibilities, accountability and relationships of professional and other personnel including volunteers.

(1) The clinical services of each ASC shall be under the supervision of a manager who shall be an RN or a physician.

(2) The following are written policies and procedures that the ASC shall develop and implement:

(a) Types of procedures that may be performed in the facility;

(b) Types of anesthesia that may be used including storage procedures. Where inhalation anesthetics and medical gases are used there shall be procedures to assure safety in storage and use;

(c) Criteria for evaluating patient before admission and before discharge or transfer;

(d) Nursing service activities;

(e) Infection control;

(f) Visitor's conduct and control;

(g) Criteria and procedures for admission of physicians, dentists, or other individuals within the scope of his or her license, to the staff;

(h) Content and form of medical records;

(i) Procedures for storage and dispensing of clean and sterile supplies and equipment and the processing and sterilizing of all supplies, instruments and equipment used in procedures unless disposable sterile packs are used;

(j) Procedures for the disposal of pathological and other potentially infectious waste and contaminated supplies. Guidelines established by the Division shall be used in developing these procedures;

(k) Procedures for the procurement, storage and dispensing of drugs;

(l) If the program calls for the serving of snacks or other foods procedures shall be written covering space, equipment and supplies. Arrangements may be made for outside services. All food services shall meet the requirements of the Food Sanitation Rules, OAR 333-150-0000;

(m) Procedures for the cleaning, storage and handling of soiled linen and the storage and handling of clean linen;

(n) Policies and procedures relating to routine laboratory testing;

(o) A policy and procedure which assures at least annual training in emergency procedures, including, but not limited to:

(A) Procedures for fire and other disaster;

(B) Infection control measures; and

(C) For staff involved in direct patient care, procedures for life threatening situations including, but not limited to, cardiopulmonary resuscitation and the life saving techniques for choking;

(p) Policies and procedures for essential life saving measures and stabilization of a patient and arrangements for transfer to an appropriate facility;

(q) Procedures for notifying patients orally and in writing of any financial interest as required by ORS 441.098;

(r) Requirements for informed consent signed by the patient or legal representative of the patient for diagnostic and treatment procedures; such policies and procedures shall address informed consent of minors in accordance with provisions in ORS 109.610, 109.640, 109.670, and 109.675; and

(s) Requirements for identifying persons responsible for obtaining informed consent and other appropriate disclosures and ensuring that the information provided is accurate.

Stat. Auth.: ORS 441.025 & 441.057
Stats. Implemented: ORS 441.025, 441.057, 441.162, & 678.362
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(2)(a) & (b)(A)–(Q); PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0135
Nursing Services

(1) An RN shall be responsible for the nursing care provided to the patients.

(2) The number and types of nursing personnel, including RNs, LPNs and nursing and surgical assistants shall be based on the needs of the patients and the types of services performed.

(3) At least one RN and one other nursing staff member shall be on duty at all times patients are present.

(4)(a) For purposes of this rule, "circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of operating room team members during surgery.

(b) The duties of a circulating nurse performed in an operating room of a certified or high complexity non-certified ambulatory surgical center shall be performed by a registered nurse licensed under ORS 678.010-678.410.

(c) In any case requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(d) Nothing in this rule precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(5) Nurses who supervise the recovery area shall have current training in resuscitation techniques and other emergency procedures.

Stat. Auth.: ORS 441.025 & 441.057
Stats. Implemented: ORS 441.025, 441.057, 441.162, & 678.362
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(4)(a)–(c); PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0140
Anesthesia Services (If Provided)

(1) General or spinal anesthesia shall be administered only by a physician or a certified nurse anesthetist. Either the physician or the CRNA shall be present for the administration of general or spinal anesthetics, during anesthesia, and the recovery of the patients when any general or spinal anesthesia is used.

(2) In all areas where flammable anesthetics are used, such rooms shall be equipped and maintained in compliance with provisions of the current issue of NFPA 99, Standard for Health Care Facilities, unless the governing body's written policy forbids the use or storage of flammable anesthetics in the facility.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(5)(a) & (b); PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0145
Storage, Disposal and Dispensing of Drugs

(1) In an ASC that does not have a pharmacy on the premises, stock quantities of prescription drugs, including local anesthetics shall be stored on the premises only when such drugs have been obtained for dispensation or administration to his/her respective patients by a physician, dentist, podiatrist or other person authorized within the scope of his/her license to so dispense or administer such drugs. Prescribed drugs already prepared for patients in the ASC may also be stored on the premises.

(2) Old medications, including special prescriptions for patients who have left the facility, shall be disposed of by incineration or other equally effective method, except narcotics and other drugs under the drug abuse law, which shall be handled in the manner prescribed by the Drug Enforcement Administration of the United States Department of Justice.

(3) Drugs shall not be administered to patients unless ordered by a physician, dentist, podiatrist or individual authorized within the scope of his or her professional license to prescribe drugs; and such order shall be in writing over the physician's or other authorized individual's signature or authentication.

(4) Prescription drugs dispensed by a physician shall be personally dispensed by the physician. Nonjudgmental dispensing functions may be delegated to staff assistants when the accuracy and completeness of the prescription is verified by the physician.

(5) The dispensing physician shall label prescription drugs with the following information:

(a) Name of patient;

(b) The name and address of the dispensing physician;

(c) Date of dispensing;

(d) The name of the drug. If the dispensed drug does not have a brand name, the prescription label shall indicate the generic name of the drug dispensed along with the name of the drug distributor or manufacturer, its quantity per unit and the directions for its use stated in the prescription. However, if the drug is a compound, the quantity per unit need not be stated;

(e) Cautionary statements, if any, as required by law; and

(f) When applicable, and as determined by the Oregon Board of Pharmacy, an expiration date after which the patient should not use the drug.

(6) Prescription drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act unless the patient requests a noncomplying container.

(7) Pharmacist and pharmacy personnel providing services to the ASC are subject to ORS chapter 689 and the rules thereunder.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(6); PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0155
Laboratory Services

(1) Laboratory services shall be available for every patient either through the use of a licensed clinical laboratory in the facility or a written contract with a licensed clinical laboratory.

(2) Any tissue removed during surgery except those exempted under OAR 333-076-0165, shall be submitted for histological examination by a pathologist. A written report of findings shall be filed in the patient's record in accordance with 333-076-0165.

(3) OAR 333-024-0005 through 333-024-0350 shall also apply.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(8)(a) & (b); PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0160
Care of Patients

(1) Each patient shall be evaluated for all risk factors before a surgical procedure may be performed in accordance with 42 CFR 416.42 and 416.52.

(2) Each patient shall be observed for post-operative complications under the direct supervision of a licensed registered nurse. Patients shall be observed for post-procedure complications until their conditions are stable.

(3) No medications or treatments shall be given without the order of a physician or other individual authorized within the scope of his/her license.

(4) At the time of discharge from the ASC, each patient must be evaluated by a physician, or by an anesthetist as defined by 45 CFR 410.69(b) for proper anesthesia recovery.

(5) Written instruction shall be given to patients on discharge covering signs and symptoms of complications as well as any necessary follow-up instructions for routine and/or emergency care.

(6) Each facility shall adopt and observe written patient care policies.

(7) Patient care policies shall be evaluated annually and rewritten as needed. Documentation of the evaluation is required.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025 & 441.086
Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(9)(a)–(e); PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0165
Medical Records

(1) A medical record shall be maintained for every patient admitted for care.

(2) A legible reproducible medical record shall include at least the following (if applicable):

(a) Admitting identification data including date of admission;

(b) Chief complaint;

(c) Pertinent family and personal history;

(d) History and physical. This history and physical shall be completed no more than 30 days prior to the initiation of any procedure. Sufficient time shall be allowed between examination and the initiation of any procedure, to permit review of tests;

(e) Clinical laboratory reports as well as reports on any special examinations. (The original report shall be authenticated and recorded in the patient's medical record.);

(f) X-ray reports shall be recorded in the medical record and shall bear the identification (authentication) of the originator of the interpretation;

(g) Signed or authenticated report of consultant when such services have been obtained;

(h) All entries in patient's medical record must be dated, timed, and authenticated:

(A)Verification of an entry requires use of a unique identifier, i.e., signature, code, thumbprint, voice print or other means, which allows identification of the individual responsible for the entry;

(B) Verbal orders may be accepted by those individuals authorized by law and by medical staff rules and regulations and shall be countersigned or authenticated within two business days by the ordering health care practitioner or another health care practitioner who is responsible for the care of the patient;

(C) A single signature or authentication of the physician, dentist, podiatrist or other individual authorized within the scope of his or her professional license on the medical record does not suffice to cover the entire content of the record.

(i) Records of assessment and intervention, including but not limited to preprocedure vital sign records, graphic charts, medication records and appropriate personnel notes;

(j) Anesthesia record including records of anesthesia, analgesia and medications given in the course of the operation and postanesthetic condition, signed or authenticated by the person making the entry;

(k) A record of operation dictated or written immediately following surgery and including a complete description of the operation procedures and findings, postoperative diagnostic impression, and a description of the tissues and appliances, if any, removed;

(l) Postanesthesia Recovery (PAR) progress notes including but not limited to vital sign records and other appropriate clinical notes;

(m) Pathology report on tissues and appliances, if any, removed at the operation. The following tissues and appliances may be exempted from pathology exam:

(A) Specimens that, by their nature or condition, do not permit fruitful examination, including but not limited to a cataract, orthopedic appliance, foreign body, or portion of rib removed only to enhance operative exposure;

(B) Therapeutic radioactive sources, the removal of which shall be guided by radiation safety monitoring requirements;

(C) Traumatically injured members that have been amputated and for which examination for either medical or legal reasons is not deemed necessary;

(D) Specimens known to rarely, if ever, show pathological change, and the removal of which is highly visible postoperatively, including but not limited to the foreskin from circumcision of a newborn infant;

(E) Placentas that are grossly normal and have been removed in the course of operative and nonoperative obstetrics;

(F) Teeth, provided that the number, including fragments, is recorded in the medical record.

(n) Summary including final diagnosis;

(o) Date of discharge and discharge note;

(p) Autopsy report if applicable;

(q) Informed consent forms that document:

(A) The name of the ASC where the procedure or treatment was undertaken;

(B) The specific procedure or treatment for which consent was given;

(C) The name of the health care practitioner performing the procedure or administering the treatment;

(D) That the procedure or treatment, including the anticipated benefits, material risks, and alternatives was explained to the patient or the patient's representative or why it would have been materially detrimental to the patient to do so, giving due consideration to the appropriate standards of practice of reasonable health care practitioners in the same or a similar community under the same or similar circumstances;

(E) The manner in which care will be provided in the event that complications occur that require health services beyond what the ASC has the capability to provide. If the ASC has entered into agreements with more than one hospital, the patient must be provided with the most likely possible option, but that the transfer hospital may be dependent on the type of problem encountered.

(F) The signature of the patient or the patient's legal representative; and

(G) The date and time the informed consent was signed by the patient or the patient's legal representative;

(r) Documentation of the disclosures required in ORS 441.098;

(s) Such signed documents as may be required by law.

(3) The completion of the medical record shall be the responsibility of the attending physician:

(a) Medical records shall be completed by the physician, dentist, podiatrist or other individual authorized within the scope of his or her professional license within four weeks following the patient's discharge;

(b) If a patient is transferred to another health care facility, transfer information shall accompany the patient. Transfer information shall include but not be limited to facility from which transferred, name of physician to assume care, date and time of discharge, current medical findings, current nursing assessment, current history and physical, diagnosis, orders from a physician for immediate care of the patient, operative report, if applicable; TB test, if applicable; other information germane to patient's condition. If discharge summary is not available at time of transfer, it shall be transmitted as soon as available.

(4) Diagnoses and operations shall be expressed in standard terminology.

(5) The medical records shall be filed in a manner which renders them easily retrievable. Medical records shall be protected against unauthorized access, fire, water and theft.

(6) Medical records are the property of the ASC. The medical record, either in original, electronic or microfilm form, shall not be removed from the institution except where necessary for a judicial or administrative proceeding. Authorized personnel of the Division shall be permitted to review medical records. When an ASC uses off-site storage for medical records, arrangements must be made for delivery of these records to the health care facility when needed for patient care or other health care facility activities. Precautions must be taken to protect patient confidentiality.

(7) All medical records shall be kept for a period of at least 10 years after the date of last discharge. Original medical records may be retained on paper, microfilm, electronic or other media.

(8) If an ASC changes ownership all medical records in original, electronic or microfilm form shall remain in the ASC or related institution, and it shall be the responsibility of the new owner to protect and maintain these records.

(9) If any ASC shall be finally closed, its medical records may be delivered and turned over to any other health care facility in the vicinity willing to accept and retain the same as provided in section (7) of this rule.

(10) All original clinical records or photographic or electronic facsimile thereof, not otherwise incorporated in the medical record, such as x-rays, electrocardiograms, electroencephalograms, and radiological isotope scans shall be retained for seven years after patient's last discharge if professional interpretations of such graphics are included in the medical records.

(11) A current written policy on the release of medical record information including patient access to his/her medical record shall be maintained in the facility.

(12) The Division may require the facility to obtain periodic and at least annual consultation from a qualified medical records consultant, RHIA/RHIT. The visits of the medical records consultant shall be of sufficient duration and frequency to review medical record systems and assure quality records of the patients. Contract for such services shall be available to the Division upon request.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0170

Quality Assessment and Performance Improvement

(1) The governing body of an ASC must ensure that there is an effective, facility-wide quality assessment and performance improvement program that demonstrates measurable improvement in patient health outcomes, and improves patient safety by using quality indicators or performance measures associated with improved health outcomes and by the identification and reduction of medical errors.

(2) The ASC must measure, analyze, and track quality indicators, adverse patient events, infection control and other aspects of performance that includes care and services furnished in the ASC. Written documentation of quality assessment and performance improvement activities shall be recorded at least quarterly.

(3) After an analysis of the causes for adverse events, the ASC must develop and implement facility-wide preventive strategies and ensure that staff are trained in and familiar with these strategies.

(4) The ASC must set priorities for its performance improvement activities that:

(a) Focus on high risk, high volume and problem prone areas;

(b) Consider incidence, prevalence and severity of problems in those areas; and

(c) Affect health outcomes, patient safety and quality of care.

(5) An ASC already in operation and not certified by CMS on December 15, 2010 must be in compliance with this section by June 15, 2011.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0175
Infection Control

(1) Each ASC shall establish and maintain an active facility-wide infection control program for the control and prevention of infection. The program shall be managed by a qualified individual and overseen by a multi-disciplinary committee which shall be responsible for investigating, controlling and preventing infections in the facility.

(2) Each ASC shall be responsible for developing written policies and for annual review of such policies, relating to at least the following:

(a) Identification of existing or potential infections in patients, employees, medical staff, and health care practitioners with ASC privileges;

(b) Control of factors affecting the transmission of infections and communicable diseases;

(c) Provisions for orienting and educating all employees, medical staff, health care practitioners with ASC privileges and volunteers on the cause, transmission, and prevention of infections;

(d) Collection, analysis, and use of data relating to infections in the ASC.

(3) Each ASC shall be responsible for the development, implementation and annual review of policies under section (2) of this rule.

(4) An ASC shall comply with all rules of the Division for the control of communicable diseases.

(5) Written isolation procedures in accordance with current Universal Precautions for Prevention of Transmission of HIV and Other Bloodborne Infections shall be established and followed by all ASC personnel for control and prevention of cross-infection. Guidelines can be obtained from U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Atlanta, GA 30333. Any guidelines published and distributed by the Division shall also be taken into consideration.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0180
Inservice Training for Nurses

(1) Each year the inservice training agenda for nurses shall include at least the following:

(a) Infection control measures;

(b) Emergency procedures including, but not limited to, procedures for fire and other disaster;

(c) Procedures for life-threatening situations including, but not limited to, cardiopulmonary resuscitation and the life-saving techniques for choking victims; and

(d) Other special needs of the patient population.

(2) The facility shall assure that each licensed/certified employee is knowledgeable of the laws/rules governing his/her performance and that employees function within those performance standards.

(3) Documentation of such training shall include the date, content, duration and names of attendees.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0190
Emergency Preparedness

(1) The ASC shall develop, maintain, update, train and exercise an emergency plan for the protection of all individuals in the event of an emergency, in accordance with the regulations as specified in **Oregon Fire Code** (Oregon Administrative Rules chapter 837, division 40).

(a) The ASC shall conduct at least two drills every year that document and demonstrate that employees have practiced their specific duties and assignments, as outlined in the emergency preparedness plan.

(2) The emergency plan shall include the contact information for local emergency management. Each facility shall have documentation that the local emergency management office has been contacted and that the facility has a list of local hazards identified in the county hazard vulnerability analysis.

(3) The summary of the emergency plan shall be sent to the Division within one year of the filing of this rule. New facilities that have submitted licensing documents to the state before this provision goes into effect will have one year from the date of license application to submit their plan. All other new facilities shall have a plan prior to licensing. The Division shall request updated plans as needed.

(4) The emergency plan shall address all local hazards that have been identified by local emergency management that may include, but is not limited to, the following:

(a) Chemical emergencies;
(b) Dam failure;
(c) Earthquake;
(d) Fire;
(e) Flood;
(f) Hazardous material;
(g) Heat;
(h) Hurricane;
(i) Landslide;
(j) Nuclear power plant emergency;
(k) Pandemic;
(l) Terrorism; or
(m) Thunderstorms.

(5) The emergency plan shall address the availability of sufficient supplies for staff and patients to shelter in place or at an agreed upon alternative location for a minimum of two days, in coordination with local emergency management, under the following conditions:

(a) Extended power outage;
(b) No running water;
(c) Replacement of food or supplies is unavailable;
(d) Staff members do not report to work as scheduled; and
(e) The patient is unable to return to the pre-treatment shelter.

(6) The emergency plan shall address evacuation, including:

(a) Identification of individual positions' duties while vacating the building, transporting, and housing residents;

(b) Method and source of transportation;

(c) Planned relocation sites;

(d) Method by which each patient will be identified by name and facility of origin by people unknown to them;

(e) Method for tracking and reporting the physical location of specific patients until a different entity resumes responsibility for the patient; and

(f) Notification to the Division about the status of the evacuation.

(7) The emergency plan shall address the clinical and medical needs of the patients, including provisions to provide:

(a) Storage of and continued access to medical records necessary to obtain care and treatment of patients, and the use of paper forms to be used for the transfer of care or to maintain care on-site when electronic systems are not available.

(b) Continued access to pharmaceuticals, medical supplies and equipment, even during and after an evacuation; and

(c) Alternative staffing plans to meet the needs of the patients when scheduled staff members are unavailable. Alternative staffing plans may include, but is not limited to, on-call staff, the use of travelers, the use of management staff, or the use of other emergency personnel.

(8) The emergency plan shall be made available as requested by the Division and during licensing and certification surveys. Each plan will be re-evaluated and revised as necessary or when there is a significant change in the facility or population of the ASC.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: PH 13-2008, f. & cert. ef. 8-15-08; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0250
Violations

In addition to non-compliance with any health care facility licensing law or condition of participation, it is a violation to:

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Division staff access to the ASC, its documents or records;

(2) Fail to implement an approved plan of correction;

(3) Fail to comply with all applicable laws, lawful ordinances and rules relating to safety from fire;

(4) Refuse or fail to comply with an order issued by the Division;

(5) Refuse or fail to pay a civil penalty; or

(6) Fail to comply with rules governing the storage of medical records following the closure of an ASC.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.015, 441.025 & 441.030
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0255
Informal Enforcement

(1) If, during an investigation or survey Division staff document violations of health care facility licensing laws or conditions of participation, the Division may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.

(2) A signed plan of correction must be received by the Division within 10 business days from the date the statement of deficiencies was mailed to the ASC. A signed plan of correction will not be used by the Division as an admission of the violations alleged in the statement of deficiencies.

(3) An ASC shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is requested from the Division. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(4) The Division shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the ASC administrator in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed to the administrator.

(5) If the ASC does not come into compliance by the date of correction reflected on the plan of correction or 60 days from date of the exit conference, whichever is sooner, the Division may propose to deny, suspend, or revoke the ASC license, or impose civil penalties.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.015 & 441.025
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0260
Formal Enforcement

(1) If, during an investigation or survey Division staff document substantial failure to comply with health care facility licensing laws, conditions of participation or if an ASC fails to pay a civil penalty imposed under ORS 441.170, the Division may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(2) The Division may issue a Notice of Imposition of Civil Penalty for violations of health care facility licensing laws.

(3) At any time the Division may issue a Notice of Emergency License Suspension under ORS 183.430(2).

(4) If the Division revokes an ASC license, the order shall specify when, if ever, the ASC may reapply for a license.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.015, 441.025, 441.030 & 441.037
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0265
Civil Penalties, Generally

(1) A licensee that violates a health care facility licensing law, including OAR 333-076-0250 (violations), is subject to the imposition of a fine not to exceed $500 per day per violation.

(2) In addition to the penalties under section (1) of this rule, civil penalties may be imposed for violations of ORS 441.015 to 441.063, 441.086 or program rules.

(3) In determining the amount of a civil penalty the Division shall consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of noncompliance with health care facility licensing laws;

(c) The violation poses a serious risk to the public's health;

(d) The licensee gained financially from the noncompliance; and

(e) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(4) The Division shall document its consideration of the factors in section (3) of this rule.

(5) Each day a violation continues is an additional violation.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.030 & 441.990
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-076-0270
Approval of Accrediting Organizations

(1) An accrediting organization must request approval by the Division to ensure that ASCs meet state licensing standards.

(2) An accrediting organization shall request approval in writing and shall provide, at a minimum:

(a) Evidence that it is recognized as a deemed accrediting organization by CMS; or

(b) If the accrediting organization is not a deemed organization under CMS, provide:

(A) Documentation of program policies and procedures that its accreditation process meets state licensing standards;

(B) Accreditation history; and

(C) References from a minimum of two health care facilities currently receiving services from the organization.

(3) If the Division finds that an accrediting organization has the necessary qualifications to certify that state licensing standards have been met, the Division will enter into an agreement with the accrediting organization permitting it to accredit ASCs in Oregon.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.062
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0005
Applicability

Unless a specific rule provides otherwise, OAR 333-500 through 535 apply to a hospital classified as general, low occupancy acute care, orthopedic, or psychiatric or mental and do not apply to a hospital classified as a special inpatient care facility.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0010
Definitions

As used in OAR chapter 333, divisions 500 through 535, unless the context requires otherwise, the following definitions apply:

(1) "Assessment" means a complete nursing assessment, including:

(a) The systematic and ongoing collection of information to determine an individual's health status and need for intervention;

(b) A comparison with past information; and

(c) Judgment, evaluation, or a conclusion that occurs as a result of subsections (a) and (b) of this definition.

(2) "Authentication" means verification that an entry in the patient medical record is genuine.

(3) "Authority" means the Oregon Health Authority.

(4) "Certified Nursing Assistant" (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing personnel in the provision of nursing care.

(5) "Chiropractor" means a person licensed under ORS chapter 684 to practice chiropractic.

(6) "Conditions of Participation" mean the applicable federal regulations that hospitals are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(7) "Deemed" means a health care facility that has been inspected by an approved accrediting organization and has been approved by the Centers for Medicare and Medicaid Services (CMS) as meeting CMS Conditions of Participation.

(8) "Discharge" means the release of a person who was an inpatient of a hospital and includes:

(a) The release and transfer of a newborn to another facility, but not a transfer between acute care departments of the same facility;

(b) The release of a person from an acute care section of a hospital for admission to a long-term care section of a facility;

(c) Release from a long-term care section of a facility for admission to an acute care section of a facility;

(d) A patient who has died; and

(e) An inpatient who leaves a hospital for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, if the person does not return as an inpatient of the same health care facility within a 24-hour period.

(9) "Direct ownership" has the meaning given the term 'ownership interest' in 42 CFR 420.201.

(10) "Division" means the Public Health Division within the Authority.

(11) "Emergency Medical Services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care to a woman in labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(12) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(13) "Full compliance survey" means a survey conducted by the Division following a complaint investigation to determine a hospital's compliance with the CMS Conditions of Participation.

(14) "Governing body" means the body or person legally responsible for the direction and control of the operation of the hospital.

(15) "Governmental unit" has the meaning given that term in ORS 442.015.

(16) "Health care facility" (HCF) has the meaning given the term in ORS 442.015.

(17) "Health Care Facility Licensing Laws" means ORS 441.005 through 441.990 and its implementing rules.

(18) "Hospital" has the meaning given that term in ORS 442.015.

(19) "Indirect ownership" has the meaning given the term 'indirect ownership interest' in 42 CFR 420.201.

(20) "Licensed" means that the person to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a hospital means that the facility is currently licensed by the Authority.

(21) "Licensed nurse" means a nurse licensed under ORS chapter 678 to practice registered or practical nursing.

(22) "Licensed Practical Nurse" means a nurse licensed under ORS chapter 678 to practice practical nursing.

(23) "Major alteration" means any structural change to the foundation, roof, floor, or exterior or load bearing walls of a building, or the extension of an existing building to increase its floor area. Major alteration also means the extensive alteration of an existing building such as to change its function and purpose, even if the alteration does not include any structural change to the building.

(24) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2).

(25) "Minor alteration" means cosmetic upgrades to the interior or exterior of an existing building, such as but not limited to wall finishes, floor coverings and casework.

(26) "Mobile satellite" means a MRI, CAT Scan, Lithotripsy Unit, Cath Lab, or other such modular outpatient treatment or diagnostic unit that is capable of being moved, is housed in a vehicle with a vehicle identification number (VIN), and does not remain on a hospital campus for more than 180 days in any calendar year.

(27) "NFPA" means National Fire Protection Association.

(28) "Nurse Midwife/Nurse Practitioner" means a registered nurse certified by the OSBN as a nurse midwife/nurse practitioner.

(29) "Nurse Practitioner" has the meaning given that term in ORS 678.010.

(30) "Nursing staff" means a registered nurse, a licensed practical nurse, or other assistive nursing personnel.

(31) "OB Unit" means a dedicated obstetrical unit that meets the requirements of OAR 333-535-0120.

(32) "On-call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(33) "Oregon Sanitary Code" means the Food Sanitation Rules in OAR 333-150-0000.

(34) "Patient audit" means review of the medical record and/or physical inspection and/or interview of a patient.

(35) "Person" has the meaning given that term in ORS 442.015.

(36) "Physician" has the meaning given that term in ORS 677.010.

(37) "Physician Assistant" has the meaning given that term in ORS 677.495.

(38) "Plan of correction" means a document executed by a hospital in response to a statement of deficiency issued by the Division that describes with specificity how and when deficiencies of health care licensing laws or conditions of participation shall be corrected.

(39) "Podiatrist" has the same meaning as "podiatric physician and surgeon" in ORS 677.010.

(40) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a licensed hospital or in a licensed ambulatory surgical center and is under the supervision of or in collaboration with a physician. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(41) "Public body" has the meaning given that term in ORS 30.260.

(42) "Registered Nurse" means a person licensed under ORS chapter 678 to practice registered nursing.

(43) "Respite care" means care provided in a temporary, supervised living arrangement for individuals who need a protected environment, but who do not require acute nursing care or acute medical supervision.

(44) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff person directly employed by the hospital, or other adverse action taken against a nursing staff person directly employed by the hospital in the terms or conditions of employment of the nursing staff person, as a result of filing a complaint.

(45) "Satellite" means a building or part of a building owned or leased by a hospital, and operated by a hospital, through which the hospital provides outpatient diagnostic, therapeutic, or rehabilitative services in a geographically separate location from the hospital, with a separate physical address from the hospital, but that is within 35 miles from the hospital.

(46) "Special Inpatient Care Facility" means a facility with inpatient beds and any other facility designed and utilized for special health care purposes that may include but is not limited to a rehabilitation center, a facility for the treatment of alcoholism or drug abuse, a freestanding hospice facility, or an inpatient facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Division, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(47) "Stable newborn" means a newborn who is four or more hours postdelivery and who is free from abnormal vital signs, color, activity, muscle tone, neurological status, weight, and maternal-child interaction.

(48) "Stable postpartum patient" means a postpartum mother who is four hours or more postpartum and who is free from any abnormal fluctuations in vital signs, has vaginal flow within normal limits, and who can ambulate, be independent in self care, and provide care to her newborn infant, if one is present.

(49) "Statement of deficiencies" means a document issued by the Division that describes a hospital's deficiencies in complying with health care facility licensing laws or conditions of participation.

(50) "Survey" means an inspection of a hospital to determine the extent to which a hospital is in compliance with health facility licensing laws and conditions of participation.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80, HD 8-1985, f. & ef. 5-17-85; Renumbered from 333-023-0114; HD 13-1987, f. 9-1-87, ef. 9-15-87; HD 23-1987(Temp), f. 11-27-87, ef. 10-15-87 through 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0000; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0020
Application for Hospital License

(1) An applicant wishing to apply for a license to operate a hospital shall submit an application on a form prescribed by the Division and pay the applicable fee as specified in OAR 333-500-0030.

(2) A single hospital license may cover more than one building if the applicant meets the requirements in OAR 333-500-0025.

(3) If the applicant is proposing a new hospital the applicant shall also submit evidence of plans review approval as required by OAR chapter 333, division 675.

(4) An applicant that has a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or an accrediting organization approved by the Division shall provide the certificate to the Division with its license application, and shall include:

(a) All Joint Commission or approved accrediting organization survey and inspection reports; and

(b) Written evidence of all corrective actions underway, or completed, in response to Joint Commission or approved accrediting organization recommendations, including all progress reports.

(5) No license shall be issued for any hospital for which a certificate of need is required, unless a certificate of need has first been issued under ORS 442.315.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.020
Hist.: HB 183, f. & ef. 5-26-66; HB 222, f. 8-26-69, ef. 8-26-69; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0116; HD 21-1985, f. & ef.

10-4-85; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0005; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0025
Indorsement of Satellite Operations

(1) The Division may indorse, under a hospital's license, a satellite or mobile satellite of a hospital.

(2) In order for a satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The satellite meets the requirements in OAR 333-500 – 535;

(b) The services at the satellite are integrated with the hospital;

(c) The financial operations of the satellite are integrated with the hospital;

(d) The hospital and the satellite have the same governing body;

(e) The satellite is under the ownership and control of the hospital;

(f) Staff at the satellite have privileges at the hospital; and

(g) Medical records of the satellite are integrated with the hospital into a unified system.

(3) A satellite shall be subject to a plans review and must pass life safety code requirements.

(4) In order for a mobile satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The mobile satellite is operated in whole or in part by the hospital through lease, ownership or other arrangement;

(b) The services at the mobile satellite are integrated with the hospital;

(c) The financial operations of the mobile satellite are integrated with the hospital;

(d) The mobile satellite is physically separate from the hospital and other buildings on the hospital campus by at least 20 feet; and

(e) It meets the 2000 NFPA 101 Life Safety Code for mobile units.

(5) A mobile satellite shall keep and provide to the Division and the Fire Marshal upon request, a log that shows where the mobile satellite is located every day of the year, and its use. A copy of the log shall be kept in the mobile satellite at all times.

(6) A hospital that has a satellite that provides inpatient services that is indorsed under its license as of October 1, 2009, may continue to have that satellite indorsed under its license. After October 1, 2009, as is consistent with the definition of satellite and mobile satellite, only a satellite or mobile satellite that provides outpatient services shall be eligible for indorsement.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.020
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0030
Annual License Fee

(1) The annual license fee for a hospital is as specified in ORS 441.020.

(2) If a hospital license covers a satellite or mobile satellite approved by the Division under OAR 333-500-0025, the applicable license fee shall be the sum of the license fees which would be applicable if each location or unit was separately licensed.

(3) The Authority may charge a reduced hospital fee or hospital satellite fee if the Division determines that charging the standard fee constitutes a significant financial burden.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.020
Hist.: HD 11, f. 3-16-72, ef. 4-1-72; HD 143(Temp), f. & ef. 8-4-77; HD 147, f. & ef. 12-2-77; HD 15-1978(Temp), f. 11-17-78, ef. 1-1-79; HD 3-1979 f. & ef. 2-26-79; HD 11-1980, f. & ef. 9-1-80; HD 22-1982(Temp), f. & ef. 11-9-82; HD 4-1984, f. & ef. 2-16-84; Renumbered from 333-023-0117; HD 23-1987 (Temp), f. 11-27-87, ef. 10-15-87 thru 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0010; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 12-2001, f. & cert. ef. 6-12-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0031
Fees for Complaint Investigations and Compliance Surveys

(1) In addition to an annual fee, the Division may charge a hospital a fee for:

(a) A complaint investigation, in an amount not to exceed $850;

(b) A full compliance survey, in an amount not to exceed $7,520;

(c) An on-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $225; and

(d) An off-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $85.

(2) During one calendar year, the Division may charge to all hospitals a total amount not to exceed:

(a) $91,000 for complaint investigations;

(b) $15,000 for full compliance surveys; and

(c) $6,700 for follow-up surveys.

(3)(a) The Division shall apportion the total amount charged under section (2) of this rule among hospitals at the end of each calendar year based on the number of complaint investigations, full compliance surveys and follow-up surveys performed at each hospital during the calendar year.

(b) The Division may not include investigations of employee complaints in a hospital's total number of complaint investigations.

(c) A hospital that was licensed in 2008 may not be charged fees under this subsection for more complaint investigations than the number of complaint investigations that occurred at the hospital in 2008.

(d) A hospital that was not licensed in 2008 may be charged fees under this subsection for an unlimited number of complaint investigations.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.021
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0034
Application Review

(1) In reviewing an application for a new hospital the Division shall:

(a) Verify compliance with the applicable sections of ORS chapters 441 and 476, and OAR 333-500 through 535, 675, and chapter 837;

(b) Determine whether a certificate of need is required and was obtained;

(c) Conduct an on-site licensing survey in coordination with the State Fire Marshal's Office; and

(d) Verify compliance with conditions of participation if the applicant has requested Medicare or Medicaid certification.

(2) In determining whether to license a hospital the Division shall consider factors relating to the health and safety of individuals to be cared for at the hospital and the ability of the operator of the hospital to safely operate the facility, and may not consider whether the hospital is or shall be a governmental, charitable or other nonprofit institution or whether it is or shall be an institution for profit.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.022, 441.025
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0040
Expiration and Renewal of License

(1) Each license to operate a hospital shall expire on December 31 following the date of issue, and if a renewal is desired, the licensee shall make application and pay the appropriate fee at least 30 days prior to the expiration date upon a form prescribed by the Division.

(2) For emergency preparedness planning and licensing purposes, a licensee shall provide, in its application for license renewal:

(a) The number of beds currently in use or capable of being used;

(b) The total number of beds that could be used with only minor alterations, taking into consideration existing equipment, the ancillary service capability of the facility, and the physical environment required by OAR 333-500 through 535, as applicable; and

(c) The number of beds to be licensed.

(3) A single hospital license may cover more than one location if the licensee meets the requirements in OAR 333-500-0025.

(4) An applicant that has a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or an accrediting organization approved by the Division shall provide the certificate to the Division with its renewal application, and shall include:

(a) All Joint Commission or approved accrediting organization survey and inspection reports; and

(b) Written evidence of all corrective actions underway, or completed, in response to Joint Commission or approved accrediting organization recommendations, including all progress reports.

(5) If an applicant wishes to renew its license and increase the number of beds licensed from the previous licensing year, the applicant shall include:

(a) Evidence of plans review approval as required by OAR 333-535 and 675 as applicable; and

(b) Evidence that a certificate of need was obtained, or is not required.

(6) The Division may not renew a license for any hospital if a certificate of need is required and has not been obtained pursuant to ORS 442.315.

(7) If the Division intends to deny a license renewal application, it shall issue of Notice of Proposed Denial of License Renewal Application in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HB 183, f. & ef. 5-26-66; HD 11, f. 3-16-72, ef. 4-1-72; HD 150(Temp), f. & ef. 12-15-77; HD 4-1978, f. & ef. 3-31-78; HD 11-1980, f. & ef. 9-2-80; Renumbered from 333-023-0118; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0015; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-500-0065
Waivers

(1) While all hospitals are required to maintain continuous compliance with the Division's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. A request for a waiver from a rule must be:

(a) Submitted to the Division in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) The special circumstances relied upon to justify the waiver;

(d) What alternatives were considered, if any and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed waiver is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, and shall not jeopardize patient health and safety; and

(f) The proposed duration of the waiver.

(2) Upon finding that the hospital has satisfied the conditions of this rule, the Division may grant a waiver.

(3) A hospital may not implement a waiver until it has received written approval from the Division.

(4) During an emergency the Division may waive a rule that a hospital is unable to meet, for reasons beyond the hospital's control. If the Division waives a rule under this section it shall issue an order, in writing, specifying which rules are waived, which hospitals are subject to the order, and how long the order shall remain in effect.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0010
Investigations

(1) As soon as practicable after receiving a complaint, taking into consideration the nature of the complaint, Division staff will begin an investigation.

(2) A hospital shall permit Division staff access to the facility during an investigation.

(3) An investigation may include but is not limited to:

(a) Interviews of the complainant, patients of the hospital, patient family members, witnesses, hospital management and staff;

(b) On-site observations of patients, staff performance, and the physical environment of the hospital; and

(c) Review of documents and records.

(4) Except as otherwise specified in 42 CFR ¦ 401, Subpart B, information obtained by the Division during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the Division may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any patient at the health care facility. The Division may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a health care facility, and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 676.160 as that information pertains to a licensee of the board.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.057
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0015
Surveys

(1) The Division shall, in addition to any investigations conducted under OAR 333-501-0010, conduct at least one on-site licensing survey of each hospital every three years to determine compliance with health care facility licensing laws and at such other times as the Division deems necessary.

(2) In lieu of an onsite inspection required under section (1) of this rule, the Division may accept:

(a) CMS certification by a federal agency or an approved accrediting organization; or

(b) A survey conducted within the previous three years by an accrediting organization approved by the Division, if:

(A) The certification or accreditation is recognized by the Division as addressing the standards and condition of participation requirements of the CMS and other standards set by the Division. Health care facilities must provide the Division with the letter from CMS indicating its deemed status;

(B) The health care facility notifies the Division to participate in any exit interview conducted by the federal agency or accrediting body; and

(C) The health care facility provides copies of all documentation concerning the certification or accreditation requested by the Division.

(3) A hospital shall permit Division staff access to the facility during a survey.

(4) A survey may include but is not limited to:

(a) Interviews of patients, patient family members, hospital management and staff;

(b) On-site observations of patients, staff performance, and the physical environment of the hospital facility;

(c) Review of documents and records; and

(d) Patient audits.

(5) A hospital shall make all requested documents and records available to the surveyor for review and copying.

(6) Following a survey Division staff may conduct an exit conference with the hospital administrator or his or her designee. During the exit conference Division staff shall:

(a) Inform the hospital representative of the preliminary findings of the inspection; and

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(7) Following the survey, Division staff shall prepare and provide the hospital administrator or his or her designee specific and timely written notice of the findings.

(8) If the findings result in a referral to another regulatory agency, Division staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(9) If no deficiencies are found during a survey, the Division shall issue written findings to the hospital administrator indicating that fact.

(10) If deficiencies are found, the Division shall take informal or formal enforcement action in compliance with OAR 333-501-0025 or 333-501-0030.

Stat. Auth.: ORS 441.025 & 441.062
Stats. Implemented: ORS 441.060 & 441.062
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0035
Nurse Staffing Audit Procedure

(1) The Division shall annually conduct random audits of not less than seven percent of all hospitals, to determine compliance with the requirements of ORS 441.162, 441.166 and 441.192.

(2) During an audit, the Division shall review:

(a) The hospital's written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-510-0045(3);

(b) The job descriptions and personnel files of the nursing staff, which includes the documentation of required licensure and indicates the specialized qualifications and competencies of the nursing staff;

(c) The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;

(d) The hospital's process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;

(e) Documentation described in OAR 333-510-0045(2) and (4) through (7);

(f) The hospital's process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;

(g) The hospital's policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0045(9);

(h) The hospital's policy regarding education and training to ensure that hospital-mandated hours are included in time worked;

(i) The hospital's policy on maintenance, use and access to the on-call list for seeking replacement staff; and

(j) Documentation of the hospital's efforts to seek replacement staff when needed.

(3) In conducting an audit, the Division may interview:

(a) Appropriate hospital staff regarding:

(A) Implementation and effectiveness of the nurse staffing plan for nursing services;

(B) Input, if any that was provided to the nurse staffing plan committee;

(C) Whether the hospital has a formal procedure for admission and diversion of patients to another acute care facility when, in the judgment of the direct care registered nurses, there is an inability to meet patient care needs or a risk of harm to existing and new patients; or

(D) Any other subject or fact relating to hospital nursing services that is subject to the review of the Division under this rule.

(b) Hospital staff that does not voluntarily come forward for an interview during an audit; and

(c) Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.

(4) Following an audit, if the Division finds a provision of ORS 441.162 or 441.168 has been violated, the Division may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0045.

(5) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied, in accordance with OAR 333-501-0035.

(6) The identity of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law. However, in the event witness testimony is needed in a hearing concerning a violation of a health care facility licensing law, the identity of a witness may be required to be disclosed.

Stat. Auth.: ORS 413.042 & 441.170
Stats. Implemented: ORS 441.160–441.192
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0040
Investigation Procedures for Investigation of Nurse Staffing Complaints

(1) As soon as possible after receiving a nurse staffing complaint, the Division shall interview the complainant and gather as much information as possible about the allegations.

(2) Following the review of the complaint and interview of the complainant, the Division will determine whether the allegations, if true, would constitute a violation of ORS 441.162 through 441.168. If the allegations constitute a violation of ORS 441.162 through 441.168, the Division will proceed with an on site complaint investigation.

(3) During an onsite complaint investigation, the Division may, as appropriate:

(a) Review any documentation described in OAR 333-501-0035(2) or any other documentation that may be relevant to the complaint, including a review of patient files;

(b) Interview any person described in OAR 333-501-0035(3) or any other person who may have information relevant to the type of complaint received; and

(c) Review any current waivers of the nurse staffing rules that the hospital has been granted.

(4) In conducting interviews during a complaint investigation under section (3) of this rule, the Division shall interview both direct care nurses and nurse managers and hospital staff that did not come forward voluntarily for an interview during an investigation, but who may have information relevant to the complaint.

(5) The Division shall determine whether the notice required under ORS 441.180 is posted in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(6) In deciding whether there is a violation of ORS 441.162 through 441.168, the Division shall consider:

(a) Whether there is objective evidence discovered during the investigation to substantiate a complaint;

(b) The number of witnesses, and the credibility of the witnesses who will attest to an alleged violation of ORS 441.162 through 441.168; and

(c) Whether witness statements are corroborated or refuted by other evidence.

(7) Nothing in section (6) of this rule requires that witness statements be corroborated in order for the Division to find a violation of ORS 441.162 or 441.166.

(8) Following an investigation, if the Division finds a provision of ORS 441.162 or 441.168 has been violated, the Division may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0035.

(9) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

(10) The identity of witnesses providing statements to the Division during an investigation will be kept confidential to the extent permitted by law. However, in the event witness testimony is needed in a hearing concerning a violation of ORS 441.162 through 441.168, the identity of a witness may be required to be disclosed.

(11) If during a complaint investigation, the Division has evidence that a hospital has engaged in a retaliatory act prohibited by ORS 441.174, the Division will advise the registered nurse, licensed practical nurse or certified nursing assistant to contact the Bureau of Labor and Industries regarding the concern.

Stat. Auth.: ORS 413.042 & 441.025
Stats. Implemented: ORS 441.160–441.192
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0045
Civil Penalties for Violations of Nurse Staffing Laws

(1) For the purposes of this rule, "safe patient care" has the meaning given the term in OAR 333-510-0002.

(2) The Division may impose civil penalties in the manner provided in ORS 441.170 for a violation of any provision of ORS 441.162 or 441.166 if there is reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of a nursing staff plan shall be considered a separate violation.

(4) Civil penalties may be imposed for violations of ORS 441.162 and 441.166 in accordance with Table 1 in this rule.

(5) The Division shall consider all evidence in determining a violation of the hospital nurse staffing rule including but not limited to witness testimony, written documents and observations.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

(7) The Division shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 413.042 & 441.170
Stats. Implemented: ORS 441.162, 441.166 & 441.170
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0055
Civil Penalties, Generally

(1) This rule does not apply to civil penalties for violations of ORS 441.162, 441.166, 441.815, or 435.254 or rules adopted to implement these statutes.

(2) A licensee that violates a health care facility licensing law, including OAR 333-501-0020 (violations), is subject to the imposition of a civil penalty not to exceed $500 per day per violation.

(3) In addition to the penalties under section (2) of this rule, civil penalties may be imposed for violations of ORS 441.030 or 441.015(1).

(4) In determining the amount of a civil penalty the Division shall consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of noncompliance with health care facility licensing laws;

(c) The violation poses a serious risk to the public's health;

(d) The licensee gained financially from the noncompliance; and

(e) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(5) The Division shall document its consideration of the factors in section (4) of this rule.

(6) Each day a violation continues is an additional violation.

(7) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.990
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-501-0060
Approval of Accrediting Organizations

(1) An accrediting organization may request approval by the Division to ensure that hospitals meet state licensing standards.

(2) An accrediting organization shall request approval in writing and shall provide, at a minimum:

(a) Evidence that it is recognized as a deemed organization by CMS; or

(b) If the accrediting organization is not a deemed organization under CMS, provide:

(A) Documentation of program policies and procedures that its accreditation process meets state licensing standards;

(B) Accreditation history; and

(C) References from a minimum of two facilities currently receiving services from the organization.

(3) If the Division finds that an accrediting organization has the necessary qualifications to certify that state licensing standards have been met, the Division will enter into an agreement with the accrediting organization.

Stat. Auth.: ORS 441.062
Stats. Implemented: ORS 441.062
Hist.: PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-505-0005
Governing Body Responsibility

(1) The governing body of a hospital shall be responsible for the operation of the hospital, the selection of the medical staff and the quality of care rendered in the hospital. The governing body shall ensure that:

(a) All health care personnel for whom a state license or registration is required are currently licensed or registered;

(b) Qualified individuals allowed to practice in the hospital are credentialed and granted privileges consistent with their individual training, experience and other qualifications;

(c) Procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) It has an organized medical staff responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care;

(e) A physician is not denied medical staff privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility;

(f) Licensed podiatric physicians and surgeons are permitted to use the hospital in accordance with ORS 441.063;

(g) All hospital employees and health care practitioners granted hospital privileges have been tested for tuberculosis in compliance with OAR 333-505-0080; and

(h) A notice, in a form specified by the division, summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, 441.192 is posted in a place where notices to employees and applicants are customarily displayed.

(2) A hospital may grant privileges to nurse practitioners in accordance with ORS 441.064 and subject to hospital rules governing admissions and staff privileges. The hospital may refuse to grant privileges to nurse practitioners only upon the same basis that privileges are refused to other licensed health care practitioners.

(3) A hospital shall require that every patient admitted shall be and remain under the care of a member of the medical staff as specified under the medical staff by-laws.

Stat. Auth: ORS 441.025
Stats. Implemented: ORS 441.055
Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0125; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0050; HD 21-1993, f. & cert. ef. 10-28-93, Renumbered from 333-505-0000; HD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-505-0020
Medical Staff

(1) The medical staff is responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care, and is accountable to the governing body.

(2) The hospital's medical staff organized pursuant to OAR 333-505-0005(1) shall include Medical Doctors and Doctors of Osteopathy, and may include other licensed health care practitioners as permitted by the governing body.

(3) The medical staff shall adopt and enforce by-laws, medical staff policies, and medical staff rules and regulations to carry out its responsibilities. The by-laws, medical staff policies, and medical staff rules and regulations must be approved by the governing body.

(4) By-laws, medical staff policies, and medical staff rules and regulations shall include but are not limited to:

(a) The organization of the medical staff, including qualifications for serving on the medical staff, nominations, election, appointment or removal of officers, and periodic review of its members;

(b) Criteria for credentialing health care practitioners and the process for applying for credentials;

(c) Criteria for restricting or terminating hospital privileges and the process for restricting or terminating hospital privileges;

(d) A process for periodically reviewing the procedures for granting, restricting, or terminating hospital privileges to ensure that procedures are being followed;

(e) Procedures for insuring that licensed health care practitioners with hospital privileges are acting within their scope of practice and acting consistent with the privileges granted;

(f) Procedures for the acceptance of verbal orders by those individuals authorized by law or their scope of practice to accept verbal orders;

(g) Criteria for tissue specimens and appliances that are subject to a macroscopic or microscopic pathology examination;

(h) Procedures for responding to medical emergencies, including contacting at least one physician in the event of a medical emergency; and

(i) Procedures for notifying patients orally and in writing of any financial interest as required by ORS 441.098.

(5) Amendments to medical staff by-laws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff by-laws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such appeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of this institution.

(6) Physicians and all other health care practitioners with individual admitting privileges are subject to applicable provisions of the medical staff by-laws and rules governing admission and staff privileges.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.055, 441.064 & 441.098
Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-505-0030
Organization, Hospital Policies

(1) A hospital's internal organization shall be structured to include appropriate departments and services consistent with the needs of its defined community.

(2) A hospital shall adopt and maintain clearly written definitions of its organization, authority, responsibility and relationships.

(3) A hospital shall adopt, maintain and follow written patient care policies that include but are not limited to:

(a) Admission, transfer and discharge policies that address:

(A) Types of clinical conditions not acceptable for admission;

(B) Constraints imposed by limitations of services, physical facilities or staff coverage;

(C) Emergency admissions;

(D) Requirements for informed consent signed by the patient or legal representative of the patient for diagnostic and treatment procedures; such policies and procedures shall address informed consent of minors in accordance with provisions in ORS 109.610, 109.640, 109.670, and 109.675;

(E) Requirements for identifying persons responsible for obtaining informed consent and other appropriate disclosures and ensuring that the information provided is accurate and documented appropriately in accordance with these rules and ORS 441.098;

(F) A process for the internal transfer of patients from one level or type of care to another;

(G) Discharge and termination of services; and

(H) Planning for continuity of patient care following discharge.

(b) Patient rights;

(c) Housekeeping;

(d) All patient care services provided by the hospital; and

(e) Maintenance of the hospital's physical plant, equipment used in patient care and patient environment.

(4) In addition to the policies described in section (3) of this rule, a hospital shall, in accordance with the Patient Self-Determination Act, 42 CFR ¦ 489.102, adopt policies and procedures that require (applicable to all capable individuals 18 years of age or older who are receiving health care in the hospital):

(a) Providing to each adult patient, including emancipated minors, not later than five days after an individual is admitted as an inpatient, but in any event before discharge, the following in written form, without recommendation:

(A) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care;

(B) Information on the policies of the hospital with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(C) A copy of the directive form set forth in ORS 127.531, along with a disclaimer attached to each form in at least 16-point bold type stating "You do not have to fill out and sign this form."; and

(D) The name of a person who can provide additional information concerning the forms for directives.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed a directive.

(c) Compliance with Oregon law relating to directives for health care.

(d) Educating the staff and the community on issues relating to directives.

(5) A hospital's transfer agreements or contracts shall clearly delineate the responsibilities of parties involved.

(6) Patient care policies shall be evaluated triennially and rewritten as needed, and presented to the governing body or a designated administrative body for approval triennially. Documentation of the evaluation is required.

(7) A hospital shall have a system, described in writing, for the periodic evaluation of programs and services, including contracted services.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-505-0033
Patient Rights

A hospital shall comply with the requirements for patients rights set out in 42 CFR ¦ 482.13.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

333-505-0050
Medical Records

(1) A medical record shall be maintained for every patient admitted for care in a hospital.

(2) A legible reproducible medical record shall include, but is not limited to (as applicable):

(a) Admitting identification data including date of admission.

(b) Chief complaint.

(c) Pertinent family and personal history.

(d) Medical history, physical examination report and provisional diagnosis as required by OAR 333-510-0010.

(e) Admission notes outlining information crucial to patient care.

(f) All patient admission, treatment, and discharge orders.

(A) All patient orders shall be initiated, dated, timed and authenticated by a licensed health care practitioner in accordance with section (7) of this rule.

(B) Documentation of verbal orders shall include:

(i) The date and time the order was received;

(ii) The name and title of the health care practitioner who gave the order; and

(iii) Authentication by the authorized individual who accepted the order, including the individual's title.

(C) Verbal orders shall be dated, timed, and authenticated within 48 hours by the ordering health care practitioner or another health care practitioner who is responsible for the care of the patient.

(D) For purposes of this rule, a verbal order includes but is not limited to an order given over the telephone.

(g) Clinical laboratory reports as well as reports on any special examinations. (The original report shall be recorded in the patient's medical record.)

(h) X-ray reports bearing the identification of the originator of the interpretation.

(i) Consultation reports when such services have been obtained.

(j) Records of assessment and intervention, including graphic charts and medication records and appropriate personnel notes.

(k) Discharge summary including final diagnosis.

(l) Discharge order.

(m) Autopsy report if applicable.

(n) Such signed documents as may be required by law.

(o) Informed consent forms that document:

(A) The name of the hospital where the procedure or treatment was undertaken;

(B) The specific procedure or treatment for which consent was given;

(C) The name of the health care practitioner performing the procedure or administering the treatment;

(D) That the procedure or treatment, including the anticipated benefits, material risks, and alternatives was explained to the patient or the patient's representative or why it would have been materially detrimental to the patient to do so, giving due consideration to the appropriate standards of practice of reasonable health care practitioners in the same or a similar community under the same or similar circumstances;

(E) The manner in which care will be provided in the event that complications occur that require health services beyond what the hospital has the capability to provide;

(F) The signature of the patient or the patient's legal representative; and

(G) The date and time the informed consent was signed by the patient or the patient's legal representative.

(p) Documentation of the disclosures required in ORS 441.098.

(3) A medical record of a surgical patient shall include, in addition to other record requirements, but is not limited to:

(a) Preoperative history, physical examination and diagnosis documented prior to operation.

(b) Anesthesia record including preanesthesia assessment and plan for anesthesia, records of anesthesia, analgesia and medications given in the course of the operation and postanesthetic condition.

(c) A record of operation dictated or written immediately following surgery and including a complete description of the operation procedures and findings, postoperative diagnostic impression, and a description of the tissues and appliances, if any, removed. When the dictated operative report is not placed in the medical record immediately after surgery, an operative progress note shall be entered in the medical record after surgery to provide pertinent information for any individual required to provide care to the patient.

(d) Postanesthesia recovery progress notes.

(e) Pathology report on tissues and appliances, if any, removed at the operation.

(4) An obstetrical record for a patient, in addition to the requirements for medical records, shall include but is not limited to:

(a) The prenatal care record containing at least a serologic test result for syphilis, Rh factor determination, and past obstetrical history and physical examination.

(b) The labor and delivery record, including reasons for induction and operative procedures, if any.

(c) Records of anesthesia, analgesia, and medications given in the course of delivery.

(5) A medical record of a newborn or stillborn infant, in addition to the requirement for medical records, shall include but is not limited to:

(a) Date and hour of birth; birth weight and length; period of gestation; sex; and condition of infant on delivery (Apgar rating is recommended).

(b) Mother's name and hospital number.

(c) Record of ophthalmic prophylaxis or refusal of same.

(d) Physical examination at birth and at discharge.

(e) Progress and nurse's notes including temperature; weight and feeding data; number, consistency and color of stools; urinary output; condition of eyes and umbilical cord; condition and color of skin; and motor behavior.

(f) Type of identification placed on infant in delivery room;

(g) Newborn hearing screening tests in accordance with OAR 333-020-0130.

(6) A patient's emergency room, outpatient and clinic records, in addition to the requirements for medical records, shall be maintained and available to the other professional services of the hospital and shall include but are not limited to:

(a) Patient identification.

(b) Admitting diagnosis, chief complaint and brief history of the disease or injury.

(c) Physical findings.

(d) Laboratory and X-ray reports (if performed), as well as reports on any special examinations. The original report shall be authenticated and recorded in the patient's medical record.

(e) Diagnosis.

(f) Record of treatment, including medications.

(g) Disposition of case with instructions to the patient.

(h) Signature or authentication of attending physician.

(i) A record of the pre-hospital report form (when patient is brought in by ambulance) shall be attached to the emergency room record.

(7) All entries in a patient's medical record shall be dated, timed and authenticated.

(a) Authentication of an entry requires the use of a unique identifier, including but not limited to a written signature or initials, code, password, or by other computer or electronic means that allows identification of the individual responsible for the entry.

(b) Systems for authentication of dictated, computer, or electronically generated documents must ensure that the author of the entry has verified the accuracy of the document after it has been transcribed or generated.

(8) The following records shall be maintained and kept permanently in written or computerized form:

(a) Patient's register, containing admissions and discharges;

(b) Patient's master index;

(c) Register of all deliveries, including live births and stillbirths;

(d) Register of all deaths;

(e) Register of operations;

(f) Register of outpatients (seven years);

(g) Emergency room register (seven years); and

(h) Blood banking register (20 years).

(9) The completion of the medical record shall be the responsibility of the attending qualified member of the medical staff. Any licensed health care practitioner responsible for providing or evaluating the service provided shall complete and authenticate those portions of the record that pertain to their portion of the patient's care. The appropriate individual shall authenticate the history and physical examination, operative report, progress notes, orders and the summary. In a hospital using interns, such orders must be according to policies and protocols established and approved by the medical staff. An authentication of a licensed health care practitioner on the face sheet of the medical record does not suffice to cover the entire content of the record:

(a) Medical records shall be completed by a licensed health care practitioner and closed within four weeks following the patient's discharge.

(b) If a patient is transferred to another health care facility, transfer information shall accompany the patient. Transfer information shall include but is not limited to:

(A) The name of the hospital from which they were transferred;

(B) The name of physician or other health care practitioner to assume care at the receiving facility;

(C) The date and time of discharge;

(D) The current medical findings;

(E) The current nursing assessment;

(F) Current medical history and physical information;

(G) Current diagnosis;

(H) Orders from a physician or other licensed health care practitioner for immediate care of the patient;

(I) Operative report, if applicable;

(J) TB test, if applicable; and

(K) Other information germane to patient's condition.

(c) If the discharge summary is not available at time of transfer, it shall be transmitted to the new facility as soon as it is available.

(10) Diagnoses and operations shall be expressed in standard terminology. Only abbreviations approved by the medical staff may be used in the medical records.

(11) Medical records shall be filed and indexed. Filing shall consist of an alphabetical master file with a number cross-file. Indexing is to be done according to diagnosis, operation, and qualified member of the medical staff, using a system such as the International or Standard nomenclature systems.

(12) Medical records are the property of the hospital. The medical record, either in original, electronic or microfilm form, shall not be removed from the hospital except where necessary for a judicial or administrative proceeding. Treating and attending physicians shall have access to medical records. When a hospital uses off-site storage for medical records, arrangements must be made for delivery of these records to the hospital when needed for patient care or other hospital activities. Precautions must be taken to protect patient confidentiality.

(13) Authorized personnel of the Division shall be permitted to review medical records and patient registers as necessary to determine compliance with health care facility licensing laws.

(14) Medical records shall be kept for a period of at least 10 years after the date of last discharge. Original medical records may be retained on paper, microfilm, electronic or other media.

(15) Medical records shall be protected against unauthorized access, fire, water and theft.

(16) If a hospital changes ownership, all medical records in original, electronic or microfilm form shall remain in the hospital and it shall be the responsibility of the new owner to protect and maintain these records.

(17) If a hospital closes, its medical records and the registers required under section (8) of this rule may be delivered and turned over to any other hospital in the vicinity willing to accept and retain the same as provided in section (12) of this rule. A hospital which closes permanently shall follow the procedure for Division and public notice regarding disposal of medical records under OAR 333-500-0060.

(18) All original clinical records or photographic or electronic facsimile thereof, not otherwise incorporated in the medical record, such as X-rays, electrocardiograms, electroencephalograms, and radiological isotope scans shall be retained for seven years after a patient's last discharge if professional interpretations of such graphics are included in the medical records.

(19) If a qualified medical record practitioner, RHIT (Registered Health Information Technician) or RHIA (Registered Health Information Administrator) is not the Director of the Medical Records Department, periodic and at least annual consultation must be provided by a qualified medical records consultant, RHIT/RHIA. The visits of the medical records consultant shall be of sufficient duration and frequency to review medical record systems and assure quality records of the patients. The contract for such services shall be made available to the Division.

(20) A current written policy on the release of medical record information including a patient's access to his or her medical record shall be maintained in the medical records department.

(21) A hospital is not required to keep a medical record in accordance with this rule for a person referred to a hospital ancillary department for a diagnostic procedure or health screening by a private physician, dentist, or other licensed health care practitioner acting within his or her scope of practice.

(22) Pursuant to ORS 441.059, the rules of a hospital that govern patient access to previously performed X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed health care practitioners permitted access to such X-rays and diagnostic laboratory reports.

(23) Nothing in this rule is meant to prohibit or discourage a hospital from maintaining its records in electronic form.

Stat. Auth: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 235, f. 2-5-70, ef. 2-25-70; HB 253, f. 7-22-70, ef. 8-25-70; HB 255, f. 9-15-70, ef. 10-11-70; HD 11-1980, f. & ef. 9-10-80; HD 8-1984, f. & ef. 5-7-84; Renumbered from 333-023-0190; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0055; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10

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Department of Human Services, Seniors and People with Disabilities Division
Chapter 411

Rule Caption: Support Services for Adults with Developmental Disabilities.

Adm. Order No.: SPD 25-2010(Temp)

Filed with Sec. of State: 11-17-2010

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Notice Publication Date:

Rules Amended: 411-340-0030, 411-340-0040, 411-340-0060, 411-340-0120

Subject: In response to legislatively required budget reductions effective October 1, 2010, the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily amending various support services rules in OAR chapter 411, division 340 to change:

• The certification period for support services brokerages and provider organizations;

• SPD's process for conducting administrative reviews in response to complaints that may qualify for such review which will

allow for an administrative review to be conducted by either a SPD Manager or Administrative Review Committee; and

• The specific internal brokerage operations around the routing of written incident reports, the approval of revisions to the Individual Support Plan (ISP), and the required review of ISPs.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-340-0030

Certification of Support Service Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by the Division under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or current Division license or certification as described in OAR 411-340-0170(1).

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application.

(d) Certificates issued on or after November 15, 2008 shall be in effect for a maximum of five years.

(e) The Division shall conduct a review of the brokerage, or the provider organization requiring certification under OAR 411-340-0170(2), prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage, or a provider organization requiring certification under OAR 411-340-0170(2), must apply for an initial certificate and for a certificate renewal.

(a) The application must be on a form provided by the Division and must include all information requested by the Division.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by the Division.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and shall extend the effective date of the existing certificate until the Division takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Division that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization shall expire on the expiration date specified on the certificate.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170(2), must notify the Division in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status, or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in a brokerage's or provider organization's ownership, legal entity, or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Division may deny, revoke, or refuse to renew a certificate when the Division finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by the Division for the purpose of investigation or certification);

(c) Has been convicted of a felony or any crime as described in OAR 407-007-0275;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by the Division to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from the Division of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a hearing, the applicant or certificate holder may request an administrative review by the Division's Assistant Director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by the Division of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by the Division and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to the Division for an administrative review. The Division shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under subsection (a) of this section. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11

411-340-0040

Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) ABUSE PROHIBITED. No adult or individual as defined in OAR 411-340-0020 shall be abused nor shall any employee, staff, or volunteer of the brokerage or provider organization condone abuse.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an accused person in

an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) All employees of a brokerage or provider organization are mandatory reporters. The brokerage or provider organization must:

(A) Notify all employees of mandatory reporting status at least annually on forms provided by the Department; and

(B) Provide all employees with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

(a) A brokerage or provider organization must prepare an incident report at the time of an unusual incident, as defined in OAR 411-340-0020, involving an individual and a brokerage or provider organization employee. The incident report must be placed in the individual's record and must include:

(A) Conditions prior to or leading to the unusual incident;

(B) A description of the unusual incident;

(C) Staff response at the time; and

(D) Review by the brokerage administration and follow-up to be taken to prevent recurrence of the unusual incident.

(b) A brokerage or provider organization must send copies of all incident reports involving potential or suspected abuse that occurs while an individual is receiving brokerage or provider organization services to the CDDP.

(c) A provider organization must send copies of incident reports of all unusual incidents that occur while the individual is receiving services from a provider organization to the individual's brokerage within five working days of the unusual incident.

(3) IMMEDIATE NOTIFICATION

(a) The brokerage must immediately report to the CDDP, and the provider organization must immediately report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notice according to OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(b) In the case of emergency overnight hospitalization due to illness or injury to an individual, the brokerage or provider organization must immediately notify:

(A) The individual's legal representative, parent, next of kin, designated contact person, or other significant person; and

(B) In the case of the provider organization, the individual's brokerage.

(c) In the event of the death of an individual, the brokerage or provider organization must immediately notify:

(A) The Medical Director of the Division;

(B) The individual's legal representative, parent, next of kin, designated contact person, or other significant person;

(C) The CDDP; and

(D) In the case of a provider organization, the individual's brokerage.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11

411-340-0060

Complaints in Support Services Brokerages

(1) COMPLAINTS. Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal complaint process. These policies and procedures must at minimum address:

(a) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue to the CDDP and notify the brokerage director and, if applicable, the provider organization director. The brokerage must maintain a log of all complaints regarding the brokerage, provider organization, or independent provider that the brokerage receives from individuals, others acting on the behalf of individuals, and from provider organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

(i) The date the complaint was received;

(ii) The name of the person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint results in disciplinary action against a staff member, the documentation on the complaint must include a statement that disciplinary action was taken.

(b) Informal complaint resolution. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any complaint that a brokerage, provider organization, or independent provider has taken action that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual from pursuit of resolution through formal complaint processes.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions. The brokerage must take steps to resolve the complaint within five working days following receipt of the complaint. If the complaint cannot be resolved informally, or if the individual making the complaint so chooses at any time, the individual may request a formal resolution of the complaint and, if needed, must be assisted by the brokerage with initiating the formal complaint process.

(e) Review by the brokerage director. If a complaint involves brokerage staff or services and if the complaint is not resolved according to subsection (b) through (d) of this section, or if the person making the complaint requests one, a formal review must be completed by the brokerage director and a written response must be provided to the complainant within 30 days following receipt of the complaint.

(f) Agreement to resolve the complaint. Any agreement to resolve a complaint that has been formally reviewed by the brokerage director must be in writing and must be specifically approved by the complainant. The brokerage must provide the complainant with a copy of the agreement.

(g) Administrative review. Unless the complainant is a Medicaid recipient who has elected to initiate the hearing process according to section (3) of this rule, the complaint may be submitted to the Division for administrative review when the complaint cannot be resolved by the brokerage and the complaint involves the provision of service or a provider.

(A) Following a decision by the brokerage director regarding a complaint, the complainant may request an administrative review by Division administration.

(B) The complainant must submit to the Division a request for an administrative review within 15 days from the date of the decision by the brokerage director.

(C) Upon receipt of a request for an administrative review, the complaint shall be referred for either a Management Review by the Division or to an Administrative Review Committee according to Division policy.

(i) Management Review.

(I) A Management Review by the Division shall include a review of the complaint and the decision made regarding the complaint. The review shall determine if the decision made was consistent with the Division's rules and policies.

(II) Division administration shall make a final decision. The decision shall be in writing and issued within 10 days from the Management Review. The written decision shall contain the rationale for the decision.

(III) The Division's decision is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review

(ii) Administrative Review Committee.

(I) The Administrative Review Committee shall be comprised of a representative of the Division, a CDDP representative, and a brokerage representative. Committee representatives may not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(II) The Administrative Review Committee must review the complaint and the decision by the brokerage director and make a recommendation to the Assistant Director of the Division within 45 days of receipt of the complaint unless the complainant and the Administrative Review Committee mutually agree to an extension.

(III) The Assistant Director of the Division shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision shall be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision shall contain the rationale for the decision.

(IV) The decision of the Assistant Director of the Division is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(h) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the complainant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, and when a complaint is not resolved according to section (1)(b) through (1)(d) of this rule, the brokerage must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing as pursuant to section (3) of this rule and the procedure to request a hearing.

(3) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

(a) Each time the brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the brokerage must notify the individual or the individual's legal representative of the right to a hearing and the method to request a hearing. The brokerage must mail the notice by certified mail, or personally serve the notice to the individual or the individual's legal representative 10 days or more prior to the effective date of an action.

(A) The brokerage must use form SDS 0947, Notification of Planned Action, or a comparable Division-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with the ISP, and the individual or the individual's legal representative has agreed with the action by signature to the ISP.

(b) A notice required by subsection (a) of this section must include:

(A) The action the brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the brokerage files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice shall take effect by default if the Department representative does not receive a request for hearing from the party within 45 days from the date that the brokerage mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which brokerage services shall be continued if a hearing is requested.

(c) If the individual or the individual's legal representative disagrees with a decision or proposed action by the brokerage to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the party may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on form DHS 443 and signed by the individual or the individual's legal representative. The signed form (DHS 443) must be received by the Department within 45 days from the date the brokerage mailed the notice of action.

(d) The individual or the individual's legal representative may request an expedited hearing if the individual or the individual's legal representative feels that there is immediate, serious threat to the individual's life or health should the normal timing of the hearing process be followed.

(e) If the individual or the individual's legal representative requests a hearing before the effective date of the proposed action and requests that the existing services be continued, the Department shall continue the services.

(A) The Department shall continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The individual is no longer eligible for Medicaid benefits.

(B) The Department shall notify the individual or the individual's legal representative that the Department is continuing the service. The notice shall inform the individual or the individual's legal representative that, if the hearing is resolved against the individual, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(f) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or the individual's legal representative requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the individual or the individual's legal representative requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or the individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(g) The Department shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or the individual's legal representative to settle the matter;

(B) Ensure the individual or the individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or the individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or the individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the brokerage.

(i) The individual or the individual's legal representative may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(j) The Department may provide the individual or the individual's legal representative the relief sought at any time before the final order is issued.

(k) An individual or the individual's legal representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives it. The Department must issue a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or the individual's legal representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order on the individual and the Department.

(B) If the administrative law judge issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exception must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department grants prior approval.

(C) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, 430.610– 430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11

411-340-0120
Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(e) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of an individual in addition to making payment to providers with the authorization of the individual;

(f) Employer-related supports; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in section (1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) MEDICAID WAIVERS. The brokerage must assure that individuals who become eligible for Medicaid after entry into the brokerage are offered the choice of home and community-based waiver services, provided a notice of fair hearing rights, and have a completed Title XIX Waiver form that is reviewed annually or at any time there is a significant change.

(6) WRITTEN PLAN REQUIRED.

(a) Unless circumstances allow exception under subsection (b) of this section, the personal agent must write an ISP dated within 90 days of an individual's entry into brokerage services and at least annually thereafter. A written copy of the most current ISP must be provided to the individual and the individual's legal representative. The ISP or attached documents must include:

(A) The individual's name;

(B) A description of the supports required, including the reason the support is necessary;

(C) Projected dates of when specific supports are to begin and end;

(D) Projected costs, with sufficient detail to support estimates;

(E) A list of personal, community, and public resources that are available to the individual and how they shall be applied to provide the required supports;

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general business provider), of supports to be purchased with support services funds;

(G) Schedule of ISP reviews; and

(H) Any revisions to paragraphs (A) to (G) of this section that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(b) The schedule of the support services ISP developed in compliance with section (3) of this rule after an individual enters a brokerage may be adjusted one time for any individual entering a brokerage in certain circumstances. Such an adjustment shall interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is authorized. Circumstances where this adjustment is permitted include:

(A) Brokerages, with the consent of the individual, may designate a new ISP start date.

(i) This adjustment may only occur one time per individual upon ISP renewal.

(ii) The individual's benefit level must be pro-rated based on the shortened plan year in order to not exceed the annual benefit level for which the individual is eligible.

(iii) ISP date adjustments shall be clearly documented on the ISP.

(B) Transition of individuals receiving family support services for children with developmental disabilities regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS) regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's Annual Plan of Care in place at the time the individual turns 18 years of age when the Annual Plan of Care, developed while the individual is still receiving family support, CIIS, or MFC services, has been authorized for implementation prior to or upon the individual's enrollment in the brokerage.

(C) Transition of individuals receiving other Division-paid services who are required by the Division to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services when the plan for services:

(i) Has been developed according to regulations governing Division-paid services the individual receives prior to transition;

(ii) Is current at the time designated by the Division for transition to support services; and

(iii) Is authorized for implementation prior to or upon the individual's enrollment in the brokerage.

(7) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by the Division for use in these circumstances, must be attached when an individual enrolled in a brokerage:

(A) Has been determined by the CDDP of the individual's county of residence as eligible for crisis diversion services according to OAR 411-320-0160; and

(B) Is in emergent status in a short-term out-of-home residential placement as part of the individual's crisis diversion services. This short-term plan must be coordinated by staff of the CDDP of the individual's county of residence.

(8) INDIVIDUAL SERVICE PLAN AUTHORIZATION.

(a) An initial and annual ISP must be authorized prior to implementation.

(b) A revision to the annual or initial ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(c) A revision to the annual or initial ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented verbal agreement to the revision by the individual or the individual's legal representative is required prior to implementation of the revision.

(d) An ISP is authorized when:

(A) The signature of the individual or the individual's legal representative is present on the ISP or documentation is present explaining the reason an individual who does not have a legal representative may be unable to sign the ISP.

(i) Acceptable reasons for an individual without a legal representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(ii) Unavailability of the individual is not an acceptable reason for the individual or the individual's legal representative not to sign the ISP.

(iii) If the individual or the individual's legal representative is unavailable to sign revisions to the ISP when required, documented verbal agreement may substitute for a signature for no more than 10 working days.

(B) The signature of the personal agent involved in the development of the ISP is present on the ISP; and

(C) A designated brokerage representative has reviewed the ISP for compliance with Division rules and policy.

(9) PERIODIC REVIEW OF PLAN AND RESOURCES.

(a) The personal agent must conduct and document reviews of plans and resources with the individual and the individual's legal representative.

(b) At least annually as part of preparation for a new ISP, the personal agent must:

(A) Evaluate progress toward achieving the purposes of the ISP, assessing and revising goals as needed;

(B) Note effectiveness of purchases based on personal agent observation as well as individual satisfaction;

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports; and

(D) Record final support services fund costs.

(10) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to transition support services.

(a) If the Division has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Division to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new brokerage while a new ISP is negotiated and authorized.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, 430.610– 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11

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Rule Caption: Homecare Workers Enrolled in the Client-Employed Provider Program.
Adm. Order No.: SPD 26-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 411-031-0020, 411-031-0040
Rules Repealed: 411-031-0020(T), 411-031-0040(T)
Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-031-0020 and OAR 411-031-0040 to implement ORS 443.004 (House Bill 2442) by disallowing initial or continued enrollment as a homecare worker in the Client-Employed Provider Program if an individual enrolled after July 28, 2009 has been convicted of a disqualifying crime under OAR 407-007-0275.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-031-0020
Definitions

(1) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(2) "Adult Protective Services" mean the services to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in OAR chapter 411, division 020.

(3) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(4) "Bargaining Agreement" means the 2009-2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union.

(5) "Burden of Proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(6) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows him or her to provide services to any eligible in-home services client. At any given time, a career homecare worker may choose not to be referred for work.

(7) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan, and monitors the services delivered.

(8) "Client" or "Client-Employer" means the individual eligible for in-home services. "Individual" is synonymous with client.

(9) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(10) "Companionship Services" mean those services designated by the Department of Labor as meeting the personal needs of a client. Companionship services are exempt from federal and state minimum wage laws.

(11) "Department" means the Department of Human Services (DHS).

(12) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(13) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(14) "Fiscal Improprieties" means the homecare worker committed financial misconduct involving the client's money, property, or benefits. Fiscal improprieties include but are not limited to financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the homecare worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(15) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that is directly employed by the client and provides either hourly or live-in services to eligible clients. The term homecare worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. Homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(16) "Hourly Services" mean the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(17) "Imminent Danger" means there is reasonable cause to believe a person's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(18) "In-Home Services" mean those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(19) "Lack of Ability or Willingness to Maintain Client-Employer Confidentiality" means the homecare worker is unable or unwilling to keep personal information about their client-employer private.

(20) "Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means the homecare worker does not possess the skills to perform services needed by clients of the Division. The homecare worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(21) "Live-In Services" mean those Client-Employed Provider Program services provided when a client requires activities of daily living, self-management tasks, and twenty-four hour availability. Time spent by any live-in homecare worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements.

(22) "Office of Administrative Hearings" means the panel established within the Employment Department described in ORS 183.605 to 183.690 that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(23) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(24) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(25) "Provider" means the person who actually renders the service.

(26) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by the client for the purpose of receiving

payment for authorized services provided to clients of the Division. Provider enrollment includes the issuance of a provider number.

(27) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Division.

(28) "Restricted Homecare Worker" means the Division or Area Agency on Aging has placed restrictions on an individual homecare workers' provider enrollment as described in OAR 411-031-0040.

(29) "Self-Management Tasks" or "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(30) "Services are Not Provided as Required" means the homecare worker does not provide the services to the client as described in the service plan authorized by the Division.

(31) "These Rules" mean the rules in OAR chapter 411, division 031.

(32) "Twenty-Four Hour Availability" means the availability and responsibility of a homecare worker to meet activities of daily living and self-management needs of a client as required by that client over a twenty-four hour period. Twenty-four hour services are provided by a live-in homecare worker and are exempt from federal and state minimum wage and overtime requirements.

(33) "Unacceptable Conduct at Work" means the homecare worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in their arrival to work or absences from work not prior-scheduled with the client, that are either unsatisfactory to the client or that neglect the client's service needs; or

(b) Inviting unwelcome guests or pets into the client's home, resulting in the client's dissatisfaction or inattention to the client's required service needs.

(34) "Unacceptable Criminal Records Check" means a check that produces information related to an individual's criminal records check which precludes the individual from being a homecare worker for the following reasons:

(a) The individual applying to be a homecare worker has been disqualified under OAR 407-007-0275;

(b) A homecare worker enrolled in the Client-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or

(c) A criminal records check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(35) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the homecare worker for:

(a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of the client, while in the client's home, or while transporting the client; or

(b) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to the client or while in the client's home.

(36) "Violations of Protective Service and Abuse Rules" means the homecare worker violated the protective service and abuse rules in OAR chapter 411, division 020.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10

411-031-0040
Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes the provider shall be required for activities of daily living and self-management tasks and twenty-four hour availability. To ensure continuity of service for the client, live-in service plans must include at least one homecare worker providing twenty-four hour availability for a minimum of five days in a calendar week. The hourly structure assumes the provider shall be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both hourly and live-in providers.

(1) EMPLOYMENT RELATIONSHIP. The relationship between the provider and the client is that of employee and employer.

(2) CLIENT-EMPLOYER JOB DESCRIPTIONS. Each client-employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the client's case manager.

(3) HOMECARE WORKER LIABILITIES. The only benefits available to homecare workers are those negotiated in the bargaining agreement and as provided in Oregon Revised Statute. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) CLIENT-EMPLOYER ABSENCES. When a client-employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure the live-in provider's presence upon the client-employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal pay providers are not eligible for payment during the absence of the client-employer.

(5) SELECTION OF HOMECARE WORKER. The client-employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The client-employer has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Division/AAA office shall determine whether the employee meets minimum qualifications to provide the authorized services paid by the Division.

(6) EMPLOYMENT AGREEMENT. The client-employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Division may not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and homecare worker have been formally notified in writing that payment by the Division is authorized.

(7) TERMS OF EMPLOYMENT. The terms of the employment relationship are the responsibility of the client-employer to establish at the time of hire. These terms of employment may include dismissal or resignation notice, work scheduling and absence reporting, as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) PROVIDER ENROLLMENT.

(a) ENROLLMENT STANDARDS. A homecare worker must meet all of the following standards to be enrolled with the Division's Client-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must complete the criminal records check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Division/AAA may allow a homecare worker to work on a preliminary basis in accordance with OAR 407-007-0315 if the homecare worker meets the other provider enrollment standards described in this section of the rule.

(C) The homecare worker must have the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) The homecare worker's U.S. employment authorization must be verified.

(E) The homecare worker must be 18 years of age or older. The Division's Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least sixteen years of age.

(F) The homecare worker must complete an orientation as described in section (8)(e) of this rule.

(b) The Division/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge, or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal records check;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs; or

(G) The Division/AAA has information that enrolling the applicant as a homecare worker may put vulnerable clients at risk.

(c) CRIMINAL RECORDS RECHECKS. Criminal records rechecks shall be conducted at least every other year from the date the homecare worker is enrolled. The Division/AAA may conduct a recheck more

frequently based on additional information discovered about the homecare worker, such as possible criminal activity or other allegations.

(A) When a homecare worker is approved without restrictions following a criminal records check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Division office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Criminal records check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The approval has ended because the Department has inactivated or terminated the homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior criminal records check approval for another Department provider type is inadequate to meet criminal records check requirements for homecare worker enrollment.

(d) RESTRICTED PROVIDER ENROLLMENT.

(A) The Division/AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to specific individuals.

(i) Unless disqualified under OAR 407-007-0275, the Division/AAA may approve a homecare worker with prior criminal records under a restricted enrollment to provide services only to specific individuals who are family members, neighbors, or friends after conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370.

(ii) Based on the applicant's lack of skills, knowledge, or abilities, the Division/AAA may approve an applicant as a restricted homecare worker to provide services only to specific individuals who are family members, neighbors, or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Division's Central Office as described in subsection (a)(E) of this section, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the applicant must complete a new application and criminal records check and be approved by the Division/AAA.

(e) HOMECARE WORKER ORIENTATION. Homecare workers must participate in an orientation arranged through a Division/AAA office. The orientation shall occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific Division/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, their provider number shall be inactivated and any authorization for payment of services shall be discontinued.

(f) A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any client in the last 12 months;

(B) The homecare worker's criminal records check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Division/AAA they will no longer be providing homecare worker services in Oregon;

(D) The provider fails to participate in a homecare worker orientation arranged through a Division/AAA office within 90 days of provider enrollment; or

(E) The homecare worker, who at the time is not providing any paid services to clients, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future clients.

(9) PAID LEAVE.

(a) LIVE-IN HOMECARE WORKERS. Irrespective of the number of clients served, the Division shall authorize one 24-hour period of leave each month when a live-in homecare worker or spousal pay provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in homecare worker shall receive a proportional share of that 24-hour period of leave authorization. A prorated share of the 24-hours shall be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) ACCUMULATION AND USAGE FOR LIVE-IN PROVIDERS. A provider may not accumulate more than 144 hours of accrued leave. The employer, homecare worker, and case manager shall coordinate the timely use of these hours. Live-in homecare workers must take vacation leave in 24-hour increments or in hourly increments of at least 4 but not more than 12 hours. Accrued leave must be taken while employed as a live-in.

(B) THE RIGHT TO RETAIN LIVE-IN PAID LEAVE. The homecare worker retains the right to access earned paid leave when terminating employment with one employer, so long as the homecare worker is employed with another employer as a live-in within one year of separation.

(C) TRANSFERABILITY OF LIVE-IN PAID LEAVE. Live-in homecare workers who convert to hourly or separate from live-in service and return as an hourly homecare worker within one year from the last day of live-in services shall be credited with their unused hours of leave up to a maximum of 32 hours.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall pay live-in homecare workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) Effective November 6, 2009, a live-in homecare worker providing live-in services seven days per week for one client-employer may submit a request for payment of 100 percent of unused paid leave if:

(I) The live-in homecare worker's client-employer is no longer eligible for in-home services described in OAR chapter 411, division 030; and

(II) The live-in homecare worker does not have alternative residential housing.

(iv) If a request for payment of 100 percent of unused paid leave based on subparagraph (D)(iii)(I) and (II) of this subsection is granted, the homecare's paid leave balance is reduced to zero.

(b) HOURLY HOMECARE WORKERS. On July 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) shall be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) shall be credited with 16 hours of paid time off. One 16 hour block of paid leave shall be credited to each eligible homecare worker, irrespective of the number of clients they serve. Such leave may not be cumulative from biennium to biennium.

(A) UTILIZATION OF HOURLY PAID LEAVE.

(i) Time off must be utilized in one eight hour block subject to authorization. If the homecare worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when their employer is temporarily unavailable for the homecare worker to provide services.

(B) LIMITATIONS OF HOURLY PAID LEAVE. Homecare workers may not be compensated for paid leave unless the time off work is actually taken except as noted in subsection (b)(D) of this section.

(C) TRANSFERABILITY OF HOURLY PAID LEAVE. An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that their hourly leave is earned) shall maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall pay hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may not be paid if paid leave has already been cashed out.

(10) DIVISION FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) DIRECT SERVICE PAYMENTS. The Division shall make payment to the provider on behalf of the client for all in-home services. This payment shall be considered full payment for the services rendered under Title XIX. Under no circumstances is the homecare worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to homecare workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) TIMELY SUBMISSION OF CLAIMS. In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) ANCILLARY CONTRIBUTIONS.

(A) FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA). Acting on behalf of the client-employer, the Division shall apply any applicable FICA regulations and shall:

(i) Withhold the homecare worker-employee contribution from payments; and

(ii) Submit the client-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Division calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the client-employer, the Division shall:

(i) Deduct the homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collect the client-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and homecare worker's contributions to the Workers' Benefit Fund.

(C) The Division shall pay the employer's share of the unemployment tax.

(d) ANCILLARY WITHHOLDINGS. For the purposes of this subsection of the rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Division shall deduct from the homecare worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Division to pay the actual administrative costs of the deductions.

(C) The Division shall pay the deducted amount monthly to the designated labor organization.

(e) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(A) The Division shall withhold state and federal income taxes on all payments to homecare workers, as indicated in the bargaining agreement.

(B) Homecare workers must complete and return a current Internal Revenue Service W-4 form to the local office. The Division shall apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) HOMECARE WORKER EXPENSES SECONDARY TO PERFORMANCE OF DUTIES.

(a) Providers may be reimbursed at $0.485 cents per mile effective October 1, 2007 when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan shall be considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) BENEFITS. Workers' compensation as defined in Oregon Revised Statute and health insurance are available to eligible homecare workers as defined in the bargaining agreement. In order to receive homecare worker services, the client-employer must provide written authorization and consent to the Division for the provision of workers' compensation insurance for their employee.

(13) OVERPAYMENTS. An overpayment is any payment made to a homecare worker by the Division that is more than the person is authorized to receive.

(a) Overpayments are categorized as follows:

(A) Administrative error overpayment. Occurs when the Division failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) Provider error overpayment. Occurs when the Division overpays the homecare worker due to a misunderstanding or unintentional error.

(C) Fraud overpayment. "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Division shall determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit shall determine when a Medicaid fraud allegation shall be pursued for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments shall be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments shall be collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Division shall determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as homecare workers shall have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070, & 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612, & 410.614
Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD 6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10

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Rule Caption: Community Developmental Disability Program.
Adm. Order No.: SPD 27-2010(Temp)
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Notice Publication Date:
Rules Amended: 411-320-0030, 411-320-0045, 411-320-0130, 411-320-0170
Subject: In response to legislatively required budget reductions effective August 1, 2010, October 1, 2010, and projected reductions March 1, 2011, the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily amending various community developmental disability program rules (CDDP) in OAR chapter 411, division 320 to:

• Eliminate the position requirements for Quality Assurance (QA) to reflect the reduction of the financial resources for this position;

• Change SPD's process for conducting administrative reviews in response to complaints that may qualify for such review which will allow for an administrative review to be conducted by either a SPD Manager or Administrative Review Committee; and

• Revise the site visit and monitoring of services requirements at DHS licensed and certified programs.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-320-0030
Organization and Program Management

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by the Division must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the agency;

(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated); and

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suf-

fered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Division.

(2) MANAGEMENT PLAN. The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule including quality assurance activities and functions consistent with the Department's Quality Management Strategy for Developmental Disabilities. The Management Plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions shall be implemented.

(3) PROGRAM MANAGEMENT. Staff delivering developmental disability services must be organized under the leadership of a designated CDDP manager and receive clerical support services sufficient to perform their required duties.

(a) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(b) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Division, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by the Division to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with the Division including but not limited to information needed to license foster homes, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) QUALIFIED STAFF. Only qualified staff shall provide developmental disability services.

(a) Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, and abuse investigator specialist for adults with developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist and abuse investigator specialist for adults with developmental disabilities.

(A) CDDP MANAGER.

(i) The CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(I) A bachelor's degree in behavioral, social, health science, special education, public administration, or human service administration AND a minimum of four years experience, with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(II) Six years of experience in supervision or six years of experience in staff technical or professional level work related to developmental disability services.

(ii) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in subsection (a)(A)(i) of this section if the county and the Division have mutually agreed on a training and technical assistance plan that assures that the person shall quickly acquire all needed skills and experience.

(iii) When the position of CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (5) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in subsection (a)(A)(i) of this section and the term of the appointment totals more than 180 days.

(B) CDDP SUPERVISOR. The CDDP supervisor (when available) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disability services, may be substituted for up to three years required experience; or

(ii) Five years of experience in supervision or five years of experience in staff technical or professional level work related to developmental disability services.

(C) SERVICES COORDINATOR. The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(D) ELIGIBILITY SPECIALIST. The eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(E) ABUSE INVESTIGATOR SPECIALIST. The abuse investigator specialist must have at least:

(i) A bachelor's degree in human, social, behavioral, or criminal science AND two years human services, law enforcement, or investigative experience; or

(ii) An associate's degree in the human, social, behavioral, or criminal science AND four years human services, law enforcement, or investigative experience.

(b) An application for employment at the CDDP must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(c) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, and who has or will have contact with an eligible individual of the CDDP, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(A) Effective July 28, 2009, the CDDP may not use public funds to support, in whole or in part, any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who will have contact with a recipient of CDDP services and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Effective July 28, 2009, a person does not meet the qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The person must notify the Department or its designee within 24 hours.

(d) Subsections (c)(A) and (B) of this section do not apply to employees who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(5) VARIANCE. The CDDP must submit a written variance request to the Division prior to employment of a person not meeting the minimum qualifications in section (4)(a) of this rule. A variance request may not be requested for sections (4)(b) and (c) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4)(a) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(6) STAFF DUTIES.

(a) SERVICES COORDINATOR DUTIES. The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as listed in OAR 411-320-0090(4);

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) ELIGIBILITY SPECIALIST DUTIES. The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for persons applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) ABUSE INVESTIGATOR SPECIALIST DUTIES. The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with developmental disabilities enrolled in, or previously eligible and voluntarily terminated from, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(7) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. The Department provides training materials and the provision of training may be conducted by the Division or CDDP staff, depending on available resources.

(a) CDDP MANAGER TRAINING. The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(v) A review and orientation of Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), home and community-based waiver services, the Oregon Health Plan (OHP), and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional Division-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) CDDP SUPERVISOR TRAINING. The CDDP supervisor (when designated) must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional Division-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) SERVICES COORDINATOR TRAINING. The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Division's rules governing the CDDP;

(iv) An overview of the Division's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of Division-sponsored or other training in the area of developmental disabilities.

(d) ELIGIBILITY SPECIALIST TRAINING. The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Division's rules governing the CDDP;

(iv) An overview of the Division's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a Division diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in Division-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of Division-sponsored or other training in the area of developmental disabilities.

(e) ABUSE INVESTIGATOR SPECIALIST TRAINING. The abuse investigator specialist must participate in core competency training. Training materials shall be provided by the OIT. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with OIT prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by OIT. At a minimum, one meeting per year must be attended in person.

(f) ATTENDANCE. The CDDP manager must assure the attendance of the CDDP supervisor, services coordinator, eligibility specialist, or abuse investigator specialist at Division-mandated training.

(g) DOCUMENTATION. The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, and other employees providing services to individuals.

(8) ADVISORY COMMITTEE. Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented. Membership must include advocates for individuals as well as individuals and their families.

(c) The advisory committee must advise the LMHA, the CMHDDP director, and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services including assisting in the development and review of local quality assurance activities.

(d) When the Division or a private corporation is operating the CDDP, the advisory committee must advise the CDDP director and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services including assisting in the development and review of local quality assurance activities.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(9) NEEDS ASSESSMENT, PLANNING, AND COORDINATION. Upon the Division's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to the Division.

(10) CONTRACTS.

(a) If the CDDP, or any of the CDDPs services as described in the Department's contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between the Division and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family, or the individual's guardian or legal representative.

(A) The service provider selected must also meet Division certification or licensing requirements to provide the type of service to be contracted.

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Division as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. The proposed local option must include:

(i) The date upon which the local option would become effective and a complete written description of how the local option would improve individual independence, productivity, or integration; or

(ii) How the local option would improve the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Division's Assistant Director that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) The Division has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Division and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

(11) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(12) POLICIES AND PROCEDURES. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, & 430

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPP 27-2010Temp), f. & cert. ef. 12-1-10 thru 5-30-11

411-320-0045

Quality Assurance Responsibilities

Each CDDP must implement and maintain a local quality assurance (QA) system in accordance with these rules. The local QA system is a set of policies and procedures developed by each CDDP that includes activities designed to measure and evaluate the CDDP service delivery system, produce measurable outcomes, and improve the general quality of service delivery.

(1) QUALITY ASSURANCE SYSTEM. The local QA system must:

(a) Ensure the development and implementation of a QA system by:

(A) Providing direct support to SPD in implementation of the Department's Quality Management Strategy for developmental disability services; and

(B) Improving the general quality of services by evaluating service delivery outcomes and adjusting local planning and performance where needed.

(b) Include all Division-funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities, and those developmental disability services operating under a direct contract with the Department. This includes participation in support services brokerages' systems improvement planning.

(c) Include at a minimum the quality indicators and all activities that are to be carried out at the local level in compliance with the Department's Quality Management Strategy.

(d) Include the implementation of the activities defined in the local Management Plan as described in OAR 411-320-0030(2).

(e) Include management actions, as needed, to improve service quality or to correct deficiencies.

(f) Include maintenance of records that document:

(A) The CDDP's performance of the activities described in the local Management Plan or as directed by the Division; and

(B) The CDDP's findings, corrective actions, and the impact of the CDDP's corrective actions that have been reviewed at a policy level within the CDDP's department structure.

(g) Include performance requirements that meet the minimum performance requirements established for all CDDP's in the Department's Quality Management Strategy.

(A) The CDDP must collect and analyze information concerning performance and outcomes of the activities represented in the local Management Plan, in compliance with the Department's Quality Management Strategy where applicable.

(B) Data concerning the CDDP's performance must be sent to the Division upon request in the format and within the timelines established by the Division. Data may include but not be limited to:

(i) Minutes from local developmental disability advisory committee meetings;

(ii) Results of customer satisfaction surveys administered by the CDDP; and

(iii) Results of case file reviews.

(h) Include implementation of corrective actions. The CDDP must act to correct deficiencies and substandard performance through management actions.

(A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county must be resolved through direct action by the CDDP, or when appropriate, through collaboration between the CDDP and the Division.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts must be resolved through collaboration with the Division.

(C) Deficiencies and substandard performance found in services provided through a region must be resolved through collaboration between the regional management entity and the affected CDDPs.

(D) Deficiencies and substandard performance found in services provided in support services brokerages must be resolved through collaboration between the support services brokerage and the Division.

(2) QUALITY ASSURANCE RESPONSIBILITIES. The CDDP must:

(a) Participate in Division-sponsored activities such as planning and training that are intended to assist in development and implementation of the Department's Quality Management Strategy requirements, compliance, monitoring procedures, corrective action plans, and other similar activities consistent with QA responsibilities.

(b) Draft a local CDDP Management Plan as described in OAR 411-320-0030(2) that includes QA activities that meet QA requirements established by the Department and consider the unique organizational structure, policies, and procedures of the CDDP.

(c) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local Management Plan.

(d) Monitor the implementation of the local Management Plan to determine the level of county compliance with the Division's requirements for CDDP service delivery.

(e) Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(f) Coordinate delivery of information requested by the Division, such as the Serious Event Review Team (SERT).

(g) Coordinate compliance reviews of the Department's requirements around individual health and welfare, level of care determination, service plans, and developmental disability service delivery by collecting and evaluating data including but not limited to:

(A) Case file reviews;

(B) Customer satisfaction surveys administered at least every two years;

(C) Service provider file reviews;

(D) Analysis of SERT data which may include:

(i) Review by service provider, location, reason, status, outcome, and follow-up;

(ii) Identification of trends; and

(iii) Review of timely reporting of abuse allegations, completion of investigation, and follow-up.

(h) When requested, identify trends and issues from data collected by the CDDP, and make outcome-based recommendations consistent with the Department's Quality Management Strategy.

Stat. Auth.: ORS 409.050, 410.070, 430.640
Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695
Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPP 27-2010Temp), f. & cert. ef. 12-1-10 thru 5-30-11

411-320-0130
Site Visits and Monitoring of Services

(1) SITE VISITS TO DIVISION LICENSED OR CERTIFIED SERVICE PROVIDER SITES. The CDDP must ensure that site visits are conducted at each child or adult foster home, each 24-hour residential program site, and each employment provider licensed or certified by the Division to serve individuals with developmental disabilities.

(a) The CDDP must establish a quarterly schedule for site visits to each child or adult foster home and each 24-hour residential program.

(b) The CDDP must establish an annual schedule for visits with individuals receiving supported living services. If an individual opposes a visit to their home, a mutually agreed upon location for the visit must be arranged.

(c) The CDDP must establish an annual schedule for visits to employment or alternatives to employment sites. If a visit to an integrated employment site disrupts the work occurring, a mutually agreed upon location for the visit must be arranged.

(d) Site visits may be increased for the following reasons including but not limited to:

(A) Increased certified and licensed capacity;

(B) New individuals being served;

(C) Newly licensed or certified provider;

(D) An abuse investigation;

(E) A serious event occurring;

(F) A change in the management or staff of the certified or licensed provider;

(G) An ISP team request; or

(H) Individuals who are also receiving crisis services.

(e) The CDDP must develop a procedure for the conduct of the visits to these sites.

(f) The CDDP must document site visits and provide information concerning such visits to the Division upon request.

(g) If there are no Division-funded individuals at the site, a visit by the CDDP is not required.

(h) When the service provider is a Division-contracted and licensed 24-hour residential program for children or is a child foster proctor agency and a Children's Residential Services Coordinator for the Division is assigned to monitor services, the Children's Residential Services Coordinator for the Division and CDDP staff shall coordinate who shall visit the home. If the visit is made by Division staff, Division staff shall provide the results of the monitoring visit to the local services coordinator. The Division may conduct monitoring visits on a more frequent basis than described in this section based on program needs.

(2) MONITORING OF SERVICES: The services coordinator must conduct monitoring activities using the framework described in this section.

(a) For individuals residing in 24-hour residential programs, supported living, foster care, or employment or alternatives to employment services, ongoing reviews of the individual's ISP shall determine whether the actions identified by the ISP team are being implemented by service providers and others. The review of an ISP shall include an assessment of the following:

(A) Are services being provided as described in the plan document and do they result in the achievement of the identified action plans;

(B) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(C) Are the personal desires of the individual, the individual's legal representative, or family addressed;

(D) Do the services provided for in the plan continue to meet what is important to and for the individual; and

(E) Do identified goals remain relevant and are the goals supported and being met?

(b) For individuals residing in 24-hour residential programs, supported living, foster care, or receiving employment or alternatives to employment, the monitoring of services may be combined with the site visits described in section (1) of this rule. In addition:

(A) During a one year period, the services coordinator shall review, at least once, services specific to health, safety, and behavior, using questions established by the Division.

(B) A semi-annual review of the process by which an individual accesses and utilizes funds must occur.

(i) For individuals receiving 24-hour residential services, the financial review standards are described in OAR 411-325-0380.

(ii) For individuals receiving adult foster care services, the financial review standards are described in OAR 411-360-0170.

(iii) Any misuse of funds must be reported to the CDDP and the Division. The Division shall determine whether a referral to the Medicaid Fraud Control Unit is warranted.

(C) The Services Coordinator must monitor reports of serious and unusual incidents.

(c) For individuals receiving employment or alternatives to employment services, the services coordinator must facilitate a team discussion using the Division's Employment First Policy as the framework for assessing where the individual is on a path to employment. If an individual chooses to not participate in a path to employment, the process by which the individual made an informed decision must be documented.

(d) The frequency of service monitoring must be determined by the needs of the individual. Events identified in section (1)(d) of this rule provide indicators that potentially increase the need for service monitoring.

(e) For individuals receiving only case management services and who are not enrolled in any other funded developmental disability service, the services coordinator must make contact with the individual at least once annually.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, the progress note must document how contact was achieved.

(B) The services coordinator must document annual contact in an Annual Plan as described in OAR 411-320-0120(2)(f).

(C) If the individual has any identified high-risk medical issue including but not limited to risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions as described in the individual's Annual Plan.

(D) Any follow-up activities must be documented in progress notes.

(3) MONITORING FOLLOW-UP. The services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a Division direct contract 24-hour residential service when the Division may conduct the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last review, the services coordinator must initiate action to update the plan.

(b) If there are concerns regarding the service provider's ability to provide services, the CDDP, in consultation with the services coordinator, must determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from the Division for licensing or other administrative support, or meeting with the service provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Division when:

(A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for Division-funded programs;

(B) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by the Division is required; or

(C) Any individual receiving Division-funded developmental disability services dies. Notification must be made to the Medical Director of the Division or his or her designee within one working day of the death. Entry must be made into the Serious Event Review System according to Department guidelines.

Stat. Auth.: ORS 409.050, 410.070, 430.640
Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPP 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11

411-320-0170
Complaints

(1) COMPLAINT LOG. The CDDP must maintain a log of all complaints received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The complaint log, at a minimum, must include:

(A) The date the complaint was received;

(B) The name of the person taking the complaint;

(C) The nature of the complaint;

(D) The name of the person making the complaint, if known; and

(E) The disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that personnel action was taken.

(2) COMPLAINTS. The CDDP must address all complaints by individuals or subcontractors in accordance with CDDP policies, procedures, and these rules. Copies of the procedures for resolving complaints must be maintained on file at the CDDP offices. The complaint procedures must be available to county employees who work with individuals, individuals who are receiving services from the county and the individual's families, the individual's legal representatives, advocates, service providers, and the Division.

(a) SUBCONTRACTOR COMPLAINTS. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of Division administrative rules and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Division in mediating the dispute.

(A) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) The party requesting mediation must send a written request to the Assistant Director of the Division, the CDDP director, and the service provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) Division staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(II) Development of rules and procedures that shall be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(iii) Unless otherwise agreed to by all parties:

(I) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(B) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Division shall prepare the final report. A final report on each mediation must be retained on file at the Division.

(b) CONTRACT NOT SUBSTANTIALLY SIMILAR. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established in the Department's model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Assistant Director of the Division within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

(i) A copy of the contract and any pertinent contract amendments;

(ii) Identification of the specific terms that are in dispute; and

(iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) The Assistant Director of the Division must offer to mediate a solution in accordance with the procedure outlined in subsections (a)(A) and (a)(B) of this section.

(i) If a solution cannot be mediated, the Assistant Director of the Division shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(I) A representative from the Division;

(II) A representative from another CDDP; and

(III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments, and send written recommendations to the Assistant Director of the Division within 45 business days after an impasse is declared, unless the Assistant Director of the Division grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, the Division may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The Assistant Director of the Division must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Division is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(D) Notwithstanding subsection (b)(C) of this section, the Assistant Director of the Division has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Assistant Director of the Division finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Division.

(E) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the Assistant Director of the Division. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(ii) The Division shall notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, the Division shall notify all parties of the Division's decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) COMPLAINTS BY OR ON BEHALF OF INDIVIDUALS. An individual, the individual's guardian or other legal representative, a family member, or advocate may file a complaint with the CDDP:

(A) INFORMAL COMPLAINT RESOLUTION. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any complaint that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual from pursuit of resolution through formal complaint processes. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the complainant. The complainant must be provided with a copy of such agreement.

(B) The CDDP must follow its policies and procedures regarding receipt and resolution of a complaint.

(C) The CMHDDP or CDDP director must provide to the complainant a written decision regarding the complaint within 30 days following receipt of the complaint.

(i) The written decision regarding the complaint must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

(ii) Along with the written decision, the complainant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the complaint.

(iii) Along with the written decision, the complainant must also be provided a notice that the complainant has the right to request an administrative review of the decision by the Division. Such notice, must be written

in clear, simple language and at a minimum explain how and when to request such a review and when a final decision shall be rendered by the Assistant Director of the Division.

(D) ADMINISTRATIVE REVIEW. Following a decision by the CMHDDP director regarding a complaint, the complainant may request an administrative review by Division administration.

(E) The complainant must submit to the Division a request for an administrative review within 15 days from the date of the decision by the CMHDDP director.

(F) Upon receipt of a request for an administrative review, the complaint shall be referred for either a Management Review by the Division or to an Administrative Review Committee according to Division policy.

(i) MANAGEMENT REVIEW.

(I) A Management Review by Division administration shall include a review of the complaint and shall determine if the decision made was consistent with the Division's rules and policies.

(II) Division administration shall make a final decision within 55 days of receipt of the request. The written decision shall contain the rationale for the decision.

(III) The Division's decision is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review

(ii) ADMINISTRATIVE REVIEW COMMITTEE.

(I) The Administrative Review Committee shall be comprised of a representative of the Division, a CDDP representative, and a service provider who provides a similar service as the service being reviewed (i.e., residential, employment, foster care, etc). Committee representatives may not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(II) The Administrative Review Committee must review the complaint and the decision by the CMHDDP director and make a recommendation to the Assistant Director of the Division within 45 days of receipt of the complaint unless the complainant and the Administrative Review Committee mutually agree to an extension.

(III) The Assistant Director of the Division shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision shall be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision shall contain the rationale for the decision.

(IV) The decision of the Assistant Director of the Division is final. Any further review is pursuant to the provisions of ORS 183.484.

(d) SPECIFIC COMPLAINTS. Individuals, or the individual's guardian or legal representative may request a review of specific decisions by the CDDP or a service provider as follows:

(A) Complaints of entry, exit, or transfer decisions within residential services may only be initiated according to OAR 411-325-0400 for 24-hour residential services and 411-328-0800 for supported living services.

(B) Complaints of entry, exit, or transfer decisions within employment services or community inclusion services may only be initiated according to OAR 411-345-0150.

(C) Appeals of Medicaid eligibility decisions may be initiated according to OAR 411-330-0130(2).

Stat. Auth.: ORS 409.050, 410.070, 430.640
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPP 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11

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Department of Justice
Chapter 137

Rule Caption: Modify rules to align with ORS 147.227 and convert CFAA funds issued by DOJ/Crime Victims' Services Division to a grant application clarifying fiscal responsibilities.
Adm. Order No.: DOJ 17-2010
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Adopted: 137-078-0041, 137-078-0051
Rules Amended: 137-078-0000, 137-078-0005, 137-078-0010, 137-078-0015, 137-078-0020, 137-078-0025, 137-078-0030, 137-078-0035, 137-078-0040, 137-078-0045, 137-078-0050
Rules Repealed: 137-078-0000(T), 137-078-0005(T), 137-078-0010(T), 137-078-0015(T), 137-078-0020(T), 137-078-0025(T), 137-078-0030(T), 137-078-0035(T), 137-078-0040(T), 137-078-0041(T), 137-078-0045(T), 137-078-0050(T), 137-078-0051(T)
Subject: To incorporate changes made to ORS 147.227 in the 2009–2011 legislative session.

Modify process by which the Department of Justice administers funding to the District Attorney (DA) offices from the Criminal Injuries Compensation Account received from the Criminal Fine and Assessment Account (CFAA) into a formalized grant application and reporting system to align with the issuance of funding by the Department of Justice, Crime Victims' Services Division.

To clarify fiscal responsibilities of fund recipients for better expenditure accountability.

To clarify use of funds not expended in the fiscal year issued.
Rules Coordinator: Carol Riches—(503) 378-5987

137-078-0000
Purpose

ORS 147.227 et seq ("the Act") provides that the Attorney General or the designee shall disburse a portion of the moneys that the Criminal Injuries Compensation Account receives from the Criminal Fine and Assessment Account ("CFAA") to counties and cities where prosecuting attorneys maintain victims' assistance programs approved by the Attorney General. The Act also requires the Attorney General to adopt administrative rules establishing criteria for the equitable distribution of moneys disbursed under the Act. OAR 137-078-0000 through 137-078-0050 (the "Rules) establish the criteria for the equitable distribution of moneys disbursed under the Act, and the establishment of an advisory committee to provide consultation on the distribution of the moneys.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0005
Designee

The designee of the Attorney General under the Act is the Administrator of the Oregon Department of Justice ("DOJ") Crime Victims' Services Division ("CVSD"), ("Administrator").

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0010
Approval of Funding and Duration of Funding

(1) To be eligible and approved for distribution of moneys under the Act ("Fund" or "Funding"), a city or county victims' assistance program ("Program") must be operational at the time an application for Funding is made. A Program is operational for the purposes of this rule if at the time of application for Funding, it is providing the core services set forth in 137-078-0030.

(2) Programs which are determined to be eligible under the Act and these rules and are approved for Funding will continue to be approved for Funding indefinitely subject to the availability of Criminal Fine and Assessment Account revenues, OAR 137-078-0050 and the following:

(a) The Program shall, at the time the application for Funding is made state whether or not the approved Program will continue in operation for the then current fiscal year ending June 30. In the event the application indicates that the Program will not continue beyond June 30th of the then current fiscal year, Funding for the Program will expire on June 30th of that year. Any subsequent reactivation of a Program or initiation of a new Program will require a new application for Funding.

(b) If a Program discontinues a core services as described in OAR 137-078-0030, the Administrator may require a new approval of Funding, based upon a new Program application, in order to continue Funding of the Program. The addition of services to an approved Program does not require a new approval or new Program application for continued Funding.

(3) Program Funding will be made to approved Programs according to the criteria for equitable distribution of moneys set forth in the Act and these Rules. Program Funding will commence at the beginning of the fiscal year in which application for Funding is made, and will continue for a one or two year period immediately following execution of the Grant agreement for Funding by the Administrator. Funds will be distributed on a quarterly basis or as determined by the Administrator.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227

Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0015
Distribution of Funds

(1) The Administrator, or designee during periods of absence or unavailability, is authorized to interpret and apply the criteria for the equitable distribution of moneys disbursed under the Act and these rules. The Administrator, after consultation with the advisory committee established under these Rules (the "Committee"), shall make decisions concerning eligibility of Programs for Funding. The Administrator is also authorized, after consultation with the Committee, to make all other decisions concerning distribution of moneys to counties and cities, including but not limited to, denial of Funding, conditional allocation of Funding when necessary to establish eligibility for Funding, notices and time limits for applications, acceptance of Funding terms, conditions and reports, method of review and role of the Committee, and reallocation of moneys not applied for or disbursed by Programs.

(2) The criteria for the equitable distribution of moneys disbursed under the Act and these Rules to Programs (the "Formula") is based upon a model which considers historic county Program allocation methodologies as it's basis along with the following criteria:

(a) The amount of Funding shall reflect consideration of county per capita population, county crime rates and other similar criteria.

(b) The Formula established for counties will be applied to cities, and be adjusted as necessary to reflect the current percentage of the total of Program Funding the counties have received under the current allocation per 137-078-0010(2)(a). New city Programs will only be approved for Funding after consultation with the Committee and after a memorandum of understanding (MOU) between the County and City programs has been executed. The financial impact and Funding considerations associated with adding a new city Program will be considered in the context of ORS 147.227(2)(c) which requires service priority to victims of serious crimes against persons.

(3) The Formula may be revised periodically by the Administrator, following consultation with the Committee to reflect statistical updates relating to the criteria reflected in the formula, and the amount of Criminal Fine and Assessment Account revenues provided to CVSD's Criminal Injuries Compensation Account.

(4) Distribution of moneys to Programs and the conditions relating thereto, including availability of monies available for Funding, shall be described in a grant award notification letter agreement established by the Administrator ("Grant"). The Grant shall incorporate by reference the requirements of the Act and these Rules, and such other terms and conditions which apply. If a Program elects to accept Funding based on the terms and conditions set forth in the Grant, an authorized representative of the Program shall sign the Grant in the manner provided therein, and return an original signed Grant to the Administrator within the timeframe established in the Grant. Upon receipt of the signed Grant, the Administrator shall distribute funds to the county or city upon the terms contained in the Grant.

(5) In the event the Administrator, after review of a Program, or otherwise, discovers non-compliance by a city or county with the terms of the Grant, Funds which were allocated to a non-compliant city or county may be reallocated to eligible cities or counties. This will occur by applying the Formula which is applicable to the city or county, to the monies which were originally allocated to the non-compliant Program. A reallocation of Funding shall thereafter be made to Programs which are in compliance with their respective Grants or held in reserve by the Administrator for future Grant allocations. The reallocation of funds derived from the non-compliant Program shall be made in the form of an Amended Award of Funding in the same manner as an initial award of Funding pursuant to a Grant.

(6) In the event Funds have already been disbursed to a Program which is or has been in non-compliance with the terms of the Grant, the Administrator, may adjust or reduce a Program's allocation in future fiscal years to take into account the Program non-compliance.

(7) If a Program does not expend all of its allocated Funds for the period of time described in the Grant, upon request of the Administrator, the Program shall explain to the satisfaction of the Administrator why the Grant monies were not expended and how those monies will be incorporated into the next year's Program. If the Administrator finds that the failure to expend all of the previously allocated funds was due to circumstances beyond the reasonable control of the Program, the Administrator may permit a Program to retain some or all the funds for use in a subsequent Grant.

(8) Any Program which has unexpended monies pursuant to a fully executed Grant (including an Amended Award of Funding), and which elects to file an objection to a notice of its alleged non-compliance under these rules, shall retain said monies until such time as the filed objection is resolved by the Administrator in favor of the Program. In the event the objection is not resolved in favor of the Program, the Program shall immediately return the monies to CVSD.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0020
Conditional Approvals

(1) "Conditional Approval" means Grant approval under circumstances in which the application establishes to the satisfaction of the Administrator that it would not be practicable at time of application for the Program to initiate or maintain a Program which provides all of the core services described in the Act and these rules.

(2) Applications for Conditional Approval shall set forth a time table for implementation of all core services required under the Act and these rules that cannot be provided at the beginning of the funding period.

(3) Conditional Approvals shall include the condition that continued approval is contingent upon complete implementation of additional services within an agreed to timetable, and that temporary approval for subsequent years will be contingent upon the addition of services and approval of the Administrator.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0025
Application Process

The application for Program approval shall be made upon documents or a web-based grant application system supplied by CVSD.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0030
Program Content: Core Services

The Program shall provide core services to victims of all types of crime, with particular emphasis on serious crimes against persons. The core services shall be coordinated with available community and government based programs that serve crime victims within the jurisdiction of the City of County Program, in order to maximize benefits to crime victims. The core service categories are as follows:

(1) Service Category: Victims' Rights Notification: "Inform victims, as soon as practicable, of the rights granted to victims under Oregon law;"

(a) Service Definition: Establish a written procedure for notification to crime victims of their rights in Oregon.

(b) Specific Service: Provide notice to victims of crime about their rights as a crime victim as soon as practicable including providing information about specific rights which must be requested to become rights, and provide access to information about how to remedy situations where crime victim notification rights are not honored.

(2) Service Category: "Ensure that victims are informed, upon request, of the status of the criminal case involving the victim;"

(a) Service Definition: Establish a written procedure for notification to crime victims of any critical stages* of the criminal case as defined in ORS 147.500(5).

(b) Specific Services: Upon crime victim request inform crime victims in advance of any critical stage of the proceeding.

(3) Service Category: Advocate for victims of serious person crimes as they move through the criminal justice system and advocate, when requested, for all other victims of crime ":

(a) Service Definition: Establish written procedures on providing "advocacy" which is defined as the act of assisting crime victims and family members through the aftermath of a crime, ensuring their rights are honored within the criminal justice system.

(b) Specific Services: Advocacy for the purposes of these rules includes advocacy of the core services outlined in the approved Program application as well as acting as a liaison in locating and utilizing resources to improve the crime victims' emotional and mental health.

(4) Service Category: "Assist victims in preparing restitution documentation for purposes of obtaining a restitution order":

(a) Service Definition: Establish a written procedure for assistance to crime victims in obtaining restitution or compensation for medical or other expenses incurred as a result of the criminal act;

(b) Specific Service:

(A) Identify and contact crime victims who have sustained monetary losses and obtain verification of those losses (estimates of damage, salary verification, etc.);

(B) Make available to the Prosecuting Attorney and courts documentation of losses incurred by the crime victims;

(C) Assist crime victims when it is necessary for them to attend a restitution hearing;

(D) Assist crime victims who inform the Program of non-receipt of restitution payments by providing referral to persons who may assist the crime victim in obtaining a remedy for a violation of crime victims' right;

(5) Service Category: "Prepare victims for court hearings by informing them of procedures involved":

(a) Service Definition: Establish a written procedure to prepare crime victims for the various court stages through which a case progresses;

(b) Specific Service: Prepare crime victims, when practicable, either by written or oral communication, of the various court procedures through which a case progresses (grand jury, arraignment, plea trial, etc.).

(6) Service Category: "Accompany victims to court hearings when practicable and requested":

(a) Service Definition: Establish a written procedure to describe the circumstances under which crime victims may be accompanied to court hearings by Program personnel, consistent with the purpose of providing support and information when deemed necessary or upon request. The procedure shall define when this service is not practicable.

(b) Specific Service:

(A) Upon request or when deemed necessary by the Program staff, arrange for advocate(s) to accompany crime victims to court;

(B) When possible, advocates who accompany crime victims to court will remain with crime victims throughout their court appearances.

(7) Service Category: "Involve victims when practicable or legally required in the decision-making process in the criminal justice system":

(a) Service Definition: Establish a written procedure for crime victims' input into the decision-making process, both at the prosecutorial and the judicial level;

(b) Specific Service:

(A) Involve the crime victims in the sentencing process, including appearances at sentencing hearings, making the court aware of the victim's presence, and facilitating the crime victim's involvement in the preparation of pre-sentence reports and the "Victim Impact Statement";

(B) Upon the crime victims' request, and to the extent practicable, insure consultation with crime victims of violent felonies regarding the plea discussions before final plea agreements are made.

(8) Service Category: "Inform victims of the processes necessary to request the return of property held as evidence":

(a) Service Definition: Establish a written procedure to inform crime victims and all family members of deceased crime victims of the process for the return of property held as evidence;

(b) Specific Service:

(A) Refer crime victims to those criminal justice authorities responsible for the return of property held as evidence;

(B) Intercede on behalf of crime victims with those criminal justice authorities responsible for the return of property in order to obtain the early release of victims' property when necessary;

(9) Service Category: "Assisting victims with the logistics related to court appearances when practicable and requested":

(a) Service Definition: Establish a written procedure to assist victims facing logistical barriers to appearing in court;

(b) Specific Service:

(A) Assist crime victims in arranging for the provision of temporary child care when appropriate;

(B) Upon request, arrange for transportation of crime victims when deemed necessary for their participation in the criminal justice proceedings;

(C) Upon request, intercede with an employer on the crime victims' behalf where the need for court appearance has caused, or will cause, an employed person to lose time from work and possibly jeopardize his/her employment in compliance with ORS 659A.272.

(10) Service Category: "Assist victims of crimes in the preparing and submitting Crime Victims' Compensation Program ("CVCP") claims to DOJ under the Act":

(a) Service Definition: Establish a written procedure for notification to crime victims and relatives of deceased victims of compensable crimes under the Act of the existence of the CVCP. When requested, or determined to be necessary by CVSD, assist crime victims in collecting required documentation, completing and submitting CVCP applications.

(b) Specific Service:

(A) Notify crime victims of the existence of the CVCP and provide an explanation of available benefits by providing crime victims and relatives with an informational brochure and an application form;

(B) When requested, assist crime victims and relatives, who are not able to do so independently, in gathering information and completing their applications in order to submit a claim for compensation under ORS 147.005 to 147.365.

(C) Upon request, inquire as to the claim status and payments with the CVCP.

(11) Service Category: "Encourage and facilitate victims' testimony":

(a) Service Definitions: To develop practices to address the interests, needs, and safety of crime victims in order to encourage and facilitate crime victims' testimony;

(b) Specific Service:

(A) Orient personnel of the criminal justice system, who will or may have contact with crime victims, to the needs of crime victims in general and in special circumstances, to the needs of particular crime victims;

(B) Provide a safe waiting area separated from the defendant, defendant's family and friends;

(C) Notify the appropriate law enforcement agency if protection of the crime victim is requested or deemed necessary by staff;

(D) When deemed necessary, advise the proper authorities of the need to include no contact provision with the crime victim as a condition of a release agreement and order and sentencing judgment;

(E) In those cases where tampering with or harassment of a crime victim occurs, encourage prosecutors to file proper charges and to give the charges priority in prosecutorial charging decisions;

(F) When hearings are cancelled, insure that a procedure exists to notify crime victims who have been requested or subpoenaed to appear, that the hearing has been cancelled, and that the victims' appearance has been excused, or continued to a future date, as the case may be;

(G) The services listed above may be provided to a witness to a crime, as deemed necessary or appropriate by CVSD in circumstances where the witness has been traumatized by the crime.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0035
Maintenance and Retention of Records

The Program shall maintain accurate, complete, orderly, and separate records. All records and documents must be adequately stored and protected from fire, electronic disclosure, and other damage. All record books, documents, and records related to the program must be accessible to the Administrator or his or her designee for inspection and audit. The accounting system shall insure that CFAA funds are not commingled with funds from any other source. Funds specifically budgeted for/or received in connection with one grant may not be used to fund another grant. Revenues and expenditures for each grant shall be separately identified and tracked within the grantee's accounting system or records. In the event a grantee's accounting system cannot comply with this requirement, the grantee shall establish a system to provide adequate fund accountability for each grant awarded. Any carryover of CFAA funds shall not revert to or be transferred to the city or county's general fund or other fund. A "carryover" is defined as any unexpended monies remaining in a Program, at the end of the term of the grant for the Program.

All records must be secured and confidential and retained in accordance with the Oregon Department of Justice record retention scheduled as required in OAR 166-300-0015, 0025.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0040
Fiscal and Contracting Requirements

In addition to Program application documents, subsidiary record documentations, and source documents, e.g., invoices, time and payroll records, and cost computations are the instruments upon which expenditure of grant Funding and Program compliance will be determined. All ledger account entries must be supported by secondary or intermediate records in the original source documentation. Programs shall follow Generally Accepted Accounting Principles (GAAP) standards. Programs that do not follow GAAP standards and practices may be subject to an additional program reviews which may result in non-renewal of program approval.

Stat. Auth.: ORS 147

Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 5-1983(Temp), f. & ef. 9-9-83; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0041
Allowable and Unallowable Expenses

(1) All reasonable activities and expenses that support or enhance the direct provision of the Program content areas 1–11 outlined in 137-078-0030 are allowable as outlined below:

(a) Salary and personnel expenses (benefits) for staff providing direct service to victims of crime;

(b) Contractual Services or Professional Services;

(c) Training and travel for direct victim assistance staff;

(d) Office equipment and supplies to support the Program;

(e) Administrative program costs up to but not to exceed 10% of the CFAA and Unitary Assessment ("UA") Grant Award to be used for fund and program management;

(f) Emergency Services and assistance;

(g) Travel and lodging expenses for a victim to attend legal proceedings directly related to their victimization;

(h) Operating Costs such as, but not limited to, supplies, printing, copying and postage;

(i) Other activities and expenses necessary to provide direct victim services as outlined in these Rules and as expressly approved by the CFAA/UA Fund Coordinators or Administrator;

(j) Rent;

(k) Furniture and Equipment purchases that provides or enhances direct services to crime victims;

(l) Outreach activities and coordination of community collaborations.

(2) The expenses and activities listed below are unallowable uses for CFAA/UA funds:

(a) Indirect program costs.

(b) Activities or costs that support prosecution or law enforcement functions.

(c) Crime prevention activities.

(d) Purchase of vehicles or buildings.

(e) Any other costs at the discretion of the Administrator.

(3) Penalty assessment funds which are returned to a district or city attorney under the provisions of the Act may not be used for expenses or expenditures that a district or city attorney's office would otherwise incur if it did not have a Program. The monies returned are to be exclusively used for the operation of the Program.

(4) Programs are required to be prudent in the acquisition of equipment. Careful screening should take place before purchasing equipment to be sure that the property is needed and the need cannot be met with the equipment already in the possession of the Program. Monies expended for the purchase of equipment that is already available for use within the county or city will be considered unnecessary and unallowable Program expenses.

(5)(a) Professional services may be performed under contract with the city or county, by individuals and organizations, when such services are not readily available within the Program and are clearly consistent with the intent and purposes of the Act. Employees on the Program's payroll are not eligible to provide professional services under contract with the Program;

(b) Under the Act, city and district attorneys are required to administer the Program. Administration of the Program shall serve the objective of incorporating these programs as an integral function of the prosecutor's office, to the end that there is an efficient and coordinated merger between the interests of serving the needs of the victim and the prosecution of crime. In light of this objective, no contract may be entered into which will allow the Program to be administered independently of the control and policy direction of the city or district attorney whose Program is the subject of the contracted service. Any allowable contract shall:

(A) Detail those specific services identified in the approved Program that are to be carried out by the contractor;

(B) Provide for coordination of the contractor's functions with those of the prosecutor's city or county office, including as appropriate, the services to be performed, the contractor's access to the prosecutor's records and personnel, and the exchange of such communications between the prosecutor's office and the contractor as are necessary to the ongoing performance of the contract services and the prosecutorial function;

(C) Provide that ultimate program control and policy direction not addressed in the agreement shall be retained as the responsibility of the prosecutor and that he or she shall provide timely consideration and written determination thereof; and

(D) Provide a procedure for routine review by the city or district attorney of the contractor's performance, facilitated by quarterly activity reports to be made by the contractor to the prosecutor outlining the activities and accomplishments during the report period, any problems in operation or implementation of the contracted services, and any critical observations relative to the program's operation.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0045
Annual Report

The Program shall submit reports as required by CVSD for each year of Funding provided by the Grant. Reports shall be submitted within 30 days of receiving instructions from the Administrator. Failure to submit reports by the due date established in the instructions may result in a suspension of funds disbursed to the Program until the reports are submitted and approved. A certification form shall also provide for verification of continued operation specified in OAR 137-078-0010(1) and verification of carryover funds.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0050
Disapproval of Program for Funding — Discontinuance of Funding

(1) The Administrator may suspend or terminate any Program for Funding that does not comply with the Act or these Rules. The Administrator may also suspend or terminate Funding because of the Program's failure to comply with the approved Program or Grant conditions. Prior to any disapproval or suspension or termination of Funding, the Administrator or his or her designee will contact the district or city attorney to assist in development of an approvable program or in correcting any deviation from applicable standards and requirements. In the case of termination of funding, 30-days advance notice will be provided by the Administrator to the district or city attorney.

(2) A district or city attorney may request reconsideration of any decision resulting in the suspension or termination of Program Funding. The process is as follows:

(a) The district or city attorney shall first request reconsideration in writing to the Administrator, detailing the reasons for disagreement with CVSD's decision. The Administrator will reconsider any decision for which request for reconsideration is received, and will notify the district or city attorney within a reasonable period of time in writing of the reconsideration decision;

(b) Any district or city attorney who requests review by the Administrator and who disagrees with the reconsideration decision may appeal to the Deputy Attorney General. Requests for the Deputy Attorney General's review shall be in writing. The Deputy Attorney General's decision will be in writing and will be final.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: JD 5-1983(Temp), f. & ef. 9-9-83; JD 1-1984, f. & ef. 3-5-84; DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

137-078-0051
Advisory Committee

(1) An Advisory Committee is established to provide consultation on the distribution of CFAA and UA monies and Grants, and the provisions of these rules.

(2) The Advisory Committee shall consist of at least the following members:

(a) A representative of the Department of Justice;

(b) A representative of the Oregon District Attorneys Association; and

(c) A representative of a prosecuting attorney's victim assistance program.

Stat. Auth.: ORS 147
Stats. Implemented: ORS 147.227
Hist.: DOJ 14-2010(Temp), f. 7-27-10, cert. ef. 8-2-10 thru 1-28-11; DOJ 17-2010, f. 11-29-10, cert. ef. 12-1-10

Department of Oregon State Police,
Office of State Fire Marshal
Chapter 837

Rule Caption: Bring NFPA Standard year of edition references and OSSC year of edition references up to date and make general grammatical corrections.
Adm. Order No.: OSFM 6-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 837-041-0050
Subject: Updates references to NFPA Standard No. 13 and No. 72 from 2002 Edition to 2007 Edition. Updates reference to Oregon Structural Specialty Code from 2007 Edition to 2010 Edition. Makes grammatical corrections relating to usage of "shall", "must", "may" and clarifies language as per state guidelines.
Rules Coordinator: Pat Carroll—(503) 934-8276

837-041-0050
Protection of the Means of Egress — General Provisions

(1) "High Life Hazard" definition: For the purpose of this rule, a "high life hazard" is any condition, or combination of conditions, where a reasonable adequate level of exiting safety has not been provided for the building occupants in the event of a fire or fire-related emergency.

(2) All existing buildings and structures, that constitute a high hazard to the occupants in the event of a fire or fire-related emergency, other than institutional, group care and single family dwelling occupancies, must provide a reasonable adequate level of exiting safety through substantial compliance with the requirements for new construction under the 2010 Edition of Oregon Structural Specialty Code, or any of the following methods or combinations thereof which the State Fire Marshal or deputy approved for the building or structure:

(a) A partial automatic sprinkler system as specified in N.F.P.A. Standard No. 13, 2007, installed throughout the complete exit system and inside every unprotected opening into the exit system. The sprinkler system must be fitted with a swing check valve on the supply side and a fire department connection, except that the fire department connection may be omitted when waived by the authority having jurisdiction. A water flow detection device must be installed that sounds an alarm on the premises or when a building has a fire alarm system, the device is connected into the building fire alarm system.

(b) An automatic smoke detection system engineered specifically for life safety and early warning, installed throughout the premises as specified in N.F.P.A. Standard No. 72 2007 Edition. Heat detectors may be installed in place of smoke detectors in mechanical service rooms, storage rooms, kitchens, custodial closets, and areas not normally occupied or traversed by people. Fire detection system(s) must be interconnected with the building evacuation fire alarm system.

EXCEPTION: In Group E Occupancies, detectors shall not be required in classrooms normally under the direct supervision of a staff member unless required by other Oregon Revised Statutes or Oregon Administrative Rules.

(c) An approved direct means of egress from each room opening to the outside at ground level. Direct exterior exits must consist of doors, landings, and necessary stairs or ramps complying with the 2010 Edition of the Oregon Structural Specialty Code.

(d) Any other plan submitted by the owner, lessee, agent, or occupant and certified by a registered architect or engineer of the State of Oregon of reasonably adequate expertise in fire and life safety, which will provide a reasonable adequate level of exiting safety from the building or structure in the event of a fire or fire-related emergency.

(3) In determining whether a building or structure constitutes a high life hazard and in determining whether to approve a method of improvement, the State Fire Marshal or deputy shall determine whether the level of hazard is unreasonable by considering among other factors the following:

(a) Type of construction;
(b) Type of use;
(c) Type and density of occupancy;
(d) Type of contents and equipment;
(e) Fire division walls creating horizontal exits;
(f) Compartmentation;
(g) Areas of refuge;
(h) Ceiling height;
(i) Corridor and stair construction;
(j) Alarm, communication and detection systems;
(k) Fire suppression systems;
(l) Exit design and fire escapes;
(m) Automatic smoke control; and
(n) Fuel loading.

(4) The State Fire Marshal or deputy shall submit to the owner, lessee, agent or occupant written findings setting forth the facts supporting the determination that a high life hazard exists. Except as provided in ORS 479.170, the owner, lessee, agent or occupant must have sixty (60) days after receipt of such findings to propose the method of improvement to the State Fire Marshal or deputy, who shall have sixty (60) days thereafter to approve or disapprove of the proposed method of improvement. If the proposed method of improvement is disapproved by the State Fire Marshal or deputy, a written statement of the reasons for disapproval shall be provided to the owner, lessee, agent or occupant within such sixty (60) day period.

(5) Except for governmental subdivisions exempt under ORS 476.030(3), the owner, lessee, agent or occupant aggrieved by the determination that the building or structure constitutes a high life hazard or by the disapproval of the proposed method of improvement (hereafter the order) and desires a hearing, the owner, lessee, agent or occupant may appeal in writing to the State Fire Marshal within (10) days from the service of the written findings of a high life hazard or the statement of reasons for disapproval of the proposed method of improvement. The appeal must set forth the specific grounds of the appeal and no other grounds shall be considered thereafter. The appeal must be accompanied by a fee of $40 payable to the State Fire Marshal, and the State Fire Marshal may refer the appeal to the Regional Appeal Advisory Board established for that region by notifying the chairman of that board and sending a copy of the notice to the appellant. The Board shall fix a time for a hearing and notify the appellant of the time and place thereof which shall be within ten (10) days after such referral by the State Fire Marshal. If the State Fire Marshal does not refer the matter to a Regional Appeal Advisory Board, the State Fire Marshal shall fix a time and place, not less than five (5) and not more than ten (10) days thereafter, when and where the appeal will be heard by the State Fire Marshal. Within ten (10) days after receiving a recommendation from the Regional Appeal Advisory Board, or if no referral was made to such Board, within ten (10) days after the hearing before the State Fire Marshal, the State Fire Marshal may affirm, modify, revoke or vacate the order. If the State Fire Marshal affirms the order, the State Fire Marshal shall fix the time within which the owner, lessee, agent or occupant must comply with the requirements of this rule. If the State Fire Marshal vacates or revokes the order, or modifies it in any particular manner other than extending time for compliance, the fee paid with the appeal shall be refunded. Otherwise, it shall be credited to appropriate state funds, and the State Fire Marshal shall so notify the State Treasurer.

(6) If the appellant under section (5) of this rule is aggrieved by the final order of the State Fire Marshal, the appellant may, within ten (10) days thereafter, appeal to the circuit court of the county in which the building or structures is situated, in the manner provided in ORS 479.180(2).

(7) In governmental subdivisions exempt under ORS 476.030(3), the owner, lessee, agent or occupant, aggrieved by the determination that the building or structure constitutes a high life hazard or by the disapproval of the proposed method of improvement, and desires a hearing, the owner, lessee, agent or occupant may appeal in writing to the Board of Appeals as provided by the ordinance and rules of the governmental subdivision.

(8) Commentary:

(a) Upgrading deficient exit facilities should always be of primary concern in any occupancy, but it must be recognized that there are degrees of deficiency from a very slight or negligible hazard to what is defined as a high life hazard under this rule. Fire officials should not equate the level of exiting safety required for new construction under the current building code with the reasonably adequate level of exiting safety required by this rule. The intent of this rule is to allow the continued use of existing buildings which provide a level of exit safety that substantially comply with the requirements for new construction under the current building code or use one of the alternatives to come within the range of reasonable safety that the public should be provided. Structural Changes shall not be required in buildings built, occupied and maintained in conformity with state building code regulations applicable at the time of construction, ORS 476.030(c).

NOTE: The state building code was first adopted in 1974.

(b) Rather than looking strictly to the current standard for new construction under the building code, fire officials must use their own judgment on a case-by-case basis as to reasonableness of the degree of hazard and adequacy of exit safety after evaluating all of the relevant factors stated in the rule and any other factors unique to the building or structure (historical structures ORS 476.035). The written findings required by this rule shall list and analyze the relevant factors so that if the determination of the fire

official is appealed, a written record of the reasons for the determination will be available for review.

(c) While fire and life safety must be given primary consideration, the determination of whether the existing level of hazard is unreasonable requires the fire official to consider the cost of the possible improvements in relation to the benefits provided by increased exiting safety from such improvements. The cost benefit analysis shall be considered in deciding which method of improvement to approve once the determination of high life hazard has been made.

(d) The rule has been amended to provide greater flexibility in the method of improvement of deficient buildings. The fire official must not approve any proposed plan of improvement unless it will provide the reasonably adequate level of exiting safety required. While the fire official is not expected to plan the method of improvement for the building owner, much time will be saved if the fire official will actively assist the building owner or the owner's engineer in finding the least expensive method of improvement providing the reasonably adequate level of exiting safety.

(e) Substantial compliance with the requirements for new construction under the current building code will often be impossible or so expensive as to be impractical in existing buildings. The approval for one or more of the remaining three alternatives shall always be given on a case-by-case basis after a consideration of all of the same factors considered in determining that the building constitutes a high life hazard and after balancing the costs against the benefits provided by the different methods. For example, in a hotel or apartment building the existence of a passive occupancy where cooking, portable space heaters, smoking in bed and other such activities create a significantly higher risk of undetected and/or uncontrolled fire incidents, the fire official might justifiably refuse to approve any plan that does not include significant use of automatic sprinklers. In contrast, where an active occupancy is involved such as in an office building, approval may be given for a plan of improvement consisting of horizontal exits and areas of refuge.

(f) In approving a plan of improvement, the fire official shall require a commitment to a date of completion for the improvements, but shall allow a sufficient period for completion.

(g) Once the improvement is completed, unless there is a significant change in one or more of the factors considered in the determination of a high life hazard, no further improvements shall be required under this rule.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476
Stats. Implemented: ORS 476.030(C)
Hist.: FM 68, f. 5-2-75, ef. 5-25-75; FM 7-1981, f. & ef. 11-5-81; OSFM 7-2001, f. 6-27-01, cert. ef. 7-1-01; OSFM 5-2008, f. 8-29-08, cert. ef. 9-1-08; OSFM 6-2010, f. & cert. ef. 12-1-10

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Rule Caption: Create new provisions for carbon monoxide alarms and detectors as directed by House Bill 3540, 2009 Legislative Assembly.
Adm. Order No.: OSFM 7-2010
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-28-10
Notice Publication Date: 11-1-2010
Rules Adopted: 837-047-0100, 837-047-0110, 837-047-0120, 837-047-0130, 837-047-0135, 837-047-0140, 837-047-0150, 837-047-0160, 837-047-0170
Subject: The purpose of these rules is to establish minimum standards for the design, inspection, testing, placement and location and maintenance of carbon monoxide alarms and detectors in one and two family dwellings, manufactured dwellings, and multifamily housing in existing structures prior to conveyance of fee title or transfer possession under land sales contract and rental property agreement.
Rules Coordinator: Pat Carroll—(503) 934-8276

837-047-0100
Purpose and Scope

The purpose of these rules is to establish minimum standards for the design, inspection, testing, placement and location and maintenance of carbon monoxide alarms in one and two family dwellings, manufactured dwellings, and multifamily housing.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0110
Definitions

(1) "Attached garage" means a garage with a door, ductwork, or ventilation shaft communicating directly with or connected to a living space and does not include:

(a) A carport;

(b) An open parking garage; or

(c) An enclosed parking garage ventilated in accordance with Section 404 of the State Mechanical Code.

(2) "Bedroom" means a room designed or intended for sleeping.

(3) "Carbon monoxide alarm" means a device that:

(a)(A) Detects carbon monoxide;

(B) Produces a distinctive audible alert when carbon monoxide is detected;

(C) Is listed by Underwriters Laboratories as complying with ANSI/UL 2034 or ANSI/UL 2075 or any other nationally recognized testing laboratory or an equivalent organization; and

(D) Operates as a distinct unit, as two or more single station units wired to operate in conjunction with each other or as part of a system that includes carbon monoxide detectors.

(b) For the purposes of these rules, "carbon monoxide detectors that are part of a system that produces a distinctive audible alert and are listed as complying with ANSI/UL 2075 shall be considered carbon monoxide alarms.

(4) "Carbon monoxide source" means:

(a) A heater, fireplace, furnace, appliance, or cooking source that uses coal, wood, petroleum products, and other fuels that emit carbon monoxide as a by-product of combustion. Petroleum products include, but are not limited to, kerosene, natural gas, or propane.

(b) An attached garage with a door, ductwork, or ventilation shaft that communicates directly with a living space.

(5) "Dwelling unit" means: A structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(6) "Landlord" means the owner, lessor, or sublessor of the rental dwelling unit or the building or premises of which it is a part. "Landlord" includes but is not limited to a person who is authorized by the owner, lessor, or subleasor to manage the premises or to enter into a rental agreement.

(7) "Manufactured Dwelling" means a dwelling as defined in ORS 446.

(8) "Multifamily housing" means a building, excluding townhouses, in which three or more residential dwelling units each have space for eating, living, sleeping, and permanent provisions for cooking and sanitation.

(9) "Nationally Recognized Testing Laboratory" means a nationally recognized testing laboratory (NRTL) that is U.S. Occupational Safety and Health Administration (OSHA) accredited to test and certify to American National Standards Institute (ANSI) standards.

(10) "One and two family dwelling" means a residential building that is regulated under the state building code as a one and two family dwelling and includes a townhouse.

(11) "Owner" includes a duly authorized agent or attorney, a purchaser, devisee, fiduciary, lessor or sublessor and/or a person having a vested or contingent interest in the property in question.

(12) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(13) "State Fire Marshal" means the State Fire Marshal appointed under ORS 476.020 and the Chief Deputy State Fire Marshal and Deputy State Fire Marshals appointed by the State Fire Marshal under ORS 476.040.

(14) "Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each extends from the foundation to the roof and at least two sides abut open space.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0120
Carbon Monoxide Alarm Requirements

(1) Properly functioning carbon monoxide alarms shall be required when:

(a) A person conveys fee title to a one and two family dwelling or multifamily housing containing a carbon monoxide source on or after April 1, 2011; or

(b) A person transfers possession under a land sale contract of a one and two family dwelling or multifamily housing containing a carbon monoxide source on or after April 1, 2011; or

(c) A person transfers ownership of a manufactured dwelling containing a carbon monoxide source on or after April 1, 2011; or

(d) A landlord enters into a rental agreement for a dwelling unit containing a carbon monoxide source on or after July 1, 2010.

(2) By April 1, 2011, every rental dwelling unit subject to these rules must contain properly functioning carbon monoxide alarms.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0130
Installation and Location of Carbon Monoxide Alarms and Detectors

(1) All carbon monoxide alarms or detectors must be installed in accordance with the manufacturer's recommended instructions and located in accordance with these rules and applicable building code at the time of construction or alteration of the dwelling.

(2) One and Two Family Dwellings and Manufactured Dwellings: A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms.

(3) Multi Family Housing:

(a) A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door in dwelling units containing a carbon monoxide source or are connected to a common area containing a carbon monoxide source. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms.

(b) A carbon monoxide alarm must be installed in any enclosed common area within the building if the common area is connected by a door, ductwork, or ventilation shaft to a carbon monoxide source located within or attached to the structure.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0135
Exemption

A landlord who rents a space for a manufactured dwelling or who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the manufactured dwelling home or floating home is exempt from these rules.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0140
Power Source

Carbon monoxide alarms must be battery operated or receive their primary power source from the building wiring with a battery back-up. Plug in devices must have a battery back-up.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0150
Testing and Maintenance of Carbon Monoxide Alarms

Carbon monoxide alarms and systems must be maintained and tested according to the manufacturer's recommended instructions.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0160
Rental Dwelling Units Subject to ORS Chapter 90

(1) Effective July 1, 2010, before a landlord transfers possession of a dwelling unit subject to these rules to a tenant, the landlord must:

(a) Install a properly functioning carbon monoxide alarm;

(b) Provide working batteries if a carbon monoxide alarm is battery operated or has a battery operated backup system; and

(c) Provide the new tenant with alarm testing instructions.

(2) If the landlord receives written notice from the tenant of a deficiency of a carbon monoxide alarm, other than dead batteries, the landlord must repair or replace the alarm.

(3) A tenant must test, at least every six months, and replace batteries as needed in any carbon monoxide alarm provided by the landlord and notify the landlord in writing of any operating deficiencies.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

837-047-0170
Tampering with a Carbon Monoxide Alarm Prohibited

A person may not remove or tamper with a carbon monoxide alarm installed in accordance with these rules. Tampering includes removal of working batteries.

Stat. Auth.: ORS 476.725
Stats. Implemented: ORS 476.725
Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10; OSFM 7-2010, f. 12-1-10, cert. ef. 12-28-10

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Department of Revenue
Chapter 150

Rule Caption: Defining tangible personal property for corporation tax apportionment.
Adm. Order No.: REV 14-2010(Temp)
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10 thru 5-27-11
Notice Publication Date:
Rules Amended: 150-314.665(2)-(A)
Subject: In 2007, the department adopted amendments to 150-314.665(2)-(A). In 2010, the Court of Appeals invalidated an administrative rule adopted by the department because of an inadequate statement of fiscal impact. Following that decision, the department determined that the fiscal impact statement filed with the 2007 rule changes may also have failed to meet statutory requirements, The department is adopting 150-314.665(2)-(A) as a temporary rule to restore the language that was in effect prior to the 2007 amendments.
Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-314.665(2)-(A)
Sales Factor; Sales of Tangible Personal Property in this State

The rule adopts provisions of a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states.

(1) For purposes of ORS 314.665 and the rules thereunder, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

(2) For purposes of apportioning income under ORS 314.665 and this rule, gross receipts from the sales of tangible personal property (except sales to the United States Government; see OAR 150-314.665(2)-(B)) are in this state:

(a) If the property is delivered or shipped to a purchaser within this state (Oregon) regardless of the f.o.b. point or other conditions of sale; whether transported by seller, purchaser, or common carrier; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller, who is subject to Oregon excise tax, must treat this as a sale of property delivered or shipped to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller is taxable in State A. The seller must treat this as a sale of property delivered or shipped to a purchaser in State A.

(c) Notwithstanding subsection (2)(b) of this rule, for tax years beginning on or after January 1, 2006, the sale of goods from a public warehouse is not considered to take place in Oregon if:

(A) The taxpayer's only activity in Oregon is the storage of the goods in a public warehouse prior to shipment; or

(B) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products.

(3) Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example 3: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in Oregon. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(4) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example 4: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon is property "delivered or shipped to a purchaser within this state."

(5) The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in Oregon, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Oregon.

Example 5: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

(6) When property being shipped by a seller from the state of origin to a purchaser in another state is diverted while enroute to a purchaser in Oregon, the sales are in Oregon.

Example 6: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Oregon, in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Oregon.

(7) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Oregon if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oregon.

(a) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state imposes a net income tax on the seller.

(b) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state would have jurisdiction to tax the seller on net income under the constitution of the United States and federal Public Law (P.L.) 86-272.

(c) OAR 150-314.620-(C) provides that sales and activities in a foreign country will be treated the same as those in another U.S. state for determining if the foreign country has jurisdiction to tax the seller on net income.

(d) The guidelines provided by federal P.L. 86-272 apply equally to activities regarding sales to unrelated parties and sales to affiliated corporations.

(e) The immunity provided by P.L. 86-272 is not lost when a business engages in de minimis activities unrelated to the solicitation of orders in a state or foreign country where its only other activities are those protected by P.L. 86-272. Examples of such immune activities include the following:

(A) The board of directors of a corporation based in Oregon holds a meeting at a hotel in another state or in a foreign country,

(B) The president of a parent corporation based in Oregon meets with the managers of a subsidiary in a foreign country to discuss the subsidiary's five-year plan and capital acquisitions budget.

(C) The controller of a parent corporation based in Oregon meets with the accounting staff of a subsidiary in a foreign country to discuss federal financial reporting requirements.

Example 7: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Oregon. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Oregon for approval and are filled by shipment from the inventory in Oregon. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Oregon, the state from which the merchandise was shipped.

Example 8: A parent company sells its product to a subsidiary, organized in a foreign country, that uses the parent's product in manufacturing its product. Because of the parent-subsidiary relationship, orders are not solicited in the same way as sales to unrelated customers. Instead, the products are shipped as needed to the subsidiary. Officials from the parent company maintain a close liaison with the foreign subsidiary on the planning and design of the items sold. After the parties agreed on a contract in which the parent would manufacture and sell certain items to the subsidiary, the close working relationship continued between the technicians of both companies. Many of the parent's employees made regular trips to the subsidiary after the contract was signed, to take care of such items as manufacturing problems, installation problems, repair work, redesign discussions, and/or production problems. Parent's production engineers, production workers, metallurgists, quality control managers, and assembly supervisors were some of the personnel who spent several weeks of the year working closely with the foreign subsidiary. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is not considered to be protected under P.L. 86-272 and therefore is not required to attribute sales to Oregon.

Example 9: A subsidiary organized in a foreign country purchases products from its parent, a manufacturing company in Oregon. The subsidiary places a purchase order with the parent on an "as needed" basis. The parent, upon receipt of the purchase order, makes shipment to the subsidiary. The subsidiary, upon receipt of the product, makes payment to the parent. The parent has a relationship with its foreign subsidiary that is unrelated to the sale of its product. Officials from the parent company occasionally visit the foreign subsidiary to discuss matters unrelated to the sale of its product, including: (1) public relations, (2) personnel matters, and (3) government relations. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is considered to be protected under P.L. 86-272 and is required to attribute the sales to Oregon.

(8) If a taxpayer whose salesman operates from an office located in Oregon makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply, under authority of ORS 314.670:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in Oregon.

Example 10: The taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Oregon.

Publications: Publications referenced are available from the Agency

Stat. Auth.: ORS 305.100 & 314.670

Stats. Implemented: ORS 314.665

Hist.: 12-70; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 14-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11

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Rule Caption: Determining Oregon sales of electricity or natural gas for corporation tax apportionment.
Adm. Order No.: REV 15-2010(Temp)
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10 thru 5-27-11
Notice Publication Date:
Rules Suspended: 150-314.665(2)-(C)
Subject: In 2007, 150-314.665(2)-(C) was adopted to explain how apportionment f Oregon sales of electricity or natural gas is determined. In 2010, the Court of Appeal invalidated an administrative rule adopted by the department because of an inadequate statement of fiscal impact. Following that decision, the department determined that the fiscal impact statement filed with the 2007 rule changes may also have failed to meet statutory requirements. The department is suspending the provisions of 150-314.665(2)-(C) and we plan to re-promulgate both rules in the near future.
Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-314.665(2)-(C)
Sales Factor; Sale of Electricity or Natural Gas

(1) A sale of tangible personal property, including but not limited to the sale of a commodity like electricity or natural gas, which is delivered or shipped to a purchaser with a contracted point of delivery in Oregon is a sale in this state. This is regardless of whether the purchaser uses the property in Oregon, transfers the property to another state, or resells the property in Oregon. If the contract states the point of delivery is at the border with another state, the sale is presumed to be in Oregon unless the taxpayer can demonstrate to the satisfaction of the department that delivery occurred in some other place.

Example 1: A provider of wholesale electricity enters into a contract to deliver a specified amount and duration of a supply of electricity to a purchaser who takes possession at a specified point of delivery in Oregon. The sale is an Oregon sale.

(2) A taxpayer who contracts to sell electricity to and also buy electricity from the same entity during the same period or partial period of time will have an offsetting contractual amount. The gross sales of electricity, without regard to the offsetting purchase amount, are considered to be Oregon sales if the contracted point of delivery is in Oregon.

Example 2: Company A signed a contract on January 2, 2006, to purchase 50 megawatts of electricity for a period of 10 hours starting November 15, 2006, from Company B with a delivery point of Malin, Oregon. For this same time period, Company A signed a contract on March 15, 2004, to sell 30 megawatts of electricity to Company B with a point of delivery at Malin, Oregon. The 30 megawatts of power is recorded as a book-out on both companies' books for reporting to Oregon. The offsetting transaction for the 30 megawatts is deemed to be delivered in Oregon for the purposes of computing the Oregon sales factor. Company A will report the sale of 30 megawatts in its Oregon sales factor numerator and Company B will

report the sale of 50 megawatts (20 megawatts to complete the sales contract plus 30 megawatts of book-out) of electricity in its Oregon sales factor numerator.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Hist.: REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; Suspended by REV 15-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11

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Department of State Lands
Chapter 141

Rule Caption: Clarify, streamline and simplify claim requirements and allow the Department to expedite straightforward claims.
Adm. Order No.: DSL 2-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Amended: 141-040-0211, 141-040-0212, 141-040-0213, 141-040-0214, 141-040-0220
Subject: The revised rules will allow the Dept. of State Lands (DSL) to maximize the effectiveness of new technologies to identify simple claims where the claimant is the owner and lives at the same address or has matching data to the property reported.

Businesses and state and local governments seeking unclaimed property will have a streamlined process to recover their funds based on an indemnification and return agreement if a superior claim is filed.

The values are increased where claimants would be required to complete an affidavit or probate an estate to finalize a claim.

DSL refers some claims to several agencies that retain those funds and process any claims. We want to clarify that our claim rules only apply to property held by DSL.
Rules Coordinator: Elizabeth Bolden—(503) 986-5239

141-040-0211
Claim Format

(1) Pursuant to ORS 98.392, a person claiming interest in unclaimed property reported or remitted to the Department may file a claim for the property or proceeds from the sale of the property at any time.

(2) A person shall file a claim with the Department on forms provided by the Department, or in a format acceptable by the Department.

(3) A complete claim shall be considered filed upon its receipt by the Department.

(4) In order to be complete, each claim shall include:

(a) The name and current photo identification or other satisfactory proof of identity of the claimant, such as a driver's license or passport;

(b) Current mailing address of the claimant and satisfactory documentation to prove current residence;

(c) A description of the claimant's interest in the property;

(d) Evidence of the claimant's Business Tax ID, or Federal Tax ID number for business or governmental entity claims;

(e) Evidence of ownership satisfactory to establish the validity of the claim; and

(f) An indemnification agreement in a form provided by or acceptable to the Department.

(g) The signature of the claimant on the claim form or other document acceptable to the Department. If the amount of the claim is greater than $100, the signature of the claimant must be notarized.

(5) In addition to the information required under subsection (4) of this section, if the claimant is the original owner, a description of the nature of the property.

(6) In addition to the information required under subsection (4) of this section, if the claimant is other than the original owner, a description of the relationship of the claimant to the original owner, and documentation of the basis on which both the original owner and the claimant have legal authority to claim the property. If the original owner of the unclaimed property is deceased and the claimant is an heir or devisee, then the claimant must describe the claimant's relationship to the deceased owner and include documentation that establishes that claimant is the heir or devisee of the original owner. If the owner is a minor or is incapacitated, then the claimant must provide proof of guardianship or conservatorship. Proof of guardianship or conservatorship must be no more than 60 days old at the time the claim is submitted.

(7) In addition to the information required under subsection (4) of this section, if the claim is being filed by a finder:

(a) The claim shall include an original Power of Attorney or written notarized statement provided by each claimant to the finder authorizing the finder to act on behalf of the claimant.

(b) The finder shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall include a copy of this license issued by the Oregon Department of Public Safety, Standards and Training with the claim.

(c) An affidavit signed by the claimant for specified types of property as determined by the Department.

(8) In addition to the information required under subsections (4) to (7) of this section, in order to expedite the determination of the rightful owner, a claimant may include the claimant's Social Security number.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99, Renumbered from 141-040-0215; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11

141-040-0212
Proof of Ownership

(1) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.

(2) Name similarity alone is not sufficient to prove entitlement to unclaimed property.

(3) Documents submitted to establish ownership may include, but are not limited to:

(a) Copies of any documents showing addresses, including but not limited to utility bills, tax records, or original correspondence addressed to the owner at the address shown on the Department's records;

(b) Passbooks, statements of accounts, canceled checks, deposit slips;

(c) Copy of, or original stock certificate in the owner's name, copy of prior dividend payment or statement, stock transmittal receipt, brokerage firm statement;

(d) Original insurance policies, premium or dividend statements;

(e) Original deposit slips or receipts;

(f) Safe deposit box rental receipt or statement regarding the box;

(g) Original certified or photo copies of court documents;

(h) Newspaper articles including marriage announcements, birth or obituary notices;

(i) Family or church records, baptismal certificates, or personal correspondence;

(j) Public or business records;

(k) Signature verification cards from financial institutions;

(l) Testimonial evidence, including properly notarized affidavits; or

(m) Any other forms of evidence the Department may consider sufficient to satisfy a reasonable and prudent person under the circumstances of the particular claim.

(4) When a claimant submits a claim on behalf of the original owner of unclaimed property, the claimant shall provide:

(a) Evidence to establish the claimant's legal authority to make a claim for the original owner; and

(b) Evidence to establish the original owner's right to the unclaimed property.

(5) When a claimant submits a claim on behalf of a successor to the original owner of the property, the claimant shall provide:

(a) Evidence to establish the claimant's legal authority to make a claim for the successor to the original owner; and

(b) Evidence to establish the original owner's right to the unclaimed property; and

(c) Evidence to establish the successor's right to the unclaimed property as a successor to the original owner. The evidence that may be used to establish the successor's right to the unclaimed property as a successor to the original owner consists of but is not limited to, certified copies of probate documents, small estate affidavit, Final Decree of Distribution, a will, death certificates, Letters Testamentary, or Guardianship or Conservatorship, or other appropriate documentation.

(6) When a claimant submits a claim on behalf of a business or governmental entity, the claimant's authority to make a claim on behalf of the entity must be established to the satisfaction of the Department in accordance with the requirements of OAR 141-040-0213.

(7) As an alternative to the information required under this section, an authorized employee filing on behalf of a business or governmental entity may submit a completed business affidavit on the form supplied by the Department that indemnifies the Department and assures repayment in the event a superior claim is submitted. The Department at its sole discretion,

may reject a business affidavit for all or a portion of the claimed properties and require the evidence under this section.

(8) If the claim is for a negotiable instrument, (cashier's check, money order, certified check, traveler's check) the payee shall be considered to be the owner unless the purchaser possesses the instrument or provides evidence of payment satisfying the obligation to the payee.

(9) If the claim is for securities, claimants are entitled to receive either the securities that the holder delivered to the Department if they still remain with the Department, or the proceeds received from the sale, less any amounts deducted pursuant to ORS 98.386.

(10) If the claim is for securities or negotiable instruments, the claimant shall surrender to the Department with the claim the certificate or the original instrument, if the claimant possesses it. If the claimant does not surrender the original certificate, the Department may require the claimant to provide a lost instrument bond.

(11) If a claim is made on behalf of a creditor of an owner of unclaimed property, the creditor shall provide a certified copy of the writ of garnishment.

(12) In the case of competing claims, the conflict must be resolved by the claimants prior to a claim being deemed complete.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11

141-040-0213
Claims Submitted on Behalf of Business Entity or Governmental Entity; Proof of Authority

(1) When a claim is submitted by an employee of a business or governmental entity, the employee shall provide an original statement on the letterhead of the entity executed by an individual authorized to bind the entity, such as an officer of the corporation, the director of a state agency, county executive, or city manager, managing member of the limited liability company, or partner of a partnership, that recites the authority of the individual to bind the entity, and that authorizes the employee to submit a claim on behalf of the entity.

(2) When a claim is submitted by an agent on behalf of a business or governmental entity, in addition to the documentation required of all other claimants under OAR 141-040-0211, the agent must provide:

(a) An original power of attorney that authorizes the agent to submit a claim on behalf of the entity that is executed by an individual authorized to bind the entity, such as an officer of the corporation, director of a state agency, county executive, or city manager, managing member of the limited liability company, or partner of a partnership; and

(b) An original statement on the letterhead of the entity executed by an individual authorized to bind the entity, such as an officer of the corporation, the director of a state agency, county executive, or city manager, managing member of the limited liability company, or partner of a partnership, that recites the authority of the individual to bind the entity, and that acknowledges that the individual has executed a power of attorney authorizing the agent to submit a claim on behalf of the entity. The statement must include the name and address of the agent and direction to the Department for payment of any property determined to be due to the entity. If payment is to be made to the agent, the agent must also provide his/her federal tax identification number.

(3) Department staff will not discuss any claim or inquiry with an agent or employee of an entity until the agent or employee has provided to the Department the documentation required in subsection (1) or (2) of this section as the case may be.

(4) When a claim is filed on behalf of a dissolved business entity, in addition to the information required by subsection (1) and (2) above, the person submitting the claim must provide:

(a) A copy of the articles of dissolution if the entity is a corporation or limited liability company; or

(b) A copy of the partnership agreement or other agreement between the partners describing how partnership assets are to be distributed if the entity is a partnership.

(5) When a claim is filed on behalf of an individual but the claim concerns unclaimed property held for the benefit of a business under an assumed business name or "doing business as", in addition to the documentation required of all other claimants under OAR 141-040-0211, the claimant must provide documentation establishing claimant's ownership of the business, such as tax statements or business license. All warrants issued by the Department in such claims shall be made payable to the claimant "doing business as" the name of the assumed business name.

(6) When a claim is filed on behalf of a business entity in bankruptcy, in addition to the documentation required of all other claimants under OAR 141-040-0211, the claimant must provide:

(a) A copy of the order appointing the bankruptcy trustee; and

(b) If the claim is being filed by an agent, an original power of attorney that authorizes the agent to submit a claim on behalf of the trustee in bankruptcy or on behalf of the person or entity authorized by the bankruptcy court to make a claim on behalf of the bankruptcy estate.

(7) When a claim is filed on behalf of a business entity formerly in bankruptcy where the entitlement to the unclaimed property arose before commencement of the bankruptcy, in addition to the documentation required of all other claimants under OAR 141-040-0211, the claimant must provide:

(a) A copy of the order of discharge or other order establishing that the bankruptcy trustee abandoned the bankruptcy estate's interest in the unclaimed property; and

(b) If the claim is being filed by an agent, the agent must also comply with the requirements of OAR 141-040-0213(2), above.

(8) If the Department receives claims filed by two or more individuals on behalf of the same business or governmental entity, the Department will notify the entity in writing. The notice shall identify the names and addresses of the individuals who submitted the claims and shall request that the entity designate the authorized individual. The Department shall not process either claim unless and until the Department receives written authorization from the entity.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11

141-040-0214
Review Criteria/Time

(1) The administrator shall approve or deny a claim to recover unclaimed property within 120 days after the claimant files a completed claim form under ORS 98.392.

(2) Except as may be authorized by an agreement between the Department and another agency or entity, when the Department determines that the claim, or some portion thereof, relates to property reported to the Department but held by another agency or entity responsible for reviewing claims and payment of claims, the claim file or relevant copies will be forwarded to the responsible agency or entity. The Department will notify the claimant of the transfer of the claim file and the contact information for the responsible agency or entity. OAR 141-040-0200 through 141-040-0220 (the "Rules for Recovery of Unclaimed Property") shall not apply to the procedures utilized by the responsible agency or entity in review of the claim.

(3) Except as otherwise provided in subsection (4) of this section, the Department will review claims in the order of receipt.

(4)The Department may expedite the review of a claim where:

(a) The claimant, in the sole discretion of the Department, has provided to the Department evidence of extenuating circumstances warranting expedited review.

(b) The Department's automated selection technology demonstrates that:

(A) The claimant is the original owner, there are no co-owners, and claimant still lives at the address reported by the holder, or

(B) The claimant is the original owner, there are no co-owners and claimant has provided other information that matches the reported data.

(5) In determining if there is sufficient evidence to support a claim, the Department shall consider:

(a) The age and likelihood of the existence of direct evidence to support the claim;

(b) The existence of any competing claims for the property; and

(c) Any other related evidence the Department determines appropriate under the circumstances of the particular claim.

(6) The Department shall determine whether a preponderance of the evidence proves the claimant is legally entitled to the unclaimed property.

(7) If the Department approves a claim, the Department shall request a warrant from the Oregon State Treasury. If the claim is allowed for funds deposited in the General Fund, the Department shall pay the claim and file a request for reimbursement from the State Treasurer, who shall reimburse the Department within five working days from the fund against which the warrant represented in the claim was issued.

(8) A holder may make payment to or delivery of property to an owner and file a claim with the Department for reimbursement. The Department shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Department may not assess any fee or other service charge

to the holder. Upon receiving the funds from the Department, the holder shall assume liability for the claimed asset and hold the Department harmless from all future claims to the property.

(9) If the property is being recovered by a finder who has submitted a Power of Attorney that authorizes disbursement to the finder, the Department shall issue a warrant payable to both the claimant and Finder and mail the warrant to the finder.

(10) When a claim is for the benefit of the heirs of a deceased owner:

(a) If the amount of the claim is less than $1000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)).

(b) If the amount of the claim is $1000 or more, but less than $5000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)) and, if the estate was not probated, require the claimant to complete an Affidavit in Lieu of Probate.

(c) If the amount of the claim is more than $5000, prior to payment the Department shall require evidence of probate or the filing of probate in accordance with the applicable requirements of Chapters 111, 113–117, Oregon Revised Statutes.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11

141-040-0220
Claim Denial/Closure

(1) If the Department requests additional information from the claimant to substantiate a claim, and there is no response from the claimant within 90 days of the request, the Department may close the file.

(2) If the Department is unable to determine legal entitlement from the evidence submitted and any supporting documentation received or provided by supplemental filings, the Department shall give written notice of denial.

(a) The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity for a contested case hearing.

(b) Within 60 days after the date of written notice of denial provided under paragraph (a) of this subsection, the claimant may request a contested case hearing on the matter.

(c) A request for a contested case hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.

(d) Within 30 days after the Department receives a request for a contested case hearing submitted under paragraph (c) of this section, the Department shall contact the claimant to schedule a hearing date by mutual agreement. The Department shall confirm the hearing date by written notice to the claimant.

(e) The contested case hearing shall be conducted by a hearings officer appointed by the Director.

(f) Additional evidence shall not be admissible at the hearing, except by mutual consent of the hearing's officer, the claimant and any other parties to the proceeding. If such additional evidence is not admitted, the hearings officer shall terminate the hearing and allow the claimant to resubmit the claim with the new evidence.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 36, f. & ef. 9-1-76; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11

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Department of Transportation, Driver and Motor Vehicle Services Division
Chapter 735

Rule Caption: Basic Control Skills Test and other Commercial Driver License Testing.
Adm. Order No.: DMV 20-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 10-1-2010
Rules Amended: 735-060-0000, 735-060-0120, 735-062-0002, 735-062-0070, 735-062-0200
Subject: Applicants for a Commercial Driver License (CDL) must demonstrate basic knowledge, vehicle control and driving skills. Based on recommendations of the American Association of Motor Vehicle Administrators (AAMVA) and proposed rulemaking issued by FMCSA, DMV has updated its CDL testing requirements by amending OAR 735-060-0120, 735-062-0070 and 735-062-0200 to require that a CDL applicant must successfully complete a Basic Control Skills test before taking an on-road driving test. DMV intends to implement Basic Vehicle Control Skills testing on January 1, 2011.

The basic vehicle control skills test requires a CDL applicant to demonstrate effective maneuvering of the truck, bus or tractor trailer that he or she is driving (and is testing to be licensed to drive). The skills that the driver must demonstrate include backing maneuvers as well a pulling forward and executing a turn all within specific boundaries.

DMV also amended OAR 735-060-0000 and 735-062-0002 to add a definition of CDL skills test. A CDL skills test is a pre-trip vehicle inspection, a basic control skills test or an on-road driving test.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-060-0000
Definitions

(1) The following definitions apply to terms in OAR 735-060-0000 through 735-060-0130:

(a) "Administrative Training" means a class provided by DMV to a CDL Tester Representative that describes the administrative requirements and responsibilities of a CDL Third Party Tester, including but not limited to, maintaining records and proper completion of DMV required reports.

(b) "CDL" means commercial driver license.

(c) "CDL Certificate of Test Completion" is a document that certifies an individual is competent to safely exercise the commercial driving privileges granted by a Class A, Class B, Class C CDL, or an endorsement related to a CDL and that is issued by a CDL Third Party Examiner as authorized by ORS 807.080.

(d) "CDL skills test" is a pre-trip vehicle inspection test, a basic control skills test or an on-road driving test.

(e) "CDL Third Party Examiner" or "CDL Examiner" is an individual issued a Third Party Examiner Certificate by DMV that authorizes the individual to conduct certified drive tests to determine a driver's qualification to obtain a CDL and issue CDL Certificates of Test Completion.

(f) "CDL Third Party Examiner Certificate" or "Examiner Certificate" is a certificate issued by DMV that authorizes an individual to conduct certification drive tests to determine a driver's qualification to obtain a CDL, endorsement related to a CDL, or both and to issue CDL Certificates of Test Completion.

(g) "CDL Third Party Tester" or "CDL Tester" is an individual or entity issued a CDL Third Party Tester Certificate by DMV for the purpose of certifying the competency of drivers to safely exercise commercial driving privileges. For purposes of OAR 735-060-0000 to 735-060-0130 the term includes, but is not limited to, an individual, corporation, association, firm, company, business, partnership, limited liability company, employer, federal or state agency, municipal corporation as defined by ORS 33.710, including a mass transit or transportation district, a publicly owned and operated educational facility and the Oregon Department of Education.

(h) "CDL Third Party Tester Certificate" or "Tester Certificate" is a driver competency testing certificate issued by DMV as authorized by ORS 807.080(2).

(i) "CDL Third Party Tester Representative" or "CDL Tester Representative" is an individual, designated by the CDL Tester as responsible for the CDL Third Party Tester's activities required by administrative rule and the CDL Third Party Tester Agreement.

(j) "Calendar day" is a period that begins at 12:01 a.m. and ends at 11:59 p.m. on the same day.

(k) "Commercial truck or bus driver training school" means any school that trains the general public in driving commercial motor vehicles and has been licensed by the Oregon Department of Education as a licensed private career school.

(L) "Disqualified" means a person's CDL has been suspended, revoked, cancelled or withdrawn by a State or other jurisdiction, or the person is not qualified to operate a commercial motor vehicle under 49 CFR part 391. "Disqualified" has the same meaning given the term "disqualification" in 49 CFR part 383.5.

(m) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(n) "Employee" means a person who works for another for compensation, but does not include an independent contractor.

(o) "Employer" includes any of the following:

(A) An individually owned business;

(B) A company;

(C) A corporation;

(D) An association;

(E) A cooperative; and

(F) A federal, state, county or municipal agency, including a publicly owned and operated education facility and the Oregon Department of Education.

(p) "FMCSA" means the Federal Motor Carrier Safety Administration.

(q) "Major traffic crime" means a conviction under Oregon statute or city ordinance, or a comparable statute or city ordinance of any other jurisdiction, for any traffic offense that is punishable by a jail sentence and includes the following offenses:

(A) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle;

(B) Driving under the influence of intoxicants;

(C) Reckless driving as defined in ORS 811.140;

(D) Failure to perform the duties of a driver involved in an accident or collision under ORS 811.700 or 811.705;

(E) Criminally driving while suspended or revoked, as defined under ORS 811.182;

(F) Fleeing or attempting to elude a police officer, as defined in ORS 811.540;

(G) Vehicular assault of bicyclist or pedestrian under ORS 811.060;

(H) Reckless endangerment of highway workers, as defined in ORS 811.231;

(I) False accident report under ORS 811.740;

(J) Knowingly violating an out-of-service notice under ORS 825.990(2); or

(K) A violation of ORS 825.990(3).

(r) "Motor carrier" means for-hire carrier or private carrier as those terms are defined in ORS 825.005 and who is subject to the FMCSA Regulations.

(s) "Under the influence of intoxicants" means a person's physical or mental faculties are adversely affected by use of over the counter drugs or a lawfully prescribed controlled substance to a noticeable or perceptible degree, unlawful use of a controlled substance or consumption of an intoxicating liquor within six hours of or while conducting or taking a certification drive test.

(2) The terms "employer" and "employee" are only applicable as used in OAR 735-060-0010 through 735-060-0130. They are not intended to affect any employer or employee rights, responsibilities or obligations.

Stat. Auth.: ORS 184.616, 184.619, 807.072 & 807.080

Stats. Implemented: ORS 807.040, 807.070, 807.072 & 807.080

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; MV 23-1987, f. & ef. 9-28-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0600; MV 6-1990, f. & cert. ef. 4-2-90; MV 9-1991(Temp), f. & cert. ef. 7-26-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 16-2010, f. 9-27-10, cert. ef. 9-30-10; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11

735-060-0120

The Certification Drive Test

(1) DMV adopts the following FMCSA regulations in effect on July 1, 2008 and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

(a) 49 CFR sec. 383.75, Third Party Testing; and

(b) 49 CFR sec. 383.131 through sec. 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program must be by a CDL Third Party Examiner. The CDL Third Party Examiner must:

(a) Be certified by DMV; and

(b) Not conduct more than eight CDL Class A, B, or C pre-trip vehicle inspection tests, eight basic control skills tests and eight on-road driving tests within a single calendar day;

(c) Begin and end all CDL skills tests during daylight hours;

(d) Conduct all CDL skills tests within the State of Oregon;

(e) Conduct the CDL skills tests in the same type and class of commercial vehicle. All CDL skills tests must be completed on the same calendar day unless the driver tested has previously failed the basic control skills or on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(8) has passed, if the driver fails any CDL skills test;

(g) Conduct the same CDL skills tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the FMSCA or the driver being tested to observe or participate in CDL skills tests without the prior approval of DMV; and

(i) Conduct all tests in English as required by OAR 735-062-0075(2)(d) and (e).

(3) The CDL Third Party Examiner must do the following before administering a drive test:

(a) Ensure the driver being tested has a valid Oregon CDL instruction permit and Oregon Class C driver license or a valid Oregon CDL and, if the driver does not have a CDL, the Oregon driver license was issued at least 21 days prior to the test as required by OAR 735-060-0105(3)(i). A certification drive test must not be administered if the CDL Examiner has reason to believe that the driver's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View the driver's Medical Certificate and any required medical waiver as described in OAR 735-063-0060.

(4) The certification drive test must be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test must include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the driver's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual;

(b) A basic control skills test. This test is designed to evaluate the driver's ability to control the vehicle and judge the position of the vehicle in relation to other objects through basic starting, stopping, backing or parking maneuvers; and

(c) An on-road driving test. This test is designed to evaluate the driver's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The driver must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road driving test:

(A) It must be conducted on a driving test route approved by DMV and meeting the specifications set forth in section (5) of this rule;

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the driver seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the driver for an on-road test, but must not conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test must be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road driving test route must:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the driver to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road driving test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirement for the pre-trip inspection and on-road driving test for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11

735-062-0002

Definitions

As used in this division the following definitions apply:

(1) "Biometric data" means measurements of the physical characteristics of a person's face that can be used to authenticate the identity of the person.

(2) "CDL skills test" is a pre-trip vehicle inspection test, a basic control skills test or an on-road driving test.

(3) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(4) "Legal presence" or "legal presence in the United States" means that a person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States under federal immigration laws.

(5) "SSA" means the Social Security Administration.

(6) "SSN" means Social Security Number.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050 & 2008 OL Ch. 1
Stats. Implemented: ORS 801.163, 802.200, 807.024, 807.050, 2008 OL Ch. 1
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11

735-062-0070
Drive Test

(1) A DMV drive test examiner or a third party drive test examiner certified by DMV will conduct the actual demonstration of an applicant's ability to drive a motor vehicle (the drive test) required under ORS 807.070(3). The test(s) must be conducted in a vehicle or combination of vehicles that can be driven only with the license class for which the application is made. For example, the drive test examiner will test a person applying for a Class C driver license in a vehicle that can be driven only by a person with a Class C driver license; the drive test examiner will test a person applying for a Class A commercial driver license in a vehicle that can be driven only by a person with a Class A commercial driver license. All persons must qualify for a Class C driver license before applying for a Class A, B or C commercial driver license.

(2) Prior to conducting a drive test, DMV will ask the person for proof of compliance with financial responsibility requirements as described in OAR 735-050-0120 or proof of a uniform financial responsibility certificate as described in OAR 735-050-0050.

(3) Prior to conducting a drive test, the drive test examiner will determine if the vehicle being used for the drive test has required equipment (e.g. lights, horn, rearview mirrors, seat belts) that is in working order and may be operated in a safe condition. The examiner may refuse to conduct a drive test in a vehicle that is determined to present health or safety risks for the examiner.

(4) The drive test examiner will conduct the drive test on public streets and highways.

(5) The drive test may include checks of the applicant's ability to safely and skillfully do the following:

(a) Operate vehicle equipment and controls;
(b) Start the vehicle;
(c) Stop the vehicle;
(d) Turn and steer the vehicle;
(e) Change lanes;
(f) Merge with other traffic;
(g) Signal;
(h) Use lanes properly and maintain lane position;
(i) Control speed and obey speed limits;
(j) Back the vehicle;
(k) Observe signs, signals, other traffic and pedestrians;
(l) Use courtesy on the road and defensive driving techniques; and
(m) Demonstrate general driving ability and vehicle control.

(6) In addition to the on-road driving test, applicants for a Class A or B commercial driver license must pass a pre-trip vehicle inspection test. Applicants for a Class C commercial driver license with a passenger endorsement also must pass a pre-trip vehicle inspection test. During this test, the examiner will evaluate the applicant's ability to properly inspect vehicle components as described in the Oregon Commercial Driver Manual.

(7) In addition, prior to the completion of the on-road driving test, applicants for a Class A, B or C commercial driver license must pass a basic controls skills test. During this test, the examiner will evaluate the applicant's ability to control the vehicle and judge the position of the vehicle in relation to other objects through basic starting, stopping, backing or parking maneuvers.

(8) The first drive test or CDL skills test may be conducted the day an applicant, who is otherwise eligible, satisfactorily completes the knowledge test and vision screening, or presents a valid instruction permit, except as indicated in section (8) of this rule. If the applicant fails the first drive test or CDL skills test, a drive test examiner will conduct additional tests as needed, with the following frequency:

(a) A second test may be conducted no sooner than seven days after the first test;

(b) A third test may be conducted no sooner than 14 days after the second test;

(c) A fourth test may be conducted no sooner than 28 days after the third test; and

(d) A fifth test may be conducted no sooner than 28 days after the fourth test.

(9) The first drive test for a provisional license applicant under 18 years of age may be conducted the day the applicant becomes eligible for the test. To be eligible for a drive test, the applicant must present a valid instruction permit. A drive test examiner will conduct additional drive tests with the following frequency:

(a) A second drive test may be conducted no sooner than 28 days after the first drive test;

(b) A third drive test may be conducted no sooner than 28 days after the second drive test;

(c) A fourth drive test may be conducted no sooner than 28 days after the third drive test; and

(d) A fifth drive test may be conducted no sooner than 28 days after the fourth drive test.

(10) No more than five drive tests may be conducted within any 12-month period. Following a fifth drive test failure within a 12 month period, no further drive tests will be conducted for one year from the date of the fifth drive test failure.

Stat. Auth.: ORS 184.614, 184.619, 802.010, 802.200, 802.540, 807.070 & 807.080
Stats. Implemented: ORS 807.070
Hist.: MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0027; MV 25-1989, f. & cert. ef. 10-3-89; MV 53-1989, f. & cert. ef. 12-1-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 7-1991, f. & cert. ef. 7-16-91; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 2-2010, f. & cert. ef. 1-28-10; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11

735-062-0200
Conversion From Another Jurisdiction's Commercial Driver License

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require an applicant for a commercial driver license in this state who currently holds a CDL issued by another jurisdiction to:

(a) Take and pass the Class C knowledge test and a vision screening; and

(b) Take and pass the CDL skills tests and knowledge test required, if the person applies for a higher class license.

(2) DMV may waive all tests, except the Class C knowledge test and the hazardous materials endorsement knowledge test, if the applicant applies for a license equal to the CDL the applicant has been issued by another jurisdiction and the CDL has not been expired for more than one year.

(3) DMV may require an applicant to take any or all CDL tests prior to issuing a CDL.

(4) DMV will submit an inquiry through the Commercial Driver License Information System (CDLIS) and the National Driver Register (NDR)/Problem Driver Pointer System (PDPS) before issuing an Oregon CDL. DMV will not issue an Oregon CDL if the inquiry shows:

(a) The applicant has a current and valid CDL, issued by another jurisdiction unless the CDL is surrendered to DMV or the applicant certifies it has been lost or destroyed;

(b) The applicant's driving privileges are suspended, revoked or canceled in another jurisdiction; or

(c) The applicant is disqualified from operating a commercial motor vehicle in another jurisdiction.

(5) The driving record of the applicant from another jurisdiction will become a part of the Oregon driving record as provided in OAR 735-062-0210.

(6) A person whose driving privileges have been suspended, revoked, or canceled in another jurisdiction or who has been disqualified from operating a commercial motor vehicle in another jurisdiction, must be eligible for valid driving privileges in the other jurisdiction before an Oregon CDL may be issued. When the person is eligible for valid driving privileges in the other jurisdiction, he or she may ask that DMV check CDLIS and NDR/PDPS to verify the eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050 & 807.070
Stat. Implemented: ORS 807.045
Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0015; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 4-2007, f. 5-24-07, cert. ef. 6-5-

07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 24-2008, f. 9-11-08, cert. ef. 10-1-08; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11

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Rule Caption: Revision of Bulk Use Fuel Sales Reporting and Remittance of Tax.
Adm. Order No.: DMV 21-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 10-1-2010
Rules Adopted: 735-176-0023
Rules Amended: 735-176-0000, 735-176-0010, 735-176-0017, 735-176-0019, 735-176-0020, 735-176-0021, 735-176-0022, 735-176-0030, 735-176-0040, 735-176-0045
Subject: Several use fuel sellers were claiming four percent tax credit on bulk sales, which results in about $80,000 of lost revenue for ODOT per year. The rule amendment clarifies that because the use fuel seller is paying the tax on behalf of the use fuel user(s), the four percent credit cannot be claimed on these sales. Rather, the four percent credit is available to licensed use fuel sellers when they are remitting tax for which they are responsible as sellers.

Further, use fuel users approached ODOT about simplifying their reporting requirements. To meet their request, the rule amendment

1) creates Use Fuel User Simplified Reporting, which allows use fuel users to report all fuel handled on one report on a monthly basis; 2) creates Third Party Payers (people or businesses who pay tax on behalf of use fuel users) to allow the Department to match user reports and supplier payments, should the user want the supplier to pay the tax for them and 3) defines Registered Bulk Fuel Distributors (people or businesses who sell bulk fuel to use fuel users, but are not licensed as use fuel sellers), to capture fuel handled information from bulk suppliers that are not licensed as use fuel sellers.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-176-0000
Definitions

(1) "Bulk Facility" means a fixed storage location for which the primary purpose is fuel distribution by truck to customers' locations. Dispensing fuel at the bulk facility into a vehicle or container is not prohibited, but may be subject to tax.

(2) "Cardlock Statement" means the printed detail of customer purchases using a cardlock card. Each statement shall contain:

(a) The card issuer's name and address;

(b) The customer's name and address; and

(c) The transaction activity detailed by card number.

(3) "Electronic Invoice" means the data captured when a cardlock card is used for a fuel purchase. The electronic invoice shall contain the same information as in "Invoice." Commonly, a series of electronic invoices will be printed in a periodic cardlock customer statement.

(4) "Emblem" means the document issued by the Department, which allows the licensed user to purchase fuel with the Oregon use fuel tax deferred. Emblems are issued for a specific vehicle and renewed annually.

(5) "Fleet Fueling" means a mobile retail fueling operation where the licensed seller places fuel into the tank of a vehicle or equipment at various locations. Any sales made without collecting Oregon tax are subject to invoice requirements in ORS 319.671.

(6) "Incidentally Operated" means the vehicle or equipment is primarily designed to be operated off road but is allowed up to five (5) miles on-road travel starting from the location the vehicle was garaged or parked the previous day. If in excess of these miles, all on-road use is subject to tax.

(7) "Invoice" means the receipt or other record of an individual transaction, completed at the time of the sale. An invoice shall contain the following:

(a) Seller's name and address;

(b) Full date of sale;

(c) Fuel types;

(d) Gallons sold;

(e) The amount of Oregon use fuel tax collected, if any (shown separately from total purchase amount);

(f) If tax was collected for fuel sold into the fuel tank of a vehicle over 26,000 pounds the invoice/receipt must contain:

(A) Oregon Motor Carrier Transportation Division issued plate number; or

(B) Oregon Motor Carrier Transportation Division weight receipt number; or

(C) Oregon Motor Carrier Transportation Division pass number; or

(D) Oregon Fuels Tax Group emblem number.

(g) If exempt, the reason for exemption as allowed by ORS 319.671.

(8) "Non-retail Facility," as defined in ORS 319.520(11), means an unattended facility where use fuels are dispensed through a card activated fuel dispensing device to non-retail customers.

(9) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged by the Department with the administration of ORS 319.010 through 319.880 on behalf of the state of Oregon.

(10) "Register" means to be entered into the Department's registry as a third party payer. This option allows a bulk facility that is not otherwise qualified as a use fuel seller (as defined by ORS 319.520 (9)), and therefore not licensed with the state of Oregon, to act as a third party payer. By registering with the state of Oregon as a third party payer, the bulk facility receives a registry number, which enables the state of Oregon to track and record bulk sales information when the third party payer is operating in accordance with OAR 735-176-0023.

(11) "Registered Bulk Distributor" means an entity that sells bulk use fuel to a use fuel user and is not otherwise qualified as a use fuel seller (as defined by ORS 319.520(9)), and is therefore not licensed with the state of Oregon. A Registered Bulk Distributor must comply with Administrative Rules chapter 735, section 176 in order to pay taxes on behalf of users as a third party payer.

(12) "Retail Facility" means a fueling operation that does not qualify as a non-retail facility. Unattended facilities that are not capable of generating an electronic invoice are considered retail facilities.

(13) "Simplified User Reporting" means a use fuel user who opts to pay tax on all gallons purchased on a monthly basis at bulk facilities, retail facilities, and non-retail facilities and report those purchases in a format determined by the Department.

(14) "Third Party Payer" means either a bulk facility that reports all bulk fuel sales, collects and remits the applicable tax to the state of Oregon on behalf of use fuel users, or a licensed use fuel seller who is collecting and remitting the applicable tax to the state of Oregon on behalf of use fuel users as part of its operation.

(15) "User" or "User of Fuel in a Motor Vehicle" as used in ORS 319.510 through 319.880 and OAR chapter 735, division 176, means a person as defined in ORS 319.520(12) who uses fuel in a motor vehicle as defined in ORS 319.520(15). "User" or "user of fuel in a motor vehicle" includes, but is not limited to, a lessor who allows a motor vehicle to operate on the highways of this state and allows the lessee to use fuel in that motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.880
Hist.: MV 22, f. 2-15-63; MV 4-1980, f. & ef. 3-4-80; MV 24-1981, f. 10-30-81, ef. 11-1-81; MV 3-1982, f. & ef. 1-4-82; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0010
Use Fuel Seller Licensing Requirements

(1) Seller License. Persons who sell fuel for use in a motor vehicle are required to be licensed. They must maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the filing due date. Persons who do not sell fuel for use in a motor vehicle are not required to be licensed. They must, however, maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the date of sale and make them available to the Department upon request.

(2) Bond amounts for licensed sellers will be two times the estimated monthly tax liability as determined by the Department.

(a) For new licensees, the bond amount shall be determined by volume sold by prior owner or similar sellers in the area.

(b) In the event there is no reliable data on which to estimate the bond, the seller will post $1,000 bond or deposit, subject to annual review and adjustment.

(3) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.621, 319.665 & 319.697
Hist.: MV 22, f. 2-15-63; MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; MV 23-1981, f. 10-30-81, ef. 11-1-81; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0017
Use Fuel Seller Reporting Requirements

(1) Fuel is presumed to be used on road when sold. Failure to account for non-taxed sales with accurate documentation completed at the time of sale, may result in the assessment of tax on the gallons of fuel and penalty and interest on the tax that has not been reported and remitted.

(2) Every seller must prepare a tax report that completely summarizes use fuel gallons sold, distributed, or used during the report period. Schedules are required for each type of operation. Total taxable gallons from each schedule will be carried to the appropriate line on the front page of the seller report for computation of the tax, penalty and interest as applicable.

(3) Bulk fuel sales, both tax paid and tax exempt, must be reported on the forms prescribed by the Department and submitted not later than the 20th day of the succeeding calendar month.

(4) "Shall report and remit" means a complete seller report, with all required schedules on forms prescribed by the Department and full remittance of tax must be received by the Department or its designated agent, not later than the 20th of the succeeding calendar month.

(a) Receipt will be considered the date evidenced by a legible United States Postal Service cancellation stamp, certified mail receipt or other third party official certification.

(b) When an official cancellation stamp certification is not present, the date that the report and payment is actually received by the Department (or its designee) will be used to determine timeliness.

(c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, receipt of the report and payment must be received by the Department on or before the next business day.

(d) A credit of 4% of the tax is available to a licensed use fuel seller based on the seller's tax liability, which is supported by schedules showing the fuel was placed into the fuel tank of motor vehicles. The 4% credit of tax is not applicable to bulk fuel sales.

(e) The full tax amount will be charged when a failure to file assessment is made.

(f) A seller will be deemed to have failed to file a report when:

(A) The report has not been filed by the next report due date if the seller is a monthly filer; or within 45 days of the due date if the seller is a quarterly or annual filer; or

(B) The Department has requested that a report be filed by a specified date and the report is not received by the specified date.

(5) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

(6) Collecting Tax on Sales.

(a) Persons who sell fuel and place it into the fuel tank of motor vehicles, except for sellers at non-retail facilities as defined in ORS 319.520(11), shall collect the Oregon tax at the time of sale except for sales into:

(A) Vehicles displaying a valid ODOT Motor Carrier Transportation Division weight receipt or pass;

(i) An invoice is required for sales into the fuel tank of motor vehicles with a combined weight in excess of 26,000 pounds where the tax was collected at the time of sale.

(ii) Invoice must contain information described in 735-176-0000 (7).

(B) Vehicles displaying a valid use fuel vehicle emblem issued by the Department;

(C) Vehicles displaying a United States government license plate or the registration plate for state or local government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(D) Farm tractors or other agricultural implements only incidentally operated on the highway as defined in ORS 319.520(10); and

(E) Cans, barrels, or containers other than the fuel supply tank of a motor vehicle.

(b) If the tax is not collected, pursuant to the exception under subsection (6)(a) of this rule, the seller shall show on the sales invoice:

(A) The United States government plate number.

(B) The registration plate number for a government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(C) The ODOT Motor Carrier Transportation Division weight receipt or pass number;

(D) ODOT use fuel emblem number; or

(E) Description of equipment or container when delivered into farm equipment, can or barrel.

(c) Suppliers may collect tax on deliveries into the bulk tank of an end user at the customer's request, provided the supplier is registered as a third party payer or is a licensed use fuel seller.

(A) Collection of tax may not occur when the purchaser will be subsequently selling the fuel into the fuel receptacle of a motor vehicle that propels the vehicle on the roads.

(B) Collection of tax at a user's request does not necessarily relieve the user of the need to be licensed and report.

(C) Taxes collected by a third party payer must be reported and remitted to the Department, in accordance with OAR 735-176-0023, on a monthly basis in a format determined by the Department

(D) The 4% credit available to use fuel sellers is not applicable to bulk fuel sales.

(7) A seller, as defined by ORS 319.520(13)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is owned by the seller, must retain written certification signed by the purchaser on forms provided by the Department that the use of the fuel is tax deferred or exempt from the tax imposed under ORS 319.530.

(a) "Certifies to the Seller" means the customer completes and signs the "Certification of Oregon Use Fuel Exempt Tax Status" form as provided by the Department. The seller is responsible for collecting and remitting the tax until the signed and dated exemption certificate is received from the customer. The form will contain:

(A) The name and address of the seller;

(B) The name, address, account number and signature of the purchaser;

(C) The reason that the use fuel tax should not be collected by the seller;

(D) A list of vehicles and cards; and

(E) A statement from the purchaser that for all use fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are tax deferred or exempt from use fuel taxation under ORS 319.510 through 319.880.

(b) A seller may not sell use fuel without the tax until a valid exemption certificate is completed, signed and returned to the seller; and

(c) The customer provides the identifying information for each cardlock card to qualify the tax deferred status.

(8) Sellers, as defined by ORS 319.520(13), who do not operate non-retail facilities in Oregon but who own the accounts of purchasers who purchase fuel at Oregon non-retail facilities, must be licensed with the Department and are required to comply with all of the provisions of ORS 319.510 through 319.880 and this rule.

(9) When a cardlock card is used at a retail facility, the retail operator may deduct those sales from the taxable sales. The owner of the card reader will provide the retail operator with the network statement verifying both the taxed and non-taxed gallons sold through the reader.

(10) A seller, as defined by ORS 319.520(13), who sells at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is not owned by the seller, must provide, upon request of the Department, the purchaser's account number and the name and address of the non-retail seller who owns the account.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.990
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0019
Use Fuel Seller Record Keeping Requirements

(1) Record Requirements. Every seller of fuel for use in a motor vehicle shall maintain and keep records for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, as follows:

(a) A purchase journal or other record of fuel received supported by purchase invoices and bills of lading showing delivery location for all use fuel purchases;

(b) A record of all bulk fuel sales, and transfers;

(c) A physical inventory of bulk fuel storage shall be recorded by the end of business on the last day of each calendar month and preserved for audit purposes. Tank inventory readings may be electronic tank monitor readings or physical stick inventory readings;

(d) Pump meter readings shall be taken by the end of business on the last day of the month and retained for audit purposes. Physical pump meter readings (or non-resettable electronic readings) will be taken for all dispensers of use fuel operated by the Seller at a location;

(e) Invoices upon which tax collections are recorded shall be kept separate from other sales invoices;

(f) Source documents for tank inventory and pump meter readings for audit purposes (whether manual or electronic readings);

(g) Copies of customer invoices, whether paper or electronic, shall be kept for audit purposes. If tax is collected from use fuel users at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected. Non-retail sellers will also retain fuel network statements to support customer invoices; and

(h) Copies of exemption certificates that include a list of cards and vehicles if cardlock cards are issued.

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the state of Oregon to examine the licensee's records. At any time such travel is determined necessary the licensee must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(4) Sellers must make documentation readily available to the Department upon request by the Department by the date prescribed by the Department.

(5) Sellers who fail to provide records for review are subject to assessment based on "best available information" collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.990
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0020
Use Fuel User Licensing Requirements

(1) License Requirements.

(a) Persons who use fuel as defined in ORS 319.520(12) in a motor vehicle, except those excluded in ORS 319.550, must first apply for and obtain a user license and a vehicle emblem for each vehicle;

(b) User licenses are subject to bonding as specified in subsection (4) of this section;

(c) Emblems are issued for specific vehicles on an annual basis; and

(d) ORS 319.611(1) imposes a penalty of 25 percent of the tax for using fuel without first obtaining a valid license and vehicle emblem.

(2) Other users required to be licensed and report vehicle operations and fuel usage include:

(a) Users of vehicles over 26,000 Gross Vehicle Weight Rating when any of the miles operated in Oregon are not subject to weight mile tax;

(b) Oregon state agencies;

(c) Oregon counties;

(d) Oregon cities;

(e) Rural fire protection districts;

(f) School districts;

(g) Special districts; and

(h) Other users as notified by the Department.

(3) Nonresidents in this state a total of 30 days or less during the calendar year are not required to be licensed if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(4) Bond amounts are limited as shown in ORS 319.570. Bonds for licensed users will be two times the estimated monthly tax liability as determined by the Department. The estimated tax liability is not reduced by tax-paid fuel purchases.

(a) In the event there is no reliable data on which to estimate the bond, the user will post $100 bond or deposit, subject to annual review and adjustment.

(b) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

(5) An emblem is required to be displayed on the vehicle for which it was issued when purchasing fuel for the vehicle. An emblem is considered to be displayed in a conspicuous place if it is readily accessible and presented to the station attendant at the time of fueling, or the cardlock card issuer upon request and at the time the account is set up, or when requested by the supplier. Emblems are not required when a licensed user fuels only from a bulk tank, owned by the licensed user.

(6) The Department may refuse to cancel a user license when such cancellation is requested by the user, if the user is required to report. Effective cancellation dates may be set by the Department if the user does not return emblems. If emblem(s) is not returned at the request of the Department, then the user shall file reports throughout the year in which the emblem will expire.

(7) Responsibilities of the User:

(a) List all use fuel vehicles on application and user report;

(b) Retain emblem with the vehicle;

(c) Retain fueling and mileage records by vehicle;

(d) Notify the Department of any changes in vehicles;

(e) Cancel license in writing if the license is no longer needed; and

(f) Return emblems when license is canceled or revoked.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; Administrative Renumbering 3-1988, Renumbered from 735-012-0036; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0021
Use Fuel User Record Keeping Requirements

(1) Record Requirements. Every user of fuel must maintain and keep the following records:

(a) A purchase journal or other record of fuel received supported by purchase invoices. If Oregon tax is included in the purchase price, a copy of the invoice must be provided with the user report to receive tax-paid fuel credit;

(b) A record of the number of miles traveled over Oregon highways. In the absence of affirmative evidence all fuel will be presumed to have been used on Oregon roads;

(c) If fuel is purchased in bulk, a stock summary of fuel handled during each month with an analysis as to inventories, receipts, sales, use, and transfers;

(d) If tax is paid to a third party payer at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected;

(e) If fuel is stored in bulk, a physical inventory shall be taken at the end of each month and preserved for audit purposes. Consumption records will be retained by the user and made available to the Department upon request by the Department;

(f) All required records shall be kept within the state of Oregon and preserved for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, and provided to the Department as required for examination; and

(g) A user with one use fuel vehicle with a light weight of less than 8,000 pounds, as verified by a method approved by the Department, may, in lieu of the requirements detailed in section (1)(a) through (1)(f) of this rule, keep an accurate record of Oregon miles driven. Tax for this user is calculated using a reasonable mile per gallon (as determined by the Department using industry standards) applied to Oregon miles traveled.

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) At the discretion of the Department, if at any time the auditor for the state travels outside the state of Oregon to examine company records, the company must reimburse the state for travel expenses, including transportation, meals, and lodging costs incurred by the auditor, based on actual cost to the state.

(4) Users must make documentation readily available to the Department upon request of the Department by the date prescribed by the Department.

(5) A user who fails to provide records for review is subject to assessment based on "best available information," collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0022
Use Fuel User Reporting Requirements

(1) Every user of fuel, except for users described in 735-176-0022(3)(a)(A) must prepare a tax report which completely summarizes the miles driven and fuel used during the report period. Schedules must be included with the tax report as well as remittance for tax due.

(2) "Shall file with the Department" means a complete user report with all required schedules and full remittance are received by the Department or its designated agent, on or before the 20th of the month following the end of the reporting period. If the 20th falls on a Saturday, a Sunday or a recognized state or federal holiday, the report will be considered timely filed if received by the next business day.

(3) Tax Reports:

(a) Every licensed user of fuel who operates a vehicle which is subject to the Use Fuel Tax Law is required to file a monthly report of miles operated and fuel used, except that:

(A) Licensed users who operate one vehicle of less than 8,000 pounds light weight may file an annual report provided they do not operate any other use fuel vehicles. This report is due by March 1, of the year following the year of report; or

(B) Users with a monthly tax obligation of less than $300 may be authorized by the Department to file quarterly reports, unless the tax is paid to the third party payer at the time of sale, which requires monthly reporting.

(b) Tax report due dates are as follows:

(A) Monthly reports are due on 20th day of the next calendar month;

(B) Quarterly tax reports:

(i) First calendar quarter reports are due April 20

(ii) Second calendar quarter reports are due July 20

(iii) Third calendar quarter reports are due October 20

(iv) Fourth calendar quarter reports are due January 20

(C) Annual reports are due January 20 of the following year.

(D) User simplified reporting is due on the 20th day of the next calendar month in a format determined by the Department.

(c) A vehicle operations schedule will be completed for miles driven for each vehicle. A deduction is allowed for the following:

(A) Miles reported to Motor Carrier Transportation Division on which weight mile tax was paid;

(B) Miles driven outside Oregon. Retain mileage records;

(C) Miles driven off-road. Retain mileage records; and

(D) For qualifying school districts and education service districts, bus miles driven to transport students, and in support of student transportation, such as driver training, fueling, maintenance and similar activities as approved by the Department are tax refundable. Bus charter miles driven and school district vehicles not used to transport students are subject to tax.

(d) A schedule of fuel purchases and usage will be completed for fuel used during the report period, from all sources. If the fuel source includes bulk fuel, a stock summary of fuel handled must be maintained.

(e) Licensed users who have paid any Oregon tax on fuel purchased from Oregon sellers of fuel must detail such purchases in the fuel schedule of the tax report form and treat such transactions as credits against their total tax liability. Credit may be taken for tax paid on gallons up to the amount of gallons used in Oregon during the report period.

(f) Users who do not provide vehicle specific mileage and consumption records are not eligible for refunds or credits of tax paid on fuel used in a non-taxable manner.

(4) Payment of tax to third party payer does not relieve the user of tax liability or reporting requirements. If the third party payer does not remit the tax, or the Department is unable to verify the tax was paid, an assessment of tax, penalty and interest will be sent to the user.

(5) Users opting for simplified reporting will not be able to claim any tax-exempt usage for fuel. All gallons purchased must be tax paid, regardless of the type of facility (bulk, retail, and/or non-retail) from where the fuel was purchased.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697, 319.831, 319.820
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0023
User Payment of Tax Through Third Party Payer

(1) A user may choose to pay the tax on use fuel bulk purchases to a bulk facility, from which the fuel is purchased, by entering into an arrangement with a bulk facility. The bulk facility must be either registered with the Fuels Tax Group to operate as a third party payer, or be a licensed seller that also operates as a third party payer. A licensed seller acting in such capacity is not required to also be registered as a third party payer, but will report bulk sales on the third party payer forms as prescribed by the Department.

(a) The third party payer must maintain records of fuel manufactured, purchased, handled, and distributed or sold and any taxes collected, and must preserve them for three years from the due date of the tax report, which is required to be filed with the tax payments made on behalf of licensed use fuel users who have opted for simplified reporting.

(b) Bulk fuel sales will be recorded on forms prescribed by the Department.

(2) Third party payers must report in a format determined by the Department and remit the tax collected on behalf of use fuel users. Regardless of tax liability, third party payers must report and remit use fuel tax on a monthly basis.

(a) Reports are due on the 20th of the month following the end of the calendar month being reported.

(b) The third party payer will retain proof of tax paid to the state of Oregon and filed tax reports for all tax collected on bulk sales for three years.

(3) The third party payer option is an accommodation to users. The user is ultimately responsible for the tax reporting and liability. If a third party payer fails to report, provide schedules or pay tax, in accordance with OAR chapter 735, division 176, the user will be responsible for the tax owed, but not paid, as well as any penalty and interest. The user will also be responsible for tax amounts deducted when a third party payer takes the 4% credit on bulk fuels, where prohibited by OAR 735-176-0017.

(4) A third party payer's failure to report, provide schedules or pay all of the bulk fuel tax collected will result in cancellation of the registration and the inability of any user to have that third party payer make payments on their behalf. Users that make payments through a third party payer that has had their registration cancelled will be notified by the Department, but users remain responsible for all tax payments regardless of whether or not notified by the Department.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697, 319.831, 319.820
Hist.: DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0030
Use Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.694(2) allows the Department to waive penalties for late payment of use fuel tax.

(2) An entity or a person may submit a written request for waiver of late payment penalties to the Department.

(3) The penalty under ORS 319.694 may be waived if the taxpayer shows reasonable cause for delay in filing the report or paying the tax.

(a) A taxpayer who wishes to apply for waiver of the penalty established by ORS 319.694(2) for failure to file a report or pay a tax must make an affirmative showing of all facts alleged as a reasonable cause for the failure to file the report or pay the tax on time in a written statement containing a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to, the following:

(A) War, riot, rebellion, acts of God or other disaster which rendered it impossible to make the filing or payment or which made delay unavoidable in making the filing or payment; or

(B) Acts or omissions by a third party which were beyond the control of the person making the filing or payment and which made delay unavoidable in making the filing or payment; or

(C) The person took in good faith all steps and precautions reasonably necessary to ensure the timeliness of the filing or payment, and

(D) Any other criteria the Department may find to be informative and appropriate.

(c) The calculation of the penalty will be shown on all adjustments. If the person requests a waiver and it is granted, the amount waived will also be shown.

(d) The following reasons are not acceptable for granting penalty waiver:

(A) Employee incompetence or inexperience;

(B) Employee turnover;

(C) Misunderstanding or ignorance of law;

(D) Computer failure or error that is not the result of a natural disaster;

(E) Changeover to new accounting processes, software or upgrades;

(F) Change in company operations; or

(G) Reliance on, or errors made by third party payers, suppliers or customers.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-012-0045; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0040
Use Fuel Tax Credit of Interest on Tax Overpayments

(1) The Department may allow interest credit for overpayments of use fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purpose of ORS 319.694(3)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit

period" shall mean a period not to exceed three years prior to the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period shall not be:

(a) Considered as interest on overpayments in the current audit period; or

(b) Subject to credit under ORS 319.694(3)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-012-0055; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

735-176-0045
Refunds and Credits of Use Fuel Tax

(1) Refunds of use fuel tax are allowed in the following circumstances:

(a) Fuel is used in another state and is also taxed by that state (proof of payment of tax to other state is required);

(b) Fuel is used off-road in a licensed vehicle (mileage records are required);

(c) Fuel is used in a qualifying government vehicle (federal, state, county, city);

(d) Fuel is used in qualifying student transportation;

(e) Fuel is used by a rural fire district;

(f) Fuel is used by a qualifying special district; and

(g) Refunds are limited to fuel purchased within 15 months of the date of the claim; application for refund is made on the form prescribed by the Department.

(2) Use fuel users who pay their taxes through a third party payer or opt for simplified reporting are not eligible for refunds or credits.

(3) An erroneous collection occurs when the seller has the information to correctly and completely document a tax deferred sale at the time of the transaction, but the seller collected the tax in error.

(a) Erroneous collection claims are filed with the fuel supplier/seller and must be made within three years of the date of purchase.

(b) Erroneous collections may occur in non-retail sales.

(c) Erroneous collections do not occur in retail sales with the exception of fleet fueling operations.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 21-2010, f. 11-19-10, cert. ef. 1-1-11

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Employment Department
Chapter 471

Rule Caption: Adds employer tax information to department confidentiality rules.
Adm. Order No.: ED 5-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Adopted: 471-010-0111
Subject: Adds a section to the department's confidentiality rules to cover disclosure f employer tax information.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-010-0111
Unemployment Insurance Tax Disclosure

The department may disclose confidential Tax information pertaining to an employing unit to employees of the employing unit or agents thereof if both of the following conditions are met:

(1) The employing unit provides informed consent authorizing the disclosure, or the employee or agent provides the department with reasonable assurance that they are acting with the informed consent of the employing unit, and.

(2) The identity of the person receiving the information has been established with reasonable assurance.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 5-2010, f. & cert. ef. 12-13-10

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Rule Caption: Notification date requirement for employer tax rate calculation – successor companies.
Adm. Order No.: ED 6-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Amended: 471-031-0140
Subject: Streamlines tax rate calculation to use a single tax year for 100% successor companies. This replaces the rule requiring successor firms to split their calculation across two tax years, which created additional administrative burden.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-031-0140
Transfer of Experience Determination, Tax Rate, Consolidation

(1) For purposes of ORS 657.480, an employing unit is a total successor to the experience of an employing enterprise when all or substantially all of the components parts of the employing enterprise are transferred to or otherwise acquired by the employing unit, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer. If at the time of the purchase or transfer the acquired employing entity is inactive, no transfer of experience shall be allowed.

(2) An employer whose tax rate for a calendar year is determined in accordance with either ORS 657.462 or 657.435 and which has become final in accordance with ORS 657.485 shall pay taxes at the determined rate on all wages paid by all employing units of the employer during the calendar year for employment as defined in ORS chapter 657.

(3) In consolidation of existing employing units, the tax rate experience will be consolidated for the next year's rate determination only if:

(a) The effective date of the consolidation is on or before August 31 of the current year; and

(b) The Department is notified of the consolidation in writing prior to November 15 of the same year.

(4) When an employing unit acquires the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), the penalty tax rate will transfer.

(5) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.435, 657.462, 657.480 & 657.485
Hist.: 1DE 153, f. 12-23-77, ef. 1-1-78; ED 2-1989, f. & cert. ef. 10-30-89; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06; ED 6-2010, f. & cert. ef. 12-13-10

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Rule Caption: Notification date requirement for employer tax rate calculation – partial successor companies.
Adm. Order No.: ED 7-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Amended: 471-031-0141
Subject: Streamlines tax rate calculation to use a single tax year for partial successor companies. This replaces the rule requiring successor firms to split their calculation across two tax years, which created additional administrative burden.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-031-0141
Partial Transfer of Experience

(1) Under ORS 657.480(1) A new or existing employing unit is a partial successor to the experience of an employing enterprise when an identifiable and segregable portion of the employing enterprise is transferred to or otherwise acquired by the employing unit, including the employees of that portion of the employing enterprise necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(2) For the period beginning with the date of the transfer of the employment experience record through the end of the calendar year in which the transfer occurs, the contribution rate of the predecessor shall be the same as if there had been no transfer. Upon determination for partial transfer the Director shall:

(a) Assign a contribution rate for a successor that is a new employing unit, to be effective from the date of the transfer through the end of the calendar year in which the transfer occurs; and

(b) Notify the successor in writing of the tax rate assigned in subsection (2)(a) of this rule.

(3) In a partial consolidation, when both employing units are existing employers, the tax rate experience shall be consolidated for the next year's rate determination only if the date of the transfer is on or before August 31 of the current year.

(4) The percentage of employment experience attributable to the transfer shall be calculated by dividing the number of employees hired by the successor that are attributable to the transfer by the total number of employees of the predecessor prior to the transfer. This percentage, rounded to the nearest percentage number, shall then be applied to the benefit charges and taxable payroll of the predecessor and the resulting amounts shall comprise the employment experience to be transferred to the successor's account. The experience shall be added to the successor's account in the same quarter it is removed from the predecessor's account. The percent transferred plus the percent not transferred shall equal one hundred percent.

(5) The Director may use other reasonable means of determining the percentage in section (4) that is attributable to the transfer.

(6) Benefits charged to the predecessor in the quarter in which the transfer occurs and the next three quarters shall be split between the predecessor and successor in accordance with the percentage established in section (4) of this rule. For each quarter thereafter, none of the benefits charged to the predecessor shall be transferred to the successor.

(7) For the limited purpose of calculating experience rates under this rule, if the transfer occurs after the fifteenth day of the middle month of a calendar quarter, wages paid by the predecessor during such quarter shall be split between the predecessor and successor in accordance with the percentage calculated in section (4) of this rule. If the transfer occurs on or before the fifteenth day of the middle month of a calendar quarter, none of the wages paid by the predecessor during such quarter shall be split.

(8) For each calendar year commencing on or after the date of the transfer, the successor's contribution rate shall be based on its experience with taxable payroll and benefit charges, including the experience of the acquired portion of business as determined in sections (2), (3), (4), (5), (6) and (7).

(9) The successor, if not an employer at the time of the transfer, shall become an employer as of the date of the transfer.

(10) In determining excess wages over the taxable wage amount, a successor may use the wages paid by the predecessor prior to the transfer.

(11) When the Employment Department determines that a partial transfer has occurred, the Employment Department shall give the successor notice of the determination and its effects to the partial successor. The partial successor may request a hearing in accordance with the provisions of ORS 657.683.

(12) Notwithstanding sections (2), (3), (4), (5), (6) and (7), when an employing unit acquires a portion of the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), a proportionate share of the penalty tax rate will transfer and be added to its calculated rate.

(13) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.480
Hist.: ED 1-2000, f. 3-31-00, cert. ef. 4-2-00; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06; ED 7-2010, f. & cert. ef. 12-13-10

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Rule Caption: Clarifies requirements regarding ownership of equipment.
Adm. Order No.: ED 8-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Amended: 471-031-0200
Subject: Clarifies the phrase used in ORS 657.047(1)(b), "their equipment". This rule will clarify the distinction between bona fide lease operators who own their own trucks, from those who have no ownership or right to possession of the equipment that extends beyond the business relationship.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-031-0200
Ownership of Equipment

For purposes of ORS 657.047(1)(b), "their equipment" consists of vehicles or equipment that meet all the following criteria:

(1) The vehicle or equipment is independently furnished by the service-provider, neither leased nor purchased from the for-hire carrier or from any entity affiliated with the for-hire carrier;

(2) Any lease of vehicle or equipment by service-provider as lessee, or title in the vehicle or equipment held by the service-provider is not conditioned upon any other agreement or contract, including, but not limited to, the following examples:

(a) an operator agreement between the service-provider and the for-hire carrier;

(b) a lease of the vehicle from the service-provider to the for-hire carrier;

(c) any contract obligating the service-provider to use the vehicle to provide services to the for-hire carrier.

Stat. Auth. ORS 657.610
Stas. Implemented: ORS 657.610
Hist.: ED 18-2008, f. 11-24-08, cert. ef. 12-1-08; ED 8-2010, f. & cert. ef. 12-13-10

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Rule Caption: Repeal subjectivity provision for Limited Liability Companies and Partnerships.
Adm. Order No.: ED 9-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Repealed: 471-031-0225
Subject: Repeals subjectivity provisions for Limited Liability Company members and Limited Liability Partnership partners.
Rules Coordinator: Courtney Brooks—(503) 947-1724

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Rule Caption: Repeals provisions of musicians' exclusion.
Adm. Order No.: ED 10-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Repealed: 471-031-0230
Subject: The statute granting an exclusion of musicians operating under a contract was repealed in the 2009 Legislative Session. To be consistent, we are repealing the accompanying rule.
Rules Coordinator: Courtney Brooks—(503) 947-1724

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Rule Caption: Defines "adequate consideration" for volunteers.
Adm. Order No.: ED 11-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Adopted: 471-031-0235
Subject: For the purposes of ORS 657.010, following discussion in the 2009 Legislative Session, defines what constitutes adequate consideration for volunteers.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-031-0235
Volunteer Consideration

For purposes of ORS 657.015:

(1) "Adequate consideration for the services performed" with respect to volunteers is as defined in the Internal Revenue Code Title 26, Subtitle C, Section 3306(c)(10)(A).

(2) Payments to volunteers that are reimbursements for reasonable expenses incurred while volunteering, such as mileage or travel costs, are not remuneration for service if they are paid under an accountable plan. Payments under an accountable plan must meet all three of the following:

(a)The deductible expense was incurred while performing services as a volunteer for a religious, charitable institution or governmental entity. A reimbursement or advance must be for an income tax deductible expense and must not be an amount that would have otherwise been paid to the volunteer.

(b) The payment must be substantiated within a reasonable period of time.

(c) The volunteer must return any amounts in excess of substantiated expenses within a reasonable period of time.

Stat. Auth. ORS 657.610
Stats. Implemented: ORS 657.610
Hist.: ED 11-2010, f. & cert. ef. 12-13-10

Land Conservation and Development Department
Chapter 660

Rule Caption: Adopt permanent rules to provide camping opportunities as temporary workforce housing related to construction projects.
Adm. Order No.: LCDD 11-2010
Filed with Sec. of State: 11-23-2010
Certified to be Effective: 11-23-10
Notice Publication Date: 8-1-2010
Rules Amended: 660-033-0130
Rules Repealed: 660-033-0130(T)
Subject: Adopts amendments to OAR 660-033-0130 (16), (17, (22), and (37) to allow on-site and off-site temporary housing opportunities to be considered as part of a proposal to site an energy facility on agricultural lands. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130 (19), campgrounds, or other statute or rule when construction is complete. Repealed temporary language in OAR 660-033-0130(19).

**This filing is correcting the filing made on September 24, 2010. It includes the full text of OAR 660-033-0130.
Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0130
Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule

or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) — (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or other-

wise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(f) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(g) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban

growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multiunit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building

established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable

weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040 & 215.213
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994 , f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LDCD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10

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Rule Caption: Minor and technical amendments to conform to law, clarify wording and correct references.
Adm. Order No.: LCDD 12-2010
Filed with Sec. of State: 12-8-2010
Certified to be Effective: 12-8-10
Notice Publication Date: 11-1-2010
Rules Amended: 660-001-0000, 660-001-0005, 660-001-0007, 660-001-0201, 660-001-0210, 660-001-0220, 660-001-0230, 660-003-0005, 660-003-0010, 660-003-0015, 660-003-0020, 660-003-0025, 660-003-0032, 660-003-0033, 660-003-0050
Subject: Rules were modified to make minor and technical amendments to: conform to statutes, laws and rules; respond to Land Use Board of Appeals and other court opinions; clarify ambiguous and unclear wording consistent with the intent of the rule; update and correct references to rules, statutes or other documents and correct grammar.
Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-001-0000
Notice of Proposed Rule

(1) Except as provided in OAR 660-001-0000(2) and ORS 183.335(7), prior to the adoption, amendment, or repeal of any permanent rule, the Department of Land Conservation and Development shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule;

(b) By mailing a copy of the notice and proposed rule(s) to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule, including electronic notices if allowed by law;

(c) By mailing a copy of the notice, including electronic mailing and also publication on the department website, of notices to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption;

(d) By mailing or furnishing a copy of the notice to the Associated Press and Capitol Press Room;

(e) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(f) The department, at its discretion, may purchase a display ad in a newspaper of statewide circulation to publicize the rulemaking; and

(g) In instances where the rulemaking adopts, amends or repeals a statewide planning goal, the department shall provide additional notice as required by statute.

(2) The Commission may adopt, amend or suspend any rule by temporary rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable pursuant to ORS 183.335(5). At the time the Commission adopts, amends or suspends any rule under this section, it shall:

(a) Prepare and adopt the statements and rule documents required by ORS 183.335(5)(a) to (e) which includes the Commission's statement of its findings "that its failure to act promptly will result in serious prejudice to the public interest or the parties concerned and the specific reasons for its findings of prejudice;" and

(b) Include in the notice of adoption of any temporary rule a statement explaining the opportunity for judicial review of the validity of the rule as provided in ORS 183.400.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183
Hist.: LCD 7-1976, f. & ef. 6-4-76; LCDC 1-1995, f. & cert. ef. 1-4-95; LCCD 2-2004, f. & cert. ef. 5-7-04; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0005
Model Rules of Procedure

(1) Pursuant to the provisions of ORS 183.341, the Land Conservation and Development Commission adopts the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act, effective January 1, 2008, except for that portion of OAR 137-003-0092(2) regarding the number of calendar days allowed to act on a stay request. The number of calendar days allowed to act on a stay request shall be 75 days rather than 30 days.

(2) Pursuant to the provisions of ORS 183.457 and OAR 137-003-0008, the Land Conservation and Development Commission authorizes parties and limited parties to contested case proceedings to be represented by an authorized representative, subject to the other requirements of ORS 183.457 and OAR 137-003-0008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Land Conservation and Development Department.]

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183.341 & 183.457
Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-010-0005; LCD 5-1978, f. & ef. 3-24-78; LCD 11-1981, f. & ef. 12-15-81; LCDC 8-1983, f. & ef. 11-23-83; LCDC 2-1986, f. & ef. 4-25-86; LCDC 4-1988, f. & cert. ef. 9-29-88; LCDC 4-1990, f. & cert. ef. 8-14-90; LCDC 4-1992, f. & cert. ef. 7-30-92; LCDC 1-1995, f. & cert. ef. 1-4-95; LCDC 1-1996, f. & cert. ef. 4-3-96; LCDD 1-1999, f. & cert. ef. 1-6-99; LCDD 2-2002, f. & cert. ef. 9-23-02; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0007
Request for Stay — Agency Determination

Except as provided in OAR 660-001-0005(1) with regard to the number of calendar days allowed to act on a stay request, agency determinations concerning a request for a stay will be processed under OAR 137-003-0090 to 137-003-0092.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCDC 2-1985, f. & ef. 3-13-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0201
Definitions

The following definition, and the definitions in ORS 197.015 and 197.090(2)(e), apply to rules 660-001-0210 through 660-001-0220: "Affected local government" means the local government, as defined in ORS 197.015, that made or adopted the land use decision, expedited land division or limited land use decision at issue in the director's request under these rules.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0210
Timing of Director's Request

(1) If a meeting of the commission is scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director shall seek commission approval before appealing, or intervening in, a land use decision, expedited land division or limited land use decision to the Land Use Board of Appeals. If the next scheduled meeting of the commission does not occur or a quorum of the commission is unavailable at the scheduled meeting, the department shall proceed as provided in section (2) of this rule.

(2) If there is no commission meeting scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director may file, or intervene in, the appeal and report the action to the commission and request permission to pursue the appeal, or intervention, at the commission's next scheduled meeting.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0220
Notice

(1) When the director seeks commission approval to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision, the department shall provide

written notice to the applicant and the affected local government. The notice shall:

(a) Identify the land use decision, expedited land division or limited land use decision at issue;

(b) Give the date and location of the commission meeting at which the director will seek commission approval to file or pursue an appeal, or an intervention in an appeal, of the identified action;

(c) Inform the applicant and affected local government that each may provide written and oral testimony to the commission concerning whether to approve the director's request; and

(d) Include a list of the factors in OAR 660-001-0230(3), on which all testimony and the commission's decision must be based.

(2) The notice shall be mailed or sent by some other means such as fax or e-mail as soon as practicable after the department receives notice of the land use decision, expedited land division or limited land use decision at issue.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0230
Commission Hearing

(1) Only the director, or department staff on the director's behalf, the applicant and the affected local government may submit written or oral testimony concerning whether the commission should approve the director's request to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision.

(2) Unless the director allows a closer deadline, written testimony must be submitted at least five days before the commission meeting to be provided to commission members in advance of the meeting. Written testimony shall be no more than five pages, including any attachments, and must be received in the Department's Salem office to be "submitted" by the deadline. If the time to submit written testimony under these rules falls on a Saturday, Sunday, or state legal holiday, the time to perform the obligation shall be shortened to the next day preceding that is not a Saturday, Sunday, or state legal holiday.

(3) Written and oral testimony and the commission's decision to approve or deny the director's request shall be based on one, or more, of the following factors:

(a) Whether the case will require interpretation of a statewide planning statute, goal, or rule;

(b) Whether a ruling in the case will serve to clarify state planning law;

(c) Whether the case has important enforcement value;

(d) Whether the case concerns a significant natural, cultural, or economic resource;

(e) Whether the case advances the objectives of the agency's Strategic Plan; or

(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings, or technical assistance.

(4) The Chair shall limit the amount of time each speaker may testify, and shall exclude written or oral testimony not relevant to the factors in OAR 660-001-0230(3).

(5) Unless the Chair establishes a different order, oral testimony will be presented in the following sequence:

(a) Director, and/or department staff;

(b) Applicant;

(c) Affected local government; and

(d) Director, and/or department staff.

(6) No rebuttal or response is permitted, although the commissioners may question the director, department staff, the applicant, and the affected local government regarding the factors during the commission's deliberations.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0005
Definitions

For purposes of this rule, the definitions contained in ORS 197.015 apply. In addition, the following definitions apply:

(1) "Acknowledgment of Compliance" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan and land use regulation, land use regulations or plan or regulation amendment complies with the goals.

(2) "Affected Agencies and Districts" are state and federal agencies, special districts and other local governments having programs affecting land use.

(3) "Comments" are opinions, beliefs, or other information which a person, local coordinating body or local government wants the commission to consider in reviewing an acknowledgment request.

(4) "Objections" are statements or positions by persons (including the local coordinating body, affected agencies or districts) opposing the granting of an Acknowledgment of Compliance.

(5) "Compliance Schedule" is a listing of the tasks which a local government must complete in order to bring its comprehensive plan, land use regulations and land use decisions into initial compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted.

(6) "Urban Planning Area" is a geographical area within an urban growth boundary.

(7) "Continuance" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals and certifies that section(s) of the plan or regulation or both comply with one or more of the goals. The order specifies amendments or other action that the local government must complete within a specified time period for acknowledgment to occur. The order is final for purposes of judicial review of the comprehensive plan, land use regulation or both as to the goals with which the plan, regulation or both the plan and regulation are in compliance.

(8) "Denial" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals. The order specifies amendments or other actions that the local government must complete for acknowledgment to occur. The order is used when the amendments or other changes required in the comprehensive plan, land use regulation or both affect many goals and are likely to take a substantial period of time to complete.

(9) "Record of Proceedings Before the Local Government", as used in ORS 197.251, means the materials submitted to the director as part of an acknowledgment request in accordance with OAR 660-003-0010(2)(a), (b) and (c), supporting evidence and documents and any official minutes or tapes of meetings leading to the adoption of a comprehensive plan, land use regulations or amendments thereto. Supporting evidence and documents listed, but not submitted with the acknowledgment request as provided in OAR 660-003-0010(2)(b) shall be considered part of the record of proceedings before the local government and part of the record of proceedings before the local government and part of the record before the commission. Notwithstanding the requirements of OAR 660-003-0010(2)(b) the director may require that such evidence or documents, or a copy, be provided to the department for convenience or if required for judicial review. This definition applies to all acknowledgment requests, corrections submitted pursuant to a commission's continuance order and new acknowledgement requests subsequent to a commission's denial order submitted to the director after the effective date of this rule.

(10) "Filing" or "Submitted" for purposes of these rules shall mean that the required documents have been received by the department at its Salem, Oregon office.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.015 & 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0010
Acknowledgment Procedures

(1) When a local government has adopted a comprehensive plan and land use regulations, as provided by ORS 197.175 and 197.250, prepared corrections pursuant to a commission's continuance order, or prepares a new acknowledgment request subsequent to a commission's denial order, it may request the commission to grant an acknowledgment of compliance. An acknowledgment request shall be sent to the director of the department.

(2) The acknowledgment request shall include:

(a) A list by ordinance number and adoption date and six copies of the plans and implementing ordinances or land use regulations, inventories and other factual information to be reviewed, provided that two additional copies shall be required by the director for counties and coastal jurisdictions;

(b) Six copies of a list of all supporting documents, including minutes and tapes which comprise the "record of proceedings" provided that two (2) additional copies shall be required by the director for counties and coastal

jurisdictions. The list of all supporting evidence and documents shall identify any items not included with each plan copy, briefly describe the contents of the items not included and identify where those items may be examined by the commission, department, affected agencies and districts and interested persons. The local government shall make such supporting evidence and documents available at the hearing before the commission held pursuant to OAR 660-003-0025;

(c) Six copies of a written statement setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other documents submitted in the acknowledgment request), provided that two additional copies shall be required by the director for counties and coastal jurisdictions;

(d) The name and address of the person representing the local government to receive notice of commission consideration of the acknowledgment request and to receive a copy of the director's report required under OAR 660-003-0025;

(e) A list of all affected agencies and districts, including addresses, identified in the local government's agency involvement program; and

(f) A list of the names and addresses of the chairperson of the Committee for Citizen Involvement and other citizen advisory committees, if any.

(3) The local government requesting acknowledgment shall send a single copy of the materials described in section (2) of this rule to the appropriate local coordination body as defined in ORS 195.025.

(4) Upon receipt of a compliance acknowledgment request, the department shall review the request to determine whether the request for acknowledgment contains each of the documents and information required by section (2) of this rule. The department may decline to accept an acknowledgment request submitted for only a portion of the area of a local government.

(5) If the request is complete, the department shall commence its review of the request as required by OAR 660-003-0025 and shall provide the public notice required by OAR 660-003-0015.

(6) If the request is not complete, the department, within 14 days of receipt of the acknowledgment request, shall in writing, notify the local government what specific requirements of section (2) of this rule have not been met. If, after 30 days from receipt of an acknowledgment request a city or county has not provided the department with the required documents or information, the department shall advise the local government that the request is not complete and shall in writing inform the local government and local coordinating body of such determination.

(7) For purposes of the 90 day period as used in ORS 197.251(1), "request" means an acknowledgment request determined by the department to include all the necessary materials required by subsections (2)(a) through (f) of this rule, and thus be complete.

(8) Notwithstanding any of the provisions of section (1) of this rule, when the director determines that a modification of any of the above rules is consistent with the applicable laws and in the best interests of the public, he may make exceptions to the application of section (2) of this rule. However, in waiving or modifying the above rules, the director must assure a reasonable opportunity to review documents and prepare and submit comments and objections.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 6-1979(Temp), f. & ef. 9-6-79; LCD 1-1980, f. & ef. 1-14-80; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0015
Notice

The department shall, in writing, provide notice of the procedures and time limits for making comments or objections and of the locations where the acknowledgment request documents can be inspected by the general public and specifically to the following (except as provided in OAR 660-003-0032 through 660-003-0050):

(1) Affected agencies and districts identified by the local government or the department;

(2) The Local Officials Advisory Committee (LOAC) and the State Citizen Involvement Advisory Committee (CIAC);

(3) The county or regional planning agency acting as the local coordination body pursuant to ORS 195.025;

(4) The chairpersons of the local Committee(s) for Citizen Involvement and other citizen advisory committees identified in the acknowledgment request pursuant to OAR 660-003-0010(2)(f);

(5) Any other person(s) who have in writing to the department requested notice.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0020
Comments and Objections

(1) After notice of receipt of the acknowledgment request has been mailed there shall be a 45 day period to submit written comments or objections together with any additional evidence to the department. However, after notice of receipt of the acknowledgment request resubmitted subsequent to a continuance order has been mailed there shall be a time period determined by the director of at least 20 days to submit written comments or objections together with any additional evidence to the department.

(2) Any person(s) commenting or objecting to an acknowledgment request are urged to send written copy of their comments or objection(s) to the local government which has requested acknowledgment. When an objection is based upon site-specific goal requirements as applied to particular properties, the person objecting is urged to send a written copy of the objection to those persons owning the property which is the subject of the objection. State agency and special district comments or objections shall be subject to the requirements of ORS 197.254.

(3) The commission shall consider only those comments and objections to an acknowledgment request that allege that the local government's plan, ordinances or land use regulations do or do not comply with one or more of the goals.

(4) Any comments and objections or additional evidence which is not received by the department within the time required by section (1) of this rule shall not be considered by the commission unless the commission determines that such evidence could not have been presented as required by section (1) of this rule.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251 & 197.254
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0025
Acknowledgment Review

(1) When an acknowledgment request, corrections submitted pursuant to a commission's continuance order or a new acknowledgement request subsequent to a commission's denial order has been received by the director, the department shall conduct an evaluation of the submitted plan, ordinances or land use regulations in order to advise the commission whether or not they comply with the Statewide Planning Goals. The department may investigate and resolve issues raised in the comments and objections or upon the department's own review of the comprehensive plan and land use regulations. The department may collect or develop evidence which rebuts any supporting documents, comments, objections or evidence submitted pursuant to OAR 660-003-0010(2) or 660-003-0020(1). The results of this evaluation including response to all objections timely submitted shall be set forth in a written report. However, the failure to respond to an objection which was timely filed shall not be grounds for invalidation of a commission order issued under this rule. Copies of the department's report shall be sent to the local government requesting acknowledgment, the local coordination body, any person who has in writing commented or objected to the acknowledgment request, within the time period required by OAR 660-003-0020(1), and any other person requesting a copy in writing. The department shall send out copies of the report on an acknowledgment request at least 21 days before commission review of the acknowledgment request. However, the department shall send out copies of the report on corrections submitted pursuant to a commission's continuance order at least 14 days before commission review of such request.

(2) The local government, persons who have submitted written comments or objections under OAR 660-003-0020(1) or persons who own property which is the subject of site specific objections received under OAR 660-003-0020(1) shall have ten calendar days from the date of mailing of the department's report to file written exceptions to that report. Except as provided in section (3) of this rule, written exceptions shall not include additional evidence. Persons or local governments submitting exceptions are urged to file a copy with the affected local government and persons who submitted comments or objections. The department shall promptly submit exceptions to the commission.

(3) Written exceptions to the department's report filed pursuant to section (2) of this rule may include evidence to rebut any additional evidence

submitted pursuant to OAR 660-003-0020(1) or developed by the department pursuant to section (1) of this rule. Written exceptions which include rebuttal evidence pursuant to this section, shall clearly identify the additional evidence being rebutted and shall be limited to rebuttal evidence. Final rebuttal evidence allowed under this section shall not create a right to submit additional evidence to the commission under section (5) of this rule.

(4) The department may submit a written or oral opinion to the commission regarding any evidence, comments, objections, or exceptions submitted to the commission concerning an acknowledgment request. Persons submitting comments, objections, or exceptions within the time periods set forth in OAR 660-003-0020(1) or section (2) of this rule shall be permitted to submit evidence to rebut any new evidence submitted for the first time pursuant to section (3) of this rule.

(5) The commission may allow any person who filed written comments or objections within the time period set forth in OAR 660-003-0020(1) to appear before the commission to present oral argument on their written comments, objections or exceptions. The commission shall not allow any additional evidence and testimony that could have been presented to the local government or to the director in accordance with OAR 660-003-0020(1) or section (3) of this rule, but was not. Any new evidence submitted during, or as part of, oral argument shall not be considered by the commission unless the commission determines that such evidence could not have been presented to the local government or to the director in accordance with OAR 660-003-0020(1) or [6]section (3) of this rule.

(6) The commission may allow any interested person who has not filed written comments or objections pursuant to OAR 660-003-0020 to comment on evidence, testimony or the director's report that has already been presented to the commission. Such comments shall not be part of the record before the commission and shall not be considered comments or objections submitted pursuant to ORS 197.251(2).

(7) At the time of consideration of the acknowledgment request, the commission shall either grant, continue, postpone for extenuating circumstances or deny the acknowledgment request, or any combination of these actions including partial acknowledgment, pursuant to ORS 197.251(1).

(8) Commission orders for acknowledgment, continuance or denial shall be provided to the local government requesting acknowledgment, and persons who filed comments or objections.

(9) When the commission resumes its consideration of the acknowledgment request, submitted subsequent to a continuance order, it shall limit its review to a determination of whether the corrections submitted bring the acknowledgment submission into compliance with the Statewide Planning Goals found not to be complied with in the previous review, unless compliance with other goals is affected by the corrections.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251, 197.254, 197.340, 197.747 & 197.757
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0032
Expedited Review Upon Reconsideration or Consideration of a Subsequent Request for Acknowledgment

(1) When the commission reconsiders an acknowledgment request pursuant to a continuance order, the commission may expedite the acknowledgment procedure by waiving, reducing or otherwise modifying the requirements of OAR 660-003-0010, 660-003-0015, and 660-003-0020; provided, however, that notice will be provided to the local government, the coordination body, those persons who have submitted comments or objections on this portion of the acknowledgment request in accordance with the requirement of OAR 660-003-0020(1) and (2), those persons who request notice in writing, and a general newspaper notice. Upon resubmittal such notice shall state that there is at least a 20 day period to be determined by the director for submission of written comments or objections from the mailing of the notice of the receipt of the acknowledgment request. However, in the judgment of the director, where continuances involve relatively complex issues, the notice shall provide the maximum notice possible, up to 45 days.

(2) When the commission reconsiders an acknowledgment request subsequent to a continuance order; the commission shall expedite the acknowledgment procedure by relying on the previous record and limiting additional comments and objections, affected agency comments, and the department's review to only those aspects of a city's or county's comprehensive plan or implementing ordinances previously identified by the commission as not being in compliance.

(3) Upon receipt of corrections made pursuant to a continuance order submitted by a local government the department shall notify all persons who are entitled to notice of the local government's acknowledgment request under section (1) of this rule, of the time and place where the corrections may be inspected and the time within which objections or comments to the corrections must be submitted.

(4) Written comments or objections to the corrections made pursuant to a continuance order by the commission shall be submitted to the department in accordance with OAR 660-003-0020.

(5) The commission's review of corrections made pursuant to a continuance order or the commission's review of a new acknowledgment request made subsequent to a denial by the commission will be conducted in accordance with the requirements of OAR 660-003-0025.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 9-1981(Temp), f. & ef.10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0033
Expedited Notice Procedure for Acknowledgment

(1) When during an acknowledgment review, a city or county changes its plan or land use regulations after the comment period provided for in either OAR 660-003-0020(1) or 660-003-0032(1), the director may determine that additional notice to the public or persons who have submitted comments or objections is not necessary prior to consideration of the jurisdiction's acknowledgment request by the commission. In making this determination, the director shall carefully consider the complexity of the goal compliance issues involved, the nature and number of comments and objections previously received, the opportunities provided by the jurisdiction for public review and comment on recent amendments and the length of time between the adoption of the recent amendments and the date of commission action on the jurisdiction's acknowledgment request. The department shall work closely with persons who have previously submitted comments and objections and the jurisdiction to resolve any conflicts concerning the additional amendments prior to commission action on the acknowledgment request.

(2) The director may forego additional notice to the public and persons who have submitted comments or objections only if the jurisdiction provides general notice to the public and notifies persons who submitted comments or objections in writing of an opportunity to participate in the local hearing(s) regarding the adoption of the additional amendments. The jurisdiction shall send a copy of the written notice to all persons who submitted comments or objections and to the department in Salem.

(3) When the commission considers the jurisdiction's request for acknowledgment, the commission shall allow testimony from the public or persons who have submitted comments or objections which allege inadequate opportunity for review of the jurisdiction's amendment adopted after the comment deadline. If the commission determines that further notice and opportunity for comment is needed, or if additional opportunity to file exceptions to the director's report under ORS 197.251(3) is required, it shall instruct the director to provide such notice and opportunity for comment before the commission acts on the jurisdiction's acknowledgment request.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCDC 6-1983, f. & ef. 7-20-83; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0050
Review Upon Remand or Reversal from Oregon Court of Appeals or Oregon Supreme Court

(1) The commission shall reconsider an acknowledgment request as a result of a remand or reversal from the Oregon Court of Appeals or Oregon Supreme Court within 90 days of the date the decision becomes final. The director shall review the Court's decision and make written recommendations to the commission regarding any additional planning work that is required for acknowledgment of compliance with the goals as a result of the Court's decision.

(2) The director's recommendations shall be sent out at least 14 days before the commission's reconsideration of the acknowledgment request subject to the Court's remand or reversal. The director's recommendations shall be sent to the applicable local government, local coordination body, parties on appeal and those persons who, according to the department's records, were mailed a copy of the commission's acknowledgment or continuance order subject to the Court's remand or reversal.

(3) The persons mailed a copy of the director's recommendations under section (2) of this rule shall have ten calendar days from the date of mailing of the director's recommendations to file with the director written exceptions to those recommendations.

(4) The director may submit a written or oral opinion to the commission regarding exceptions submitted to the commission concerning the remand or reversal.

(5) The commission may allow any person who received a copy of the director's recommendation under section (1) of this rule or who filed written exceptions within the time period set forth in section (3) of this rule to appear before the commission to present oral comments on the director's recommendation or their written exceptions. The commission shall not allow additional evidence to be presented which was not part of the record of the commission's initial acknowledgment review subject to the Court's remand or reversal.

(6) The commission may allow any interested person who was not mailed a copy of the director's recommendation or did not file a written exception pursuant to sections (1) and (3) of this rule to comment on the director's recommendation or submitted written exceptions.

(7) Following review of the director's recommendation and any exceptions, the commission shall enter a continuance order for those parts of the comprehensive plan or land use regulations for which the court determined that goal compliance had not been demonstrated. The commission may also enter a limited acknowledgment order for parts of the comprehensive plan and land use regulations not affected by the continuance order.

(8) The commission's review of corrections made pursuant to an order issued pursuant to section (7) of this rule will be conducted in accordance with the requirements of OAR 660-003-0025 or 660-003-0033.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCDC 6-1985, f. & ef. 11-15-85; LCDD 12-2010, f. & cert. ef. 12-8-10

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Oregon Board of Naturopathic Medicine
Chapter 850

Rule Caption: Clarifying the education for injections.
Adm. Order No.: OBNM 6-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Amended: 850-060-0212
Subject: Amend the following sections of OAR 850-060-0212 (bold/underlined text is new; strike-through is deleted.)

OAR 850-060-0212

Education Requirements for Injections/ IV Chelation Therapy

(1) Before using therapeutic injections ~~[of vitamins and minerals]~~, or preventive injections of any substance, whether intramuscular (IM) or subcutaneous (SC) or intravenous (IV), licensee must provide proof of Board approved qualifying continuing education prior to using these applications as set forth in this rule, or proof of Board approved qualifying education received at an approved medical institution equivalent to the prescribed continuing education.

(2) ~~[Non-IV]~~ **Subcutaneous and intramuscular** therapeutic injections ~~[of vitamins or minerals]~~ require a one-time two hour qualifying education on this subject.

(3) IV therapeutic injections of vitamins or minerals require a one-time 12 hour qualifying education on this subject.

(4) Preventive injections (IM, SC, IV) require an additional one-time four hours of qualifying education in addition to the CE hours noted in OAR 850-060-0212(2) and (3).

Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0212
Education Requirements for Injections/ IV Chelation Therapy

(1) Before using therapeutic injections or preventive injections of any substance, whether intramuscular (IM) or subcutaneous (SC) or intravenous (IV), licensee must provide proof of Board approved qualifying continuing education prior to using these applications as set forth in this rule, or proof of Board approved qualifying education received at an approved medical institution equivalent to the prescribed continuing education.

(2) Subcutaneous and intramuscular therapeutic injections require a one-time two hour qualifying education on this subject.

(3) IV therapeutic injections of vitamins or minerals require a one-time 12 hour qualifying education on this subject.

(4) Preventive injections (IM, SC, IV) require an additional one-time four hours of qualifying education in addition to the CE hours noted in OAR 850-060-0212(2) and (3).

(5) The use of any IV chelation therapy requires 12 hours of Board approved qualifying education in addition to the education required in (2), (3) and (4) of this rule.

(6) Licensee must stay current in IV chelation training. Current means licensee has completed the education and obtained a certificate of competence within the last five years.

(7) Qualifying chelation therapy education must be provided by faculty with at least five years of experience in IV chelation therapy and current training approved by the Board. The qualifying education must contain all of the following:

(a) Current/ historical research on IV chelation therapy,
(b) Indications/contraindications of IV chelation therapy,
(c) IV Chelation therapy side effects and toxicity,
(d) IV Chelation therapy and practical application,
(e) IV solutions,
(f) Initial evaluation and treatment monitoring requirements,
(g) Frequency of IV treatment and remineralization,
(h) Charting requirements, standards of care, office procedures, consent to treat, nutrition and lifestyle recommendations during treatment,
(i) Heavy metal toxicity and disease,
(j) Practical on mixing and administering IV Chelation solutions,
(k) Examination for certification (exam subject to Board approval).

Stat Auth.: ORS 685.125
Stats. Implemented: ORS 685
Hist: BNE 6-2004, f. & cert. ef. 6-10-04; BNE 6-2005, f. & cert. ef. 8-15-05; Renumbered from 850-010-0212, BNE 8-2005, f. & cert. ef. 10-27-05; OBNM 6-2010, f. & cert. ef. 12-13-10

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Rule Caption: Clarifying the formulary classifications.
Adm. Order No.: OBNM 7-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-13-10
Notice Publication Date: 11-1-2010
Rules Amended: 850-060-0226
Subject: To OAR 850-060-0226 add the following classification: (bold/underlined is new text.)

(8) Central Nervous System Agents
(d) Psychotherapeutic Agents
(A) Antidepressants
(i) Monoamine Oxidase Inhibitors
(ii) Selective Serotonin- and Norepinephrine-reuptake Inhibitors
(iii) Selective Serotonin- Reuptake Inhibitors
(iv) Serotonin Modulators
(v) Tricyclics and Other Norepinephrine-reuptake Inhibitors
(vi) Antidepressants, Miscellaneous
(B) Antipsychotics, to include only the following:
(i) Atypical antipsychotics
(e) Anorexigenic Agents and Respiratory and Cerebral Stimulants
(A)Amphetamines
(B) Anorexigenic Agents and Respiratory and Cerebral Stimulants, Miscellaneous

Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0226
Formulary Compendium Classifications

The Formulary Council has approved the following pharmacologic-therapeutic classifications based on the 2009 American Hospital Formulary Service (AHFS), in addition to drugs previously approved by the Formulary Council and listed in 850-060-0225. This listing does not supersede the education and training requirement established in 850-060-0212 for administration of IV agents. The Formulary Council may consider new agents, substances and pharmacologic-therapeutic classifications for addition to this list.

(1) Antihistamine Drugs:
(a) First Generation Antihistamine Drugs;
(A) Ethanolamine Derivatives;
(B) Ethylenediamine Derivatives;
(C) Phenothiazine Derivatives;
(D) Piperazine Derivatives;
(E) Propylamine Derivatives;
(F) Miscellaneous Derivatives.
(b) Second Generation Antihistamines.
(2) Anti-Infective Agents:
(a) Antihelmintics;

(b) Antibacterials;
(A) Aminoglycosides;
(B) Cephalosporins;
(i) First Generation Cephalosporins;
(ii) Second Generation Cephalosporins;
(iii) Third Generation Cephalosporins;
(iv) Fourth Generation Cephalosporins.
(C) Miscellaneous β-Lactams;
(i) Carbacephems;
(ii) Carbapenems;
(iii) Cephamycins;
(iv) Monobactams.
(D) Chloramphenicol;
(E) Macrolides;
(i) Erythromycins;
(ii) Ketolides;
(iii) Other Macrolides.
(F) Penicillins;
(i) Natural Penicillins;
(ii) Aminopenicillins;
(iii) Penicillinase-resistant Penicillins;
(iv) Extended-spectrum Penicillins.
(G) Quinolones;
(H) Sulfonamides;
(I) Tetracyclines: Glycylcyclines.
(J) Antibacterials, Miscellaneous;
(i) Aminocyclitols;
(ii) Bacitracins;
(iii) Cyclic Lipopeptides;
(iv) Glycopeptides;
(v) Lincomycins;
(vi) Oxazolidinones;
(vii) Polymyxins;
(viii) Rifamycins;
(ix) Streptogramins.
(c) Antifungals;
(A) Allylamines;
(B) Azoles;
(C) Echinocandins;
(D) Polyenes;
(E) Pyrimidines;
(F) Antifungals, Miscellaneous.
(d) Antimycobacterials;
(A) Antituberculosis Agents;
(B) Antimycobacterials, Miscellaneous.
(e) Antivirals;
(A) Adamantanes;
(B) Antiretrovirals;
(i) HIV Fusion Inhibitors;
(ii) HIV Protease Inhibitors;
(iii) Integrase Inhibitors;
(iv) Nonnucleoside Reverse Transcriptase Inhibitors;
(v) Nucleoside and Nucleotide Reverse Transcriptase Inhibitors.
(C) Interferons;
(D) Monoclonal Antibodies;
(E) Neuraminidase Inhibitors;
(F) Nucleosides and Nucleotides;
(G) Antivirals, Miscellaneous.
(f) Antiprotozoals;
(A) Amebicides;
(B) Antimalarials;
(C) Antiprotozoals, Miscellaneous.
(3) Antineoplastic Agents (oral and topical only) limited to the following:
(a) 5FU;
(b) Anastrozole;
(c) Letrozole;
(d) Megestrol;
(e) Mercaptopunne;
(f) Methotrexate;
(g) Tamoxifen;
(h) Tretinoin.
(4) Autonomic Drugs:
(a) Parasympathomimetic (Cholinergic) Agents;
(b) Anticholinergic Agents;
(A) Antimuscarinics/Antispasmodics;
(c) Sympathomimetic (Adrenergic) Agents;
(A) α-Adrenergic Agonists;
(B) β- Adrenergic Agonists;
(i) Non-selective β — Adrenergic Agonists;
(ii) Selective β1 — Adrenergic Agonists;
(iii) Selective β2 — Adrenergic Agonists;
(C) α-And β-Adrenergic Agonists;
(d) Sympatholytic (Adrenergic Blocking) Agents;
(e) Skeletal Muscle Relaxants;
(A) Centrally Acting Skeletal Muscle Relaxants;
(B) Direct-acting Skeletal Muscle Relaxants;
(C) GABA-derivative Skeletal Muscle Relaxants;
(D) Neuromuscular Blocking Agents;
(E) Skeletal Muscle Relaxants, Miscellaneous.
(f) Autonomic Drugs, Miscellaneous.
(5) Blood Derivatives.
(6) Blood Formation, Coagulation, and Thrombosis:
(a) Antianemia Drugs: Iron Preparations.
(b)(A) Antithrombotic Agents;
(B) Anticoagulants;
(i) Coumarin Derivatives;
(ii) Direct Thrombin Inhibitors;
(iii) Heparins;
(iv) Anticoagulants, Miscellaneous;
(c) Platelet-reducing Agents;
(d) Platelet-aggregation Inhibitors;
(e) Thrombolytic Agents;
(f) Hematopoietic Agents;
(g) Hemorrheologic Agents;
(h) Antihemorrhagic Agents.
(A) Antiheparin Agents;
(B) Hemostatics.
(7) Cardiovascular Drugs:
(a) Cardiac Drugs;
(A) Antiarrhythmic Agents;
(i) Class Ia Antiarrhythmics;
(ii) Class Ib Antiarrhythmics;
(iii) Class Ic Antiarrhythmics;
(iv) Class III Antiarrhythmics;
(v) Class IV Antiarrhythmics.
(B) Cardiotonic Agents;
(C) Cardiac Drugs, Miscellaneous.
(b) Antilipemic Agents;
(A) Bile Acid Sequestrants;
(B) Cholesterol Absorption Inhibitors;
(C) Fibric Acid Derivatives;
(D) HMG-CoA Reductase Inhibitors;
(E) Antilipemic Agents, Miscellaneous.
(c) Hypotensive Agents;
(A) Calcium-Channel Blocking Agents;
(B) Central a-Agonists;
(C) Direct Vasodilators;
(D) Peripheral Adrenergic Inhibitors.
(d) Vasodilating Agents;
(A) Nitrates and Nitrites;
(B) Phosphodiesterase Inhibitors;
(C) Vasodilating Agents, Miscellaneous.
(e) Sclerosing Agents;
(f) α-Adrenergic Blocking Agents;
(g) β-Adrenergic Blocking Agents;
(h) Calcium-Channel Blocking Agents;
(A) Dihydropyridines;
(B) Calcium-Channel Blocking Agents, Miscellaneous;
(i) Renin-Angiotensin-Aldosterone System Inhibitors;
(A) Angiotensin-Converting Enzyme Inhibitors;
(B) Angiotensin II Receptor Antagonists;
(C) Mineralocorticoid (Aldosterone) Receptor Antagonists;
(D) Renin Inhibitors.
(8) Central Nervous System Agents;
(a) Analgesics and Antipyretics;
(A) Nonsteroidal Anti-inflammatory Agents;
(i) Cyclooxygenase-2 (COX-2) Inhibitors;
(ii) Salicylates;
(iii) Other Nonsteroidal Anti-inflammatory Agents.

(B) Opiate Agonists;
(C) Opiate Partial Agonists;
(D) Analgesics and Antipyretics, Miscellaneous.
(b) Opiate Antagonists;
(c) Anticonvulsants, does not include Barbiturates;
(A) Benzodiazepines;
(B) Hydantoins;
(C) Succinimides;
(D) Anticonvulsants, Miscellaneous.
(d) Psychotherapeutic Agents;
(A) Antidepressants;
(i) Monoamine Oxidase Inhibitors;
(ii) Selective Serotonin- and Norepinephrine-reuptake Inhibitors;
(iii) Selective Serotonin- Reuptake Inhibitors;
(iv) Serotonin Modulators;
(v) Tricyclics and Other Norepinephrine-reuptake Inhibitors;
(vi) Antidepressants, Miscellaneous.
(B) Antipsychotics, to include only the following:
(i) Atypical antipsychotics;
(e) Anorexigenic Agents and Respiratory and Cerebral Stimulants;
(A)Amphetamines;
(B) Anorexigenic Agents and Respiratory and Cerebral Stimulants, Miscellaneous.
(f) Anxiolytics, Sedatives, and Hypnotics, does not include Barbiturates;
(A) Benzodiazepines;
(B) Anxiolytics, Seditives, and Hypnotics; Miscellaneous.
(g) Antimanic Agents;
(h) Antimigraine Agents;
(A) Selective Serotonin Agonists: Antiparkinsonian Agents
(A) Adamantanes;
(B) Anticholinergic Agents;
(C) Catechol-O-Methyltransferase (COMT) Inhibitors;
(D) Dopamine Precursors;
(E) Dopamine Receptor Agonists;
(i) Ergot-derivative Dopamine Receptor Agonists;
(ii) Non-ergot-derivative Dopamine Receptor Agonists;
(F) Monoamine Oxidase B Inhibitors.
(j) Central Nervous System Agents, Miscellaneous.
(9) Contraceptives (foams, devices).
(10) Diagnostic Agents.
(11) Disinfectants (for Agents used on objects other than skin).
(12) Electrolytic, Caloric, and Water Balance.
(a) Acidifying Agents;
(b) Alkalinizing Agents;
(c) Ammonia Detoxicants;
(d) Replacements Preparations;
(e) Ion-Removing Agents;
(A) Calcium-removing Agents;
(B) Potassium-removing Agents;
(C) Phosphate-removing Agents;
(D) Other Ion-removing Agents.
(f) Caloric Agents;
(g) Diuretics;
(A) Loop Diuretics;
(B) Osmotic Diuretics;
(C) Potassium-sparing Diuretics;
(D) Thiazide Diuretics;
(E) Thiazide-like Diuretics;
(F) Diuretics, Miscellaneous.
(h) Irrigation Solutions;
(i) Uricosuric Agents.
(13) Enzymes.
(14) Respiratory Tract Agents;
(a) Antihistamines;
(b) Antitussives;
(c) Anti-inflammatory Agents;
(A) Leukotriene Modifiers;
(B) Mast-cell Stabilizers;
(d) Expectorants;
(e) Pulmonary Surfactants;
(f) Respiratory Agents, Miscellaneous.
(15) Eye, Ear, Nose, and Throat (EENT) Preparations;
(a) Antiallergic Agents;
(b) Anti-infectives;
(A) Antibacterials;
(B) Antifungals;
(C) Antivirals;
(D) Anti-infectives, Miscellaneous.
(c) Anti-inflammatory Agents;
(A) Corticosteroids;
(B) Nonsteroidal Anti-inflammatory Agents;
(C) Anti-inflammatory Agents, Miscellaneous.
(d) Local Anesthetics;
(e) Mydriatics;
(f) Mouthwashes and Gargles;
(g) Vasoconstrictors;
(h) Antiglaucoma Agents;
(A) α-Adrenergic Agonists;
(B) β-Adrenergic Agents;
(C) Carbonic Anhydrase Inhibitors;
(D) Miotics;
(E) Prostaglandin Analogs: EENT Drugs, Miscellaneous.
(16) Gastrointestinal Drugs:
(a) Antacids and Adsorbents;
(b) Antidiarrhea Agents;
(c) Antiflatulents;
(d) Cathartics and Laxatives;
(e) Cholelitholytic Agents;
(f) Emetics;
(g) Antiemetics;
(A) Antihistamines;
(B) 5-HT3 Receptor Antagonists;
(C) Antiemetics, Miscellaneous.
(h) Antiulcer Agents and Acid Suppressants;
(A) Histamine H2-Antogonists;
(B) Prostaglandins;
(C) Protectants;
(D) Proton-pump Inhibitors.
(i) Prokinetic Agents;
(j) Anti-inflammatory Agents;
(k) GI Drugs, Miscellaneous.
(17) Gold Compounds.
(18) Heavy Metal Antagonists.
NOTE: IV administration requires education and training compliance with 850-060-0212.
(19) Hormones and Synthetic Substitutes;
(a) Adrenals;
(b) Androgens;
(c) Contraceptives;
(d) Estrogens and Antiestrogens;
(A) Estrogens;
(B) Estrogen Agonists-Antiagonists;
(e) Gonadotropins;
(f) Antidiabetic Agents.
(A) α-Glucosidase Inhibitors;
(B) Amylinomimetics;
(C) Biguanides;
(D) Dipeptidyl Peptidase (DDP-4) Inhibitors;
(E) Incretin Mimetics;
(F) Insulins;
(G) Meglitinides;
(H) Sulfonylureas;
(I) Thiazolidinediones.
(g) Antihypoglycemic Agents: Glycogenolytic Agents;
(h) Parathyroid;
(i) Pituitary;
(j) Somatotropin Agonists and Antagonists;
(A) Somatotropin Agonists;
(B) Somatotropin Antagonists;
(k) Progestins;
(l) Thyroid and Antithyroid Agents;
(A) Thyroid Agents;
(B) Antithyroid Agents.
(20) Local Anesthetics.
(21) Oxytocics.
(22) Serums, Toxoids, and Vaccines;
(a) Serums;
(b) Toxoids;
(c) Vaccines.
(23) Skin and Mucous Membrane Agents;

(a) Anti-infectives;
(A) Antibacterials;
(B) Antivirals;
(C) Antifungals;
(i) Allylamines;
(ii) Azoles;
(iii) Benzylamines;
(iv) Hydroxypyridones;
(v) Polyenes;
(vi) Thiocarbamates;
(vii) Antifungals, Miscellaneous;
(D) Scabicides and Pediculicides;
(E) Local Anti-infectives, Miscellaneous;
(b) Anti-inflammatory Agents;
(c) Antipruritics and Local Anesthetics;
(d) Astringents;
(e) Cell Stimulants and Proliferants;
(f) Detergents;
(g) Emollients, Demulcents, and Protectants;
(h) Keratolytic Agents;
(i) Keratoplastic Agents;
(j) Depigmenting and Pigmenting Agents;
(A) Depigmenting Agents;
(B) Pigmenting Agents.
(k) Sunscreen Agents;
(l) Skin and Mucous Membrane Agents, Miscellaneous.
(24) Smooth Muscle Relaxants:
(a) Gastrointestinal Smooth Muscle Relaxants;
(b) Genitourinary Smooth Muscle Relaxants;
(c) Respiratory Smooth Muscle Relaxants.
(25) Vitamins:
(26) Miscellaneous Therapeutic Agents;
(a) Alcohol Deterrents limited to the following:
(A) Acamprosate;
(B) Disulfiram;
(C) Naltrexone
(b) 5-α Reductase Inhibitors;
(c) Antidotes;
(d) Antigout Agents;
(e) Biologic Response Modifiers, limited to Interferons;
(f) Bone Resorption Inhibitors;
(g) Cariostatic Agents;
(h) Complement Inhibitors;
(i) Disease-Modifying Antirheumatic Agents;
(j) Gonadotropin-releasing Hormone Antagonists;
(k) Immunosuppressive Agents;
(l) Other Miscellaneous Therapeutic Agents limited to the following:
(A) Alfuzosin Hydrochloride;
(B) Drotrecogin Alfa (Activated);
(C) Lanreoytide Acetate;
(D) Rilonacept;
(E) Sapropterin Dihydrochloride;
(F) Tamsulosin Hydrochloride.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10; OBNM 5-2010, f. & cert. ef. 6-30-10; OBNM 7-2010, f. & cert. ef. 12-13-10

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Oregon Business Development Department
Chapter 123

Rule Caption: This is a revision of the procedural rules, updating statutes and some minor housekeeping changes.
Adm. Order No.: OBDD 40-2010
Filed with Sec. of State: 11-30-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 123-001-0700, 123-001-0725, 123-001-0750
Subject: The Contested Case section of the procedural rules is being updated to correct statute references and make minor housekeeping changes.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-001-0700
Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0750 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies:

(a) An application for either preliminary certification or annual certification to exempt the taxable income of a facility under ORS 316.778 or 317.391 (see OAR 123-635), other than when denial results from objection to preliminary certification by the city, county or port; or

(b) Any other application or request for which state law provides for appeal by contested case.

(2) Except as otherwise provided under state law or elsewhere in this chapter of administrative rules, this rule and contested case provisions do not pertain to any other proceeding, hearing, determination or decision by the Department, Director, Commission or any subsidiary body.

(3) OAR 123-001-0700 to 123-001-0750 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, relevant parts of OAR 137-003 are hereby incorporated into and adopted as part of this division of administrative rules by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0750, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval under section (1) of this rule, as identified in the application form or other submitted materials. This person is thus the affected party or appellant for purposes of the contested case, and the submitted address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that the Department initially sends to the Applicant, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.417(2), 183.464(2) & 285A.075
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

123-001-0725
Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send notice to the applicant, such that:

(a) The Department sends notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as relevant.

(2) The notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the applicant for any reason, prior to a final order, including but not limited to the re-submission of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department

shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as relevant.

(5) If the applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a copy of the referral furnished to the applicant, General Counsel and the Department of Revenue/county assessor as relevant.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.417(2), 183.464(2) & 285A.075
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

123-001-0750
Representations by Agency Representative

For purposes of any contested case hearing before an administrative law judge:

(1) Subject to the approval of the office of Attorney General of the State of Oregon under ORS chapter 180, the Director may authorize an officer or employee of the Department to appear on behalf of the Department.

(2) Such a Department representative may not present legal argument on behalf of state government.

(3) The Department retains its full prerogative, with or without intervention by the administrative law judge, to consult with or otherwise involve the office of Attorney General. Such prerogative includes but not necessarily limited to the sole purpose of having the office of Attorney General present legal argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4)(a) "Legal argument" includes arguments on:

(A) The jurisdiction to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or the presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures followed in the contested case hearing.

Stat. Auth.: ORS 183.452(2)(b) & 285A.075
Stats. Implemented: ORS 183.411 & 183.452
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

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Rule Caption: The changes in these rules revise language for the Special Public Works Fund.
Adm. Order No.: OBDD 41-2010
Filed with Sec. of State: 11-30-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 123-042-0010, 123-042-0020, 123-042-0026, 123-042-0036, 123-042-0038, 123-042-0045, 123-042-0055, 123-042-0065, 123-042-0076, 123-042-0122, 123-042-0132, 123-042-0155, 123-042-0165, 123-042-0175, 123-042-0180, 123-042-0190
Subject: These rules are being revised due to legislation from the 2009 Legislative Session through HB 2152. The name of the department has been changed to the Oregon Business Development Department. The infrastructure Finance Authority has been created to oversee the public finance program, including the Special Public Works Fund.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-042-0010
Purpose and Objectives

Pursuant to ORS 285B.419, the Oregon Business Development Department is required to adopt rules that implement the Special Public Works Fund Program. These rules are promulgated under authority granted by ORS 285B.419(1) and 285A.075.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: IRD 1-1986(Temp), f. & ef. 1-14-86; IRD 9-1986, f. 6-30-86, ef. 7-1-86; EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88, Renumbered from 120-050-0010; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 14-1991(Temp), f. & cert. ef. 10-17-91; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-19-04; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0020
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this OAR 123 division 42 the following terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Authority" means the Infrastructure Finance Authority within the Oregon Business Development Department.

(2) "Award" means the authority's determination that the project is eligible for funding and that the authority has identified the specified funding type and amount for the activities described in the staff recommendation.

(3) "Award date" means the date of the final authority management signature approving the award.

(4) "Board" means the Oregon Infrastructure Finance Authority Board.

(5) "Commission" means the Oregon Business Development Commission

(6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including but not limited to the following type of projects:

(a) Transportation projects

(b) Utility system projects

(c) Buildings, lands or other facility projects including planning project activities that are necessary or useful as determined by the authority.

(7) "Direct project management costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. Direct project management costs does not include routine or ongoing expenses of the municipality.

(8) "Eligible commercial jobs project" means a project that creates or retains jobs that are created or retained by businesses selling goods or services in markets for which national or international competition exists.

(9) "Emergency project" means a development project resulting from an emergency as defined in ORS 401.025 to which federal disaster relief has been committed.

(10) "Essential Community Facilities" means municipally owned or operated facilities that provide or support services vital to public health and safety, including, but not limited to police and fire protection, medical treatment, public utilities, transportation, and auxiliary shelter facilities.

(11) "Executive Director" means the administrator of the Infrastructure Finance Authority.

(12) "Firm business commitment project" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project shall support industrial development and eligible commercial jobs and be consistent with local comprehensive plans and implementing ordinances.

(13) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(14) "Marine facility" has the meaning given that term in ORS 285B.410(7)

(15) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(16) "Planning project" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the authority determines to be necessary or useful in planning for a potential development project.

(17) "Project" means a development, planning or emergency project

(18) "State revenue bond loan" means a loan funded in whole or part through the sale of state revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

(19) "Temporary project financing" means non permanent financing, including short term and bridge financing used to finance eligible acquisition, pre-construction and construction costs.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0026
Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants may be given only when loans are not feasible due to the financial need of the municipality or special circumstances of a project. The level of loan or grant funding, if any, may be determined by the authority on a case-by case-basis. The authority shall determine awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund according to the following criteria:

(a) Amount requested.

(b) Type.

(c) Interest rate.

(d) Terms and conditions of an award. The authority may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project.

(2) Grants:

(a) If the authority determines that a firm business commitment project meets the minimum criteria for a grant, the authority may make a further determination on the amount of the grant. The maximum grant amount is $500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of eligible commercial and industrial jobs proposed to be created or retained with a maximum of $5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the authority's adopted policy.

(b) If a grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(c) The authority shall receive in accordance with OAR 123 division 70 a copy of the appropriate First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

(d) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(e) The authority may not expend more than $900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(f) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the authority will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the authority shall apply the following minimum criteria for grants:

(A) The authority's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(B) Jobs will be created or retained as a result of the grant being awarded; and

(C) The authority has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

(3) Loans:

(a) Maximum loan amount for a project will be based on the authority's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the fund, and prudent fund management. Projects that the authority determines are not financially feasible, or loans that cannot be adequately secured, will not be funded.

(b) When the authority makes a loan to finance temporary project financing, all of the following apply:

(A) The municipality must receive an award from the authority before project construction begins

(B) The award will consist of loan only, and will not exceed the cost of the project;

(C) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.

(c) A development project may receive loan funding as follows:

(A) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(B) The interest rate on a loan will be based on market conditions for similar debt, and will be set at the time of the award.

(C) The interest rate on a state revenue bond loan will be equal to the coupon rates on the bonds. Until the state revenue bonds are sold, the municipality will pay interest on the outstanding principal balance of the loan at the rate established by the authority.

(d) The maximum loan amount per project is $10,000,000, of which not more than $3,000,000 may be in the form of a direct loan. A direct loan is a loan that is not a state revenue bond loan.

(e) A loan amount requiring Board approval shall be established by the Board.

(f) The loan shall be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:

(A) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(B) If repayment of a loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the authority will assess the financial capacity of the payor, the adequacy of the security, the financial instrument(s) requiring such payments to the municipality, and any liens, pledge(s), or assignments of collateral from the payor to the municipality. The authority may require an assignment of such revenue and collateral from the municipality.

(C) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the authority's financial analysis will extend to the financial feasibility of the projected revenues and the financial and legal adequacy of the proposed pledge of tax increment revenue.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0036
Project Priorities and Funding

(1) The authority may consider the following priorities when determining a development project's eligibility, including but not limited to:

(a) Projects that help create or retain permanent jobs.

(b) Projects for which a municipality has documented a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development.

(c) Projects for which a municipality has documented substantial local commitment to the project's success.

(d) Projects for which a municipality has documented how the benefits of the project will be preserved over the project life.

(2) The authority may apply the following procedure when determining whether to make an award for an eligible development project:

(a) The authority will review project concepts and/or project information contained in the project intake form.

(b) Proposed projects that the authority determines to be eligible, meet the Board approved prioritization criteria, are a high priority and address the goals of the program, will be advanced to the next step. A proposed project that is not advanced will be referred to other possible funding source(s) or referred back to the proposing municipality for further project development.

(c) High priority projects will be funded on a funds available basis.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0038
Criteria for Special Project Funding

Special types of development projects must meet the following criteria. If the project consists:

(1) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use. A loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(2) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(3) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(4) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the energy system project will be located within the recognized service territory of the municipality.

(5) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.

(6) Of a project for a utility system that is functionally connected to, or anticipates connecting to, another municipality's utility system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity in regard to the project and utility system is required. A certified copy of the fully executed intergovernmental agreement must be provided before the authority will disburse funds.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 285B.410 - 285B.460
Hist.: EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0045
Planning Project Eligibility, Criteria and Funding

(1) A planning project, as defined in ORS 285B.410(9), may be eligible for a loan. The authority will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(2) Planning projects listed in OAR 123-042-0045(3) and (4) may also be eligible for grant funding.

(3) A planning project conducted for the purpose of developing industrial lands, including planning for industrial site certification, is eligible for a grant of up to $60,000 per site, per year or 85% of the allowable planning project cost, whichever is less. This type of planning project must meet the following criteria:

(a) The land must be zoned 'industrial"; and

(b) The land meets marketability standards as determined by the department using its adopted policy.

(4) A planning project conducted for the purpose of a renewable energy feasibility study is eligible for a grant of up to $50,000 or 75% of allowable project cost, whichever is less. A renewable energy feasibility study award may also be in the form of a loan. The authority may conduct a competitive application process for renewable energy feasibility study grant awards. Information about the application process, the scoring criteria and process and the program requirements in general is contained in the program guideline. A new program guideline will be developed and provided for each competitive solicitation.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0055
Emergency Project Eligibility, Criteria and Funding

(1) An emergency project, as defined in ORS 285B.410(5), that meets the following criteria is eligible for assistance from the fund:

(a) The project must result from an emergency as defined in ORS 401.025; and

(b) The project must have federal disaster relief assistance funds committed;

(2) The following apply to both grants and loans for emergency projects:

(a) The maximum award amount for an emergency project shall not exceed the required local match for the federal disaster relief assistance committed to the project;

(b) A grant award for an emergency project shall not exceed $500,000 per project, or the amount of the federally required local match, whichever is less; and

(c) A loan for an emergency project shall meet the criteria set forth in OAR 123-042-0036.

(3) The authority shall not expend more than $2.5 million for emergency project grants, including grants for essential community facilities, in a biennium.

(4) For the purposes of awards made under this OAR 123-042-0055, allowable project costs shall be those eligible for federal assistance, unless those costs are precluded by a restriction in state law or the Code of Federal Regulations.

(5) In the event of an emergency, the authority may adopt a policy, after consultation with stakeholders and others, to guide implementation decisions regarding such matters as grant amounts and priorities.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0065
Allowable Project Costs

For purposes of projects funded under this division of rules, the allowable costs of a project include:

(1) Financing costs, including capitalized interest;

(2) Direct project management costs;

(3) Costs of consultant services and expenses;

(4) Construction costs and expenses;

(5) Costs of property acquisition, including any easement, or right of way directly related to and necessary for the project;

(6) Costs incurred by the municipality prior to the award if such costs are allowable under the authority's adopted policy for reimbursement of pre-award costs;

(7) Costs of acquiring off-site property for purposes directly related to the project, such as wetland mitigation; and

(8) Other costs that the authority determines to be necessary or useful.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0076
Ineligible Projects and Project Costs

Expenses and costs expressly allowed under this division of rules, are eligible for reimbursement from the fund. All other costs are ineligible for reimbursement including but not limited to:

(1) Assistance to facilities that are or will be privately owned;

(2) Purchase of general purpose motor vehicles and other equipment not directly related to the project;

(3) Assistance to projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; and

(4) Project operating or maintenance costs, except as allowed by statute.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0122
Application Requirements

(1) A municipality may submit an application to the authority after consulting with the authority on a preliminary determination of eligibility and following the authority's procedures.

(2) The application shall be in the form provided by the authority and shall contain or be accompanied by such information and documentation as the department authority may require. The authority may, to the extent possible, assist municipalities in understanding program requirements and in completing applications. The authority will process only completed applications.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0132
Application Review and Approval

(1) For a construction project the authority must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues, collateral, or payments from any owners of specially benefited properties, and such pledge is sufficient, when considered with other collateral or assets, to assure repayment, and the municipality has certified to the authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) The municipality is willing and able to enter into a contract with the ;

(d) The project is consistent with the requirements governing assistance from the fund. If the authority determines that the municipality or the proposed project does not meet the requirements of OAR chapter 123, division 42, the authority may reject an application or require further documentation from the municipality;

(e) Other funds that may be needed to complete the project are available or the municipality has a binding commitment for such funds. If a portion of the other funds needed to complete the project is not available or committed at the time an award is made, the award shall be conditional on securing the other needed funds or a binding commitment for such funds; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance, it shall proceed immediately.

(2) For a planning project, the authority must make the following determinations:

(a) The requirements set out in OAR 123-042-0132(1) are met, except for subsection (b) if no loan is being awarded;

(b) The planning activities must be for a project that is eligible under OAR chapter 123, division 42 and meets the criteria listed in OAR 123-042-0045; and

(c) The municipality has demonstrated the ability to secure, the administrative capacity to undertake and complete the planning project.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0155
Contracts and Disbursements of Funds

(1) The authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in form and substance as provided by the authority, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) For a development project, a provision requiring that the contracted project remain in municipal ownership for the life of the loan. If this condition is not met, any grant shall convert to a loan, and at the authority's determination, may become immediately due and payable in full;

(d) For a planning project, other than renewable energy feasibility study, a provision requiring that the land involved in the project must remain zoned as industrial and not be converted to another use for at least 5 years after completion of the project. If this condition is not met, any grant shall convert to a loan, and at the authority's determination, may become immediately due and payable in full;

(e) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the authority a lien on, or a security interest in, the collateral as determined by the authority to be necessary to secure repayment of the loan or bond;

(f) A provision that for a period of up to six (6) years after project completion, the authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project; and

(g) Other provisions that the authority considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0165
Municipality Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the authority, and its representatives, reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the authority.

(3) The municipality shall certify that any service provider retained for their professional expertise is certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

(4) The municipality shall certify that it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(5) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 requiring public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed on all plans, reports, bid documents and advertisements relating to the project: "This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Development Department."; and

(b) For a construction project, post a sign, provided by the departmentauthority, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(6) For a construction project, the municipality shall have a plan for ongoing operation, Maintenance and replacement that will preserve the project benefits over its useful life.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482 & 280.518
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0175
Eligibility Criteria for State Revenue Bond Loans

The authority shall apply the following standards for determining the eligibility of development projects for revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments and the term of the loan shall not exceed the usable life of the contracted project;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for revenue bond financing as established by authority policies.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0180
Remedies

The authority may invoke remedies for an "event of default" as described in the contract with the municipality, including the withholding of amounts otherwise due to the municipality pursuant to ORS 285B.449.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

123-042-0190
Appeals and Exceptions

(1) Appeals of decisions made by a municipality regarding a project must be made in accordance with the requirements and procedures of the municipality.

(2) The executive director of the authority will consider appeals of the authority's funding decisions. Only the municipality may appeal. An appeal must be submitted in writing to the executive director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the authority's review of the application will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The executive director's decision is final.

(3) The executive ddirector may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285B.419 & 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482 & 285A.101
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

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Rule Caption: These rules revise the Water/Watershed Financing Program's ineligible project costs.
Adm. Order No.: OBDD 42-2010
Filed with Sec. of State: 11-30-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 123-043-0025
Subject: These rules revise the ineligible project costs for the Water/Watershed Financing Program.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-043-0025
Ineligible Project Costs

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

(1) Costs incurred for facilities that are or will be privately owned.

(2) Purchase of general purpose motor vehicles and other equipment not directly related to the project.

(3) Purchase of off-site property for uses not directly related to the project.

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 42-2010, f. 11-30-10, cert. ef. 12-1-10

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Oregon Business Development Department, Oregon Arts Commission
Chapter 190

Rule Caption: These procedural rules for the Oregon Arts Commission are being repealed.
Adm. Order No.: OAC 2-2010
Filed with Sec. of State: 11-30-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Repealed: 190-001-0000, 190-001-0005
Subject: These procedural rules related to the Oregon Arts Commission rulemaking procedures are being repealed. This information can be found in statute. The rules do not offer any additional information.
Rules Coordinator: Mindee Sublette—(503) 986-0036

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Oregon Criminal Justice Commission
Chapter 213

Rule Caption: Presentence Reports.
Adm. Order No.: CJC 4-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 1-1-12
Notice Publication Date: 5-1-2010
Rules Amended: 213-013-0010
Subject: The rule change is needed to implement Or Laws 2005 Ch 473 (SB 914 (2005)). That legislation directs the Oregon Department of Corrections to require that a presentence report provide an analysis of the disposition most likely to reduce the defendant's criminal conduct, explain why the disposition would have such an effect, and provide an assessment of the availability to the defendant of relevant programs and treatment. The Criminal Justice Commission is amending its rule pertaining to presentence reports to be consistent with changes adopted by the Department of Corrections to implement SB 914.

The rule change is made effective 1/1/12, because the rule has been submitted to the legislature for approval per ORS 137.667. The legislative session will begin in 2011, and the legislature's approval of Commission rules would be effective on 1/1/12 (the effective date of the approving legislation). The rule's effective date is being made to correspond with the prospective legislative approval date.
Rules Coordinator: Craig Prins—(503) 378-4830

213-013-0010
Minimum Contents of Presentence Reports

Except as provided by section (9), each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after November 1, 1989, shall at a minimum include the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction and an appropriate classification of each crime of conviction on the Crime Seriousness Scale (Division 17). If the crime of conviction is subclassified in Division 18 or 19, the presentence report shall state the factual circumstances that justify the proposed subclassification.

(2) A listing of all prior adult felony and Class A misdemeanor convictions and all prior juvenile adjudications and an assessment of the appropriate classification of the criminal history on the Criminal History Scale pursuant to OAR 213-004-0006 to 213-004-0013.

(3) An analysis of the disposition that is most likely to reduce the defendant's criminal conduct and why such disposition would have the desired effect.

(4) An assessment of the availability to the defendant of any relevant programs or treatment, both in and out of custody, whether provided by the Department or another entity.

(5) A proposed grid block classification for each crime of conviction and the presumptive sentence for each crime of conviction.

(a) If the proposed grid block classification is a grid block above the dispositional line, the presentence report shall state the presumptive prison term range and the presumptive duration of post-prison supervision;

(b) If the proposed grid block classification is Grid Block 8-G, 8-H or 8-I, the presentence report shall state whether the offender is eligible for an optional probationary sentence. If the offender is eligible, the presentence report may include a recommendation that an optional probationary sentence be imposed with a further recommendation for the appropriate conditions of probation designed to reduce future criminal conduct.

(c) If the proposed grid block classification is a grid block below the dispositional line, the presentence report shall provide the following information:

(A) The presumptive term of probation;

(B) The maximum number of sanction units that may be imposed and the number of sanction units that may be used to impose jail time as part of the probationary sentence;

(C) A recommendation for the appropriate conditions of probation including both custody and non-custody conditions; and

(D) Any other information relevant to the imposition of a presumptive sentence as provided by these rules.

(6) A victim statement as required by ORS 137.530(2).

(7) A recommendation as to whether a departure from the guidelines is appropriate. If a recommendation is made, the presentence report shall indicate the aggravating or mitigating factors upon which the departure recommendation is made. Such recommendations shall be consistent with the requirements for departures as defined by OAR 213-008-0001 to 213-008-0007.

(8) Any additional information as provided upon request of the sentencing judge.

(9) The sentencing judge may waive the requirement for any information necessary to establish the presumptive sentence if that information has been made part of an accepted plea agreement.

Stat. Auth.: ORS 137.656 - 137.667
Stats. Implemented: ORS 137.656 - 137.669; SB 914 (2005)
Hist.: SSGB 2-1989, f. 10-17-89, cert. ef. 11-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-013-0010; Administrative Correction 8-26-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 4-2010, f. 12-13-10, cert. ef. 1-1-12

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Rule Caption: Amends Oregon Sentencing Guidelines in light of HB 3508 (2009).
Adm. Order No.: CJC 5-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 12-26-10
Notice Publication Date: 8-1-2010
Rules Amended: 213-017-0006
Rules Repealed: 213-017-0006(T)
Subject: The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election. Section 10 of SB 1087 (2008 Oregon Laws chapter 14) changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Oregon Legislature voted to suspend implementation of portions of Measure 57 in HB 3508 (2009). Following HB 3508 (2009), Mail Theft or Receipt of Stolen Mail under ORS 164.162 is classified as a felony for sentences imposed prior to February 15, 2010 and for sentences imposed for crimes committed on or after January 1, 2012. During the intervening time period, that portion of Measure 57 that classified Mail Theft or Receipt of Stolen Mail under ORS 164.162 as a felony is suspended and that crime becomes a Class A misdemeanor. CJC amended the sentencing guidelines to incorporate that change. The amendment contained a typographical error, in which the date "January 1, 2010" was referenced instead of the date "January 1, 2012." A temporary rule is in place correcting that error. This rule amendment makes permanent that temporary change.
Rules Coordinator: Craig Prins—(503) 378-4830

213-017-0006
Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

(1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
(2) MAJOR DRUG OFFENSES (See division 19.)
(3) ORS 162.015 – BRIBERY – (B).
(4) ORS 162.025 – BRIBE RECEIVING – (B).
(5) ORS 162.065 – PERJURY – (C).
(6) ORS 162.117 – PUBLIC INVESTMENT FRAUD – (B).
(7) ORS 162.155 – ESCAPE II – (C).
(8) ORS 162.185 – SUPPLYING CONTRABAND – (C).
(The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
(9) ORS 162.265 – BRIBING A WITNESS – (C).
(10) ORS 162.275 – BRIBE RECEIVING BY WITNESS – (C).
(11) ORS 162.285 – TAMPERING W/ WITNESS – (C).
(12) ORS 162.325 – HINDERING PROSECUTION – (C).
(13) ORS 163.160(3) – FELONY DOMESTIC ASSAULT – (C).
(14) ORS 163.165 – ASSAULT III – (C).
(If the offense cannot be ranked at CC 8).
(15) ORS 163.208 – ASSAULT OF A PUBLIC SAFETY OFFICER – (C).
(16) ORS 163.213 – USE OF A STUN GUN, TEAR GAS, MACE I – (C).
(17) ORS 163.257 – CUSTODIAL INTERFERENCE I – (C).
(18) ORS 163.264 – SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I – (B).
(If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
(19) ORS 163.275 – COERCION – (C). (No threat of physical injury; otherwise CC 7.)
(20) ORS 163.355 – RAPE III – (C).
(21) ORS 163.385 – SODOMY III – (C).
(22) ORS 163.432 – ONLINE SEXUAL CORRUPTION OF A CHILD II – (C).
(23) ORS 163.465 – FELONY PUBLIC INDECENCY – (C).
(24) ORS 163.525 – INCEST – (C).
(If one of the participants is under the age of 18; otherwise CC 1.)
(25) ORS 163.547 – CHILD NEGLECT IN THE FIRST DEGREE – (B).
(26) ORS 163.688 – POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I – (B).
(27) ORS 164.055 – THEFT I* – (C).
(28) ORS 164.057 – AGGRAVATED THEFT – (B).
(Economic loss was greater than $50,000; otherwise CC 5.)
(29) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY * – (C).
(30) ORS 164.075 – THEFT BY EXTORTION* – (B).
(31) ORS 164.085 – THEFT BY DECEPTION* – (C).
(32) ORS 164.125 – THEFT OF SERVICES* – (C).
(33) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
(34) ORS 164.138 – CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* – (C).
(35) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY* – (C).
(36) ORS 164.162 – MAIL THEFT OR RECEIPT OF STOLEN MAIL – (C).
(For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2012; otherwise a Class A misdemeanor.)
(37) ORS 164.215 – BURGLARY II* – (C).
(38) ORS 164.315 – ARSON II* – (C).
(39) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
(40) ORS 164.377 – COMPUTER FRAUD (LOTTERY)* – (C).
(41) ORS 164.377(3) – COMPUTER CRIME* – (C).
(42) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
(43) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
(44) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
(45) ORS 164.877(1) – TREE-SPIKING – (C).
(46) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
(47) ORS 165.013 – FORGERY I* – (C).
(48) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
(49) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
(50) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
(51) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD* v (C).
(52) ORS 165.692 – FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT – (C).
(53) ORS 165.800 – IDENTITY THEFT* – (C).
(54) ORS 166.015 – RIOT – (C).
(55) ORS 166.165 – INTIMIDATION I – (C).
(56) ORS 166.220 – UNLAWFUL USE OF WEAPON – (C).
(57) ORS 166.270 – EX-CON IN POSSESSION OF FIREARM – (C).
(58) ORS 166.272 – UNLAWFUL POSSESSION OF FIREARM – (B).
(59) ORS 166.370(1) – INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) – PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL – (C).

(60) ORS 166.382 – POSSESSION OF DESTRUCTIVE DEVICE – (C).

(61) ORS 166.384 – UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE – (C).

(62) ORS 166.410 – ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS – (B).

(63) ORS 166.643 – UNLAWFUL POSSESS SOFT BODY ARMOR – (B).

(If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)

(64) ORS 167.057 – LURING A MINOR – (C).

(65) ORS 167.339 – ASSAULT OF A LAW ENFORCEMENT ANIMAL – (C).

(66) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).

(67) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).

(68) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).

(69) ORS 811.182 – DRIVING WHILE SUSPENDED/REVOKED – (C).

(70) ORS 811.705 – HIT & RUN VEHICLE (INJURY) – (C).

(71) ORS 813.010 – FELONY DRIVING UNDER THE INFLUENCE – (C).

(72) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).

(73) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).

(If part of an organized operation or if value of property taken from one or more victims was greater than $50,000; otherwise CC 5.)

(74) ORS 830.475 – HIT AND RUN BOAT – (C).

(75) 2009 Oregon Laws Ch 783 – AGGRAVATED HARRASSMENT – (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was $50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660 & HB 3508 (2009) & 2009 OL Ch. 783

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09, cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 3-2010(Temp), f. & cert. ef. 6-30-10 thru 12-26-10; CJC 5-2010, f. 12-13-10, cert. ef. 12-26-10

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Rule Caption: Adopts guidelines to implement ORS 203.095.
Adm. Order No.: CJC 6-2010
Filed with Sec. of State: 12-13-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 10-1-2010
Rules Adopted: 213-070-0000, 213-070-0005, 213-070-0010, 213-070-0020, 213-070-0030, 213-070-0040, 213-070-0050
Subject: The Criminal Justice Commission (CJC) is required under SB 77 (2009), codified at ORS 203.095, to establish by rule guidelines by which to identify the minimally adequate level at which public safety services must be delivered in a county. The guidelines must provide a basis for analyzing whether a county provides a minimally adequate level of public safety services in the areas of county jail operations; law enforcement, investigation and patrol; community corrections; juvenile justice; emergency operations and emergency response; search and rescue operations; criminal prosecution; and court facility operations. These rules implement those provisions of ORS 203.095. The rules also require affected counties to send the Commission copies of certain pertinent documents.
Rules Coordinator: Craig Prins—(503) 378-4830

213-070-0000
Purpose

The purpose of these rules is to provide guidance about the process and procedures the Criminal Justice Commission ("Commission") will employ if the governing body of any county or the Governor seeks a declaration of a Public Safety Services Emergency by requesting that the Commission review and analyze public safety services provided by that county.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0005
Policy

In developing the guidelines set forth in these rules, the Commission considered the population density, geographic characteristics, historical crime rates, and other relevant factors in Oregon counties. The Commission also sought broad input from the governing bodies of counties; sheriffs; district attorneys; judges; other appropriate county officials; labor organizations representing county employees; other public safety stakeholders; and members of the public. The Commission intends for the resulting guidelines to incorporate factors integral to a reasonable and adequate operation of each area of public safety services under consideration, in order to facilitate the Commission's ability to evaluate each county's current level of public safety services relative to its own historic standards of public safety services levels. The Commission recognizes that individual counties have differing priorities and methodologies of providing public safety services, and to that end the Commission intends to compare a county's current provision of public safety services to that same county's historic level of services provision, rather than to compare a county's provision of public safety services to that of other counties.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0010
Definitions

(1) "Capacity based release" is a procedure by which inmates awaiting trial are released pending trial, and sentenced inmates are released into the community before their sentence has ended, in order to ensure that jails do not exceed capacity. The inmates with the least perceived risk are those who should be released, until the requisite population level is reached.

(2) "Minimally Adequate Level of Public Safety Services" is that level of public safety services determined to be required to provide a reasonable level of public safety within the county. The Commission will determine the level of services that are minimally adequate in a particular county by following the process set forth in these rules, analyzing the contextual factors present in the county as well as the current and historical levels of public safety services provided by the county.

(3) "Public Safety Services Emergency" is a situation in which a county is in a state of fiscal distress that compromises the county's ability to provide a Minimally Adequate Level of Public Safety Services.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0020
Current Level of Public Safety Services

(1) Following receipt of a written request from the Governor or the governing body of a county, the Criminal Justice Commission shall send commissioners or commission staff to the county to consult with each of the following county representatives to gather information regarding the current level of public safety services provided by the county:

(a) The governing body of the county;
(b) The Sheriff;
(c) The District Attorney;
(d) Judges;
(e) Other appropriate county officials;
(f) Labor organizations representing county employees; and
(g) Other public safety stakeholders.

(2) The Commission shall gather and analyze information regarding the county's current level of public safety services in the following areas:

(a) County jail operations;
(b) Law enforcement, investigation and patrol;
(c) Community corrections;
(d) Juvenile justice;
(e) Emergency operations and emergency response;
(f) Search and rescue operations;
(g) Criminal prosecution; and
(h) Court facility operations.

(3) Upon the Commission's request, the county shall send to the Commission:

(a) A copy of the county's adopted budget for the most recent budget cycle; and

(b) A copy of the county's most recent annual risk management analysis, if available.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0030
Historical Level of Public Safety Services

(1) The Commission shall conduct a review of the public safety services historically provided by the county over at least the five years immediately preceding the date of the request, to determine the historic baseline of public safety services provided by the county during that time. The Commission shall compare the historic baseline level of public safety services to the current level of public safety services provided by the county to assist in determining whether the county is providing a Minimally Adequate Level of Public Safety Services.

(2) The Commission shall compile and analyze the following objective data in determining the historic baseline of public safety services provided by the county:

(a) County jail operations:

(A) Annual cost of operation;

(B) Number of operable beds (number of beds for which staffing is currently available);

(C) Number of available beds (number of operable beds plus the number of beds mothballed or otherwise not currently in use);

(D) Number of capacity based releases;

(E) Percentage of sentences fully served before release;

(F) Number of beds available for post-prison supervision and probation violation sanctions;

(G) Number of jail beds per capita;

(H) Number slots available for alternate forms of custody (e.g., ankle bracelets for house arrest, work center beds, other quasi-custodial beds).

(b) Law enforcement, investigation and patrol:

(A) Number of sworn and non-sworn officers (including city, county and state);

(B) Number of investigators (including city, county and state).

(c) Community corrections:

(A) Number parole/probation officers;

(B) Number felons supervised;

(C) Crime of supervision (each offender's most serious crime of supervision as categorized by the Oregon Department of Corrections);

(D) Percentage of high-risk offenders as determined by Oregon Department of Corrections risk analysis tool;

(E) Dollars spent per felon supervised (expenditures out of county funds that are not a part of state community corrections grants);

(F) Expenditures for programs to reduce recidivism (education, treatment etc).

(d) Juvenile justice:

(A) Number of felony referrals to juvenile department;

(B) Number of beds available for placement of delinquent youth;

(C) Number of juvenile department employees supervising youth on county probation;

(D) Number juvenile offenders released from county juvenile detention facilities due to capacity.

(e) Emergency operations and emergency response including search & rescue operations:

(A) Number of 911 dispatchers or call takers;

(B) Response time for 911 dispatchers or call takers to answer telephone call;

(C) Response time for emergency response personnel to arrive at scene;

(D) Current updated disaster plan in place;

(E) Ability to execute disaster plan (resources and equipment available to execute plan if necessary).

(f) Criminal prosecution:

(A) Number of prosecutors in District Attorney's office;

(B) Number of support staff in District Attorney's office;

(C) Number of felony and misdemeanor cases charged per prosecutor;

(D) List of crimes for which District Attorney's office ordinarily does not file charges absent special circumstances, due to funding or staffing issues (e.g., Criminal Trespass II, or all property crime misdemeanors, etc.);

(E) Number and types of cases resolved through early disposition or early resolution programs (e.g., District Attorney diversion).

(g) Court facility operations:

(A) Hours of courthouse operation;

(B) Number of security officers on duty in courthouse;

(C) Portion of courthouse operating budget provided by county;

(D) Average time from arraignment to final resolution of criminal cases.

(h) The county's annual budget for each of 213-070-0030(a)-(g) above.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0040
Context Under Which Factors Are to Be Considered

(1) When evaluating the factors set forth in these rules to determine whether the county is providing a Minimally Adequate Level of Public Safety Services, the Commission shall take into consideration the county's:

(a) Population density;

(b) Geographic characteristics;

(c) Historical crime rates; and

(d) Other relevant factors.

(2) The Commission shall evaluate the crime rate statistics in the county as most recently available and compare and contrast them to historical crime rate statistics in the county over at least the five years immediately preceding the date of the request. Crime rates shall be determined by reference to the Oregon Uniform Crime Reports. The crime rate statistics considered shall include the violent crime index, property crime index, crime rates for Driving Under the Influence of Intoxicants under ORS 813.010, and crime rates for Assault IV under ORS 163.160.

(3) The Commission may also consider the median level of public safety services provided in any or all other counties in one or more of the areas required to be analyzed under OAR 213-070-0020(2).

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

213-070-0050
Findings and Recommendation

(1) After the Commission has obtained the above information and completed its analysis, the Commission shall make findings as to whether the county is providing a Minimally Adequate Level of Public Safety Services. The Commission shall accomplish this by comparing the current level of public safety services (as determined under OAR 213-070-0020) with the historical level of public safety services (as determined under OAR 213-070-0040), analyzed in the context set forth in OAR 213-070-0030. In developing its findings, the Commission may consider whether public safety services are efficiently and effectively used in the county, the county's provision of services in each of the designated areas set forth in OAR 213-070-0020, and the extent to which changes in best practices policies, procedures or organizational operations would be likely to be conducive toward maximizing public safety in that county. The Commission may include findings and recommendations in these areas in its report to the Governor.

(2) Taking those findings as a whole, the Commission shall develop a recommendation to the Governor as to whether to declare a Public Safety Services Emergency for that county. If the Commission finds that the county is providing a less than Minimally Adequate Level of Public Safety Services, the Commission shall recommend that the Governor declare a Public Safety Services Emergency.

(3) Within 14 days after the request for review is made, the Commission shall provide its findings and recommendation to the Governor. The Commission shall send copies of the findings and recommendation to the Legislative Assembly and to the governing body of the county.

Stat. Auth.: ORS 203.095
Stats. Implemented: ORS 203.095
Hist.: CJC 6-2010, f. 12-13-10, cert. ef. 1-1-11

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Allows Department to appoint a representative for contested case hearings on assessed civil penalties.
Adm. Order No.: OHCS 15-2010(Temp)
Filed with Sec. of State: 12-1-2010
Certified to be Effective: 12-1-10 thru 5-29-11
Notice Publication Date:
Rules Adopted: 813-001-0060
Subject: 813-001-0060 Allow an employee to appear on behalf of the Department in contested case hearings conducted by the Department, by the Office of Administrative Hearings or by another agency on civil penalties assessed by the Department against a landlord or

owner of a manufactured dwelling park. Establishes actions employee may be involved in during hearing.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-001-0060
Lay Representative, Contested Cases Involving Civil Penalty

(1) Subject to the approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department in a contested case hearing conducted by the Department or by the Office of Administrative Hearings on a civil penalty assessed by the Department against a landlord or owner of a manufactured dwelling park pursuant to section 4, chapter 619, Oregon Laws 2005.

(2) Subject to the approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department in a contested case hearing conducted before another agency on a civil penalty assessed by the Department against a landlord or owner of a manufactured dwelling park pursuant to section 4, chapter 619, Oregon Laws 2005.

(3) A representative of the Department under section (1) of this rule may not make legal argument on behalf of the Department, including an argument on any of the following:

(a) The jurisdiction of the Department to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department or an agency generally; or

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) A representative of the Department under section (1) of this rule may do any of the following:

(a) Examine and cross-examine witnesses;

(b) Present motions, evidence and factual arguments; and

(c) Present arguments on any of the following matters:

(A) The application of a statute or rule to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of a statute or rule directly applicable to an issue in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

Stat. Auth.: ORS 183.452
Stats. Implemented: ORS 183.452 & 2005 OL ch. 619 sec. 4
Hist.: OHCS 15-2010(Temp), f. & cert. ef. 12-1-10 thru 5-29-11

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Rule Caption: Clarification of language surrounding selection and processing of standby applications for farmworker housing tax credits.
Adm. Order No.: OHCS 16-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 12-15-10
Notice Publication Date: 11-1-2010
Rules Amended: 813-041-0020
Subject: 813-041-0020(3) Clarification of language surrounding the selection and processing of standby applications by the department.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-041-0020
Standby Applications

(1) If the application of a taxpayer under OAR 813-041-0010 is subject to disapproval by the Department solely for the reason that the estimated eligible costs, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, exceed the limitation on the total of estimated eligible costs under ORS 315.167, the taxpayer may:

(a) Request reduction of the estimated eligible costs for the project to an amount that, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, would not exceed the limitation; or

(b) Request that the Department place the taxpayer on a standby list for future possible eligibility.

(2) Applications on a standby list under this rule are subject to maintenance in any order determined by the Department if they are otherwise determined in the evaluation process to be appropriate for approval.

(3) The Department may select and process a standby application under (2) of this rule for approval whenever credit becomes available. The taxpayer may update the taxpayer's application as needed within the time provided by the Department.

(4) All outstanding standby applications expire on December 31 of the calendar year of application.

Stat. Auth.: ORS 315.164 - 315.169 & 458.650
Stats Implemented: ORS 315.167
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10; OHCS 6-2010, f. & cert. ef. 6-10-10; OHCS 8-2010(Temp), f. & cert. ef. 6-17-10 thru 12-13-10; OHCS 16-2010, f. & cert. ef. 12-15-10

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Adopt rule prohibiting the sale of certain alcohol energy drinks designated adulterated by the FDA.
Adm. Order No.: OLCC 14-2010(Temp)
Filed with Sec. of State: 11-20-2010
Certified to be Effective: 11-20-10 thru 5-18-11
Notice Publication Date:
Rules Adopted: 845-010-0146
Subject: Certain alcohol energy drinks were determined to be adulterated products by the U.S. Food and Drug Administration (FDA) on November 17, 2010. Based on the warnings issued to the manufacturers of these alcohol products by the FDA, as well as the Federal Trade Commission (FTC) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), the Commission finds that there is a need to promptly prohibit the sale or offering for sale of the adulterated products to protect public safety. ORS 471.446(2) allows the Commission to prohibit licensees from selling such adulterated products. We need to adopt this rule on a temporary basis in order to protect the immediate health and safety of the public.
Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-010-0146
Alcohol Energy Drinks

(1) No licensee may sell or offer for sale Core High Gravity HG Green, Core High Gravity HG Orange, Lemon Lime Core Spiked, Moonshot, Four Loko, Joose, and Max, which contain the "unsafe food additive" of caffeine and which were determined to be "adulterated" products on November 17, 2010 by the U.S. Food and Drug Administration under 21 U.S.C. 342(a)(2)(C).

(2) Violation of this rule is a Category II violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.446(2)
Hist.: OLCC 14-2010(Temp), f. & cert. ef. 11-20-10 thru 5-18-11

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Rule Caption: Amend rule to allow suppliers to exchange adulterated alcohol products.
Adm. Order No.: OLCC 15-2010(Temp)
Filed with Sec. of State: 12-3-2010
Certified to be Effective: 12-3-10 thru 5-31-11
Notice Publication Date:
Rules Amended: 845-013-0070
Subject: Certain alcohol energy drinks were determined to be adulterated products by the U.S. Food and Drug Administration (FDA) on November 17, 2010. Based on the warnings issued to the manufacturers of these alcohol products by the FDA, as well as the Federal Trade Commission (FTC) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), the Commission found that these products contain an adulterated ingredient and to protect public safety adopted OAR 845-010-0146 prohibiting the sale or offering for sale of the adulterated products as of November 20, 2010. However, current Oregon statutes and rules do not allow wholesalers and manufacturers to exchange products containing adulterated ingredients that were previously delivered to retailers for other equivalent products that have not been banned from sale. This means that a substantial amount of these adulterated products would remain in the state where they might be available to the public rather than being safely returned to the wholesalers or manufacturers. Allowing wholesalers to exchange products containing adulterated ingredients that have been banned from sale in the state for comparable saleable products is necessary to ensure that all of the adulterated products are promptly

removed from retail premises in the state, thereby significantly reducing the risk that the products will be sold or otherwise made available to be consumed. We need to adopt this rule on a temporary basis in order to protect the immediate health and safety of the public.
Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-013-0070
Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except those described in 471.398(5) and the two categories of services of nominal value described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

(a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;

(b) Performing emergency repairs on draft equipment;

(c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;

(d) Tapping kegs during regular delivery calls.

(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer's or wholesaler's alcoholic beverage products such as:

(a) Delivering to the designated place on the retailers premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;

(b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;

(c) Pricing packages and containers of the manufacturer's or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or pricing information in the retailer's system but does not include changing shelf tags;

(d) Promptly exchanging alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;

(e) Exchanging products that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product, or exchanging products that have been found to contain adulterated ingredients (See also OAR 845-013-0020(1)(b)). If the amount exchanged is one case or less of malt beverages or if the product contains adulterated ingredients, the manufacturer or wholesaler may substitute another malt beverage product of similar value. A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0353, 845-006-0427, and 845-006-0450.

NOTE: ORS 471.186(4) prohibits a manufacturer or wholesaler from providing or paying for a person to serve samples at package stores except as provided in ORS 471.402.

(h) Providing celebrities or performers to promote the manufacturer's or wholesaler's product on a retailer's premises as long as:

(A) Neither the manufacturer/wholesaler nor retailer advertise or promote the celebrity or performer's visit;

(B) The celebrity or performer does only a brief performance, if any;

(C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;

(D) The manufacturer or wholesaler provides the celebrities no more than once per year per retail premises.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.398(5) & 471.446(2)
Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97; OLCC 17-2000, f. 11-9-00, cert. ef 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 15-2010(Temp), f. & cert. ef. 12-3-10 thru 5-31-11

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: New rule to implement verification of retirement provisions of Senate Bill 897 (2010).
Adm. Order No.: PERS 11-2010
Filed with Sec. of State: 11-24-2010
Certified to be Effective: 11-24-10
Notice Publication Date: 7-1-2010
Rules Adopted: 459-005-0040
Subject: Senate Bill 897 (2010) requires PERS to verify certain retirement data upon an eligible member's request. Under the bill, PERS must notify the member's employers of the request and give those employers a reasonable time to confirm or modify the data previously reported to PERS. After this period has passed, the member's employer may not later modify that data. PERS will then produce a verification based on the reported data. With some exceptions, PERS is restricted from using anything less than the amounts in the verification to calculate the member's service retirement benefit. The proposed rule clarifies standards for implementation and administration of verifications and incorporates several policy decisions necessary for completing implementation.

The rule includes a process to request an extension of the 60-day period. An extension may be granted by the Director or his designee upon an employer's petition showing good cause. The petition must be specific to an individual member, state the duration and end date of the requested extension, and be received by PERS no later than the 45th day after notice is issued to the employer. An employer may request only one extension for any eligible member.

Staff feels the extension provision provides sufficient flexibility for an employer to address more complex records, especially when considered with other aspects of the implementation plan that are designed to avoid PERS and employers receiving disproportionate numbers of requests.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0040
Verification of Retirement Data

(1) For purposes of this rule:

(a) "Eligible member" means an active or inactive member of the system who is within two years of attaining earliest service retirement age or has attained earliest service retirement age. "Eligible member" does not include a retired member of the system, an alternate payee, or a beneficiary.

(b) "Verification" means a document provided to an eligible member by PERS pursuant to section 3, chapter 1, Oregon Laws 2010.

(2)(a) PERS will determine an eligible member's creditable service, retirement credit, final average salary, member account balance, and accumulated unused sick leave for a verification based on employment data reported to PERS by the member's employers, as reflected in PERS' records. Except as provided in this section, an employer may not modify an eligible member's records after the earlier of the 60th day after PERS notifies the eligible member's employer that a request for a verification has been submitted or the date the employer confirms the records in a manner determined by PERS.

(b) PERS may direct an employer to modify records if PERS determines modification is necessary, such as:

(A) To reconcile the member's records before the verification is issued;

(B) To implement the resolution of a dispute under section 3(2), chapter 1, Oregon Laws 2010; or

(C) To reissue a verification under subsection (4)(e) of this rule.

(c) An employer may petition PERS for an extension of the 60-day period described in subsection (a) of this section.

(A) The petition must:

(i) Be specific to an eligible member;

(ii) Specify the duration and end date of the extension requested;

(iii) Be received by PERS no later than the 45th day after notice is issued; and

(iv) Establish good cause why the extension should be granted.

(B) The PERS Executive Director or a person designated by the Director may grant or deny the request.

(C) An employer may not request more than one extension for an eligible member.

(3) For any verification provided by PERS:

(a) All data in a verification will be as of December 31 of the last calendar year before the date the verification is produced for which the Board has adopted annual earnings crediting.

(b) If an eligible member requests an additional verification, an employer may not confirm or modify, nor may a member dispute, by

reason of the additional verification, data for periods before the date specified in the most recent verification.

(4) When a member who has received a verification retires for service, PERS may not use amounts less than the amounts verified to calculate the member's retirement allowance or pension, except as permitted in section 3(3), chapter 1, Oregon Laws 2010, and this section.

(a) Amounts in a verification may be adjusted if a Tier Two member restores forfeited creditable service and establishes Tier One membership in the manner described in ORS 238.430(2)(b).

(b) Amounts in a verification may be adjusted to comply with USERRA.

(c) Amounts in a verification may be adjusted to implement a judgment, administrative order, arbitration award, conciliation agreement, or settlement agreement.

(d) If, subsequent to the date specified in a verification, a member's account is divided pursuant to ORS 238.465, the member and alternate payee accounts will be used to determine compliance with section 3(3), chapter 1, Oregon Laws 2010 and this section.

(e) If the amounts in a verification are adjusted under section 3(3), chapter 1, Oregon Laws 2010 or this section, the verification will be reissued by PERS as of the date specified in the original verification.

(5) Erroneous payments or overpayments not recoverable under section 3(6), chapter 1, Oregon Laws 2010 will be allocated annually by the Board.

Stat. Auth.: ORS 238.650, 238A.450
Stats. Implemented: 2010 OL Ch. 1, Sec. 2-4 (Enrolled SB 897)
Hist.: PERS 11-2010, f. & cert. ef. 11-24-10

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Rule Caption: Permits PERS to disclose employee's membership status to enable employer to comply with reporting requirements.
Adm. Order No.: PERS 12-2010
Filed with Sec. of State: 11-24-2010
Certified to be Effective: 11-24-10
Notice Publication Date: 9-1-2010
Rules Amended: 459-060-0020
Subject: OAR 459-070-0100 requires employers to transmit employment information to PERS in the manner and format required by PERS; we require employers to use the electronic reporting system (EDX). When reporting new employees through EDX, employers must assign a hire code and wage code. Those codes are different depending on the employee's status with PERS: active, inactive, or retired member or not currently a member of PERS. If the wrong code is used when reporting a new employee, the employment record suspends, an error report issues, and the employer and Employer Service Center staff must reconcile the error. Typically, the only resolution is for PERS to inform the employer of the member's current status so the correct codes can be assigned in the employer's report and the records can be posted. PERS staff proposes amending OAR 459-060-0020 with a minor modification to accommodate PERS' sharing of limited membership status information with the employer.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-060-0020
Confidentiality of Member's Records

(1) ORS 192.502(12) unconditionally exempts from public disclosure a member's nonfinancial membership records and an active or inactive member's financial records maintained by PERS. PERS shall not release such records to anyone other than the member, an authorized representative of the member, or the member's estate except:

(a) Upon the written authorization of the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(b) As otherwise provided in OAR 459-060-0030.

(2) ORS 192.502(2) conditionally exempts from public disclosure a retired member's financial information maintained by PERS. PERS shall not release such records to anyone other than the member, an authorized representative of the member, or the member's estate unless:

(a) To do so would not constitute an unreasonable invasion of privacy and there is clear and convincing evidence that disclosure is in the public's interest;

(b) PERS receives written authorization from the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(c) Release is provided for under OAR 459-060-0030.

(3)(a) Subject to subsection (b) of this section, PERS may provide a member's current or former employer with information from the member's records that is otherwise exempt from public disclosure to the extent necessary to enable the employer:

(A) To determine whether a non-PERS retirement plan maintained by the employer complies with any benefit or contribution limitations or nondiscrimination requirement imposed by applicable federal or state law;

(B) To apply any coordination of benefits requirement contained in any non-PERS benefit plan maintained by the employer;

(C) To perform any necessary account reconciliation following an integration of the employer's retirement plan into PERS; or

(D) To reconcile an actuarial valuation by providing the employer with the following member information:

(i) Salary information;

(ii) Employment history; or

(iii) Contribution history.

(b) PERS will not provide the information described in subsection (a) of this section unless the employer demonstrates to the satisfaction of PERS that the information is necessary to accomplish one of the purposes described in paragraphs (A), (B), (C) and (D) of subsection (a) and the employer certifies in writing that it will not disclose the information to any third party except to the extent permitted under this division and ORS 192.502(10).

(4) To enable an employer to comply with OAR 459-070-0100, PERS may disclose to the employer an employee's status as an active, inactive, or retired member, or a non-member.

(5) PERS will not provide a mailing list of its members or their dependents to any individual or enterprise.

Stat. Auth.: ORS 192.502 & 238.650
Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238
Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03; PERS 12-2010, f. & cert. ef. 11-24-10

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Oregon State Lottery
Chapter 177

Rule Caption: Changes Match 5 Play® prize to set amount of $1,000,000.
Adm. Order No.: LOTT 10-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 12-12-10
Notice Publication Date: 11-1-2010
Rules Amended: 177-085-0065
Subject: The Oregon Lottery has amended the above referenced Powerball® game rule to change the way the prize amount is determined for the Match 5 Power Play® option. This change was necessary to implement changes to the Powerball® game rules made by the national organization that administers the multi-state Powerball® game.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-085-0065
Power Play

(1) General: Power Play® is an optional, limited extension of the Powerball® Game described in OAR Division 85. The Lottery Director, in the Lottery Director's sole discretion and based on agrments with MUSL, is authorized to initiate and terminate the Power Play® option.

(2) Set Prizes Only: Power Play® multiplies or increases the amount of any of the cash Set Prizes (the cash prizes normally paying $3 to $200,000) won in a drawing. The Grand Prize jackpot is not a Set Prize and will not be multiplied or increased. Match 5 Bonus Prizes are awarded independent of the Power Play® option and are not multiplied by the Power Play® multiplier.

(3) Power Play® Purchase: A qualifying Power Play® option play is any single Powerball® Play for which the player selects the Power Play® option on either the Play Slip or by selecting the Power Play® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Power Play® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) Qualifying Play: A qualifying play which wins one of the seven lowest lump sum Set Prizes (excluding the Match 5 prize) will be multi-

plied by the number selected (either 2, 3, 4, or 5), in a separate random Power Play® drawing announced during the official Powerball® drawing show. The announced Match 5 prize, for players selecting the Power Play® option, shall be $1,000,000 unless a higher limited promotional dollar amount is announced by the Product Group.

(5) Selection of Multiplier: MUSL will conduct a separate random Power Play® drawing and announce results during each of the regular Powerball® drawings held during the promotion. During each Power Play® drawing, a single number (2, 3, 4, or 5) shall be drawn. The Product Group may change one or more of these multiplier numbers and/or the Match 5 Power Play® prize amount for special promotions from time to time.

(6) Power Play® Prize Pool: The prize pool for all prize categories shall consists of up to 49.5 percent of each drawing period's sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, after the Powerball® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Powerball® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(7) Power Play® Prize Reserve Accounts: An additional one-half percent of sales, including any specific statutorily mandated tax on a Party Lottery to be included in the price of a lottery ticket, may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

(8) Power Play® Payout: Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Powerball® set prize amounts, qualifying Power Play® option plays will pay the amounts shown below when matched with the Power Play® number drawn. Match 5 prizes shall be paid $1,000,000 regardless of the Power Play® number selected, unless a higher limited promotional dollar amount is announced by the Product Group. [Table not included. See ED. NOTE.]

(9) Probability of Prize Increase: The following table sets forth the probability of the various Power Play® numbers being drawn during a single Powerball® drawing, except that the Power Play® amount for the Match 5 prize will be $1,000,000. The Product Group may elect to run limited promotions that may increase the multiplier numbers or Match 5 Power Play® prize amount. [Table not included. See ED. NOTE.]

(10) Prize Pool Carried Forward: The prize pool percentage allocated to the Power Play® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(11) Pari-Mutuel Prizes —All Prize Amounts: If the total of the original Powerball® set prizes and the Power Play® prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the Power Play® prize amounts) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any;

(b) An amount from the Powerball® Set-Prize Reserve Account, if available in the account, not to exceed twenty-five million dollars ($25,000,000) per drawing; and

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including Power Play® prize amounts), then the highest set prize (including the Power Play® prize amounts) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize, including the Power Play® prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all set prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages. In rare instances, where the Powerball® set prize amount may be funded but the money available to pay the full Power Play® prize amount may not be available due to an unanticipated number of winners, the Product Group may announce pari-mutuel shares of the available pool for the Power Play® payment only.

(12) Prize Payment: All Power Play® prizes shall be paid in one lump sum. The Lottery may begin paying Power Play® prizes after receiving authorization to pay from the MUSL central office.

(13) Prizes Rounded: Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461
Hist.: LOTT 3-2001(Temp), f. 3-1-01, cert. ef 3-2-01 thru 8-29-01; LOTT 10-2001, f. 5-25-01, cert. ef. 5-29-01; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 10-2010, f. 11-19-10, cert. ef. 12-12-10

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Rule Caption: Clarify payment and set maximum guaranteed amount for Win for Life^{SM} top prize; housekeeping changes.
Adm. Order No.: LOTT 11-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 12-1-10
Notice Publication Date: 11-1-2010
Rules Amended: 177-094-0080
Subject: The amendments to the above rule clarify the amount a winner is paid for the top prize and set a maximum guaranteed top prize amount in the Win for Life^{SM} game. Other amendments include housekeeping changes.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-094-0080
Prizes

(1) Prizes for a winning ticket are determined by matching each horizontal set in the ticket's game play with the winning numbers from the relevant drawing. [Table not included. See ED. NOTE.]

(2) Prize Percentage Payout: The number of prizes for the Win for Life^{SM} game is not predetermined by the Lottery. The overall prize percentage payout for the Win for Life^{SM} game is estimated at approximately 65% over time, but the actual prize payout may vary from day-to-day and year-to-year due to factors that include, but are not limited to, the numbers of players participating each day and the number of winning wagers.

(3) Disputes: In the event of a dispute over the value of a prize or whether a ticket contains winning numbers, the Director's determination is controlling.

(4) Multiple Prizes:

(a) Subject to the validation requirements in OAR 177-094-0060, for each drawing, a player may receive multiple prizes on each ticket for which a ticket containing a winning game play is eligible.

(b) Only the top-prize associated with each set of numbers within the Win for Life^{SM}, $50,000, $20,000, and $10,000 prize categories shall be paid.

(5) Claiming a Prize: Prize payments must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025.

(6) Payment of Prizes: All prizes resulting from a ticket shall be paid in one lump-sum except for the Win for Life^{SM} prize of $1,000 per week for life.

(7) Win for Life^{SM} Top Prize:

(a) General: Only one natural person may claim and receive payment of the Win for Life^{SM} top prize of $1,000 per week for life per winning ticket. A Win for Life^{SM} top prize cannot be shared by multiple owners of a single winning ticket. In the event a single winning ticket is owned by more than one natural person, the individual owners with an ownership interest in the ticket must identify the natural person who will receive the top prize on a form provided by the Lottery.

(b) Payment Options: The Win for Life^{SM} top prize is $1,000 per week for life and shall be paid, based upon a selection made by the winner, either as:

(A) Weekly: A prize payment of $1000 each week beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the same day each week, or if such day falls on a non-business day, then the next business day; or

(B) Annually: A payment of $52,000 paid annually beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the anniversary date of the first payment, or if such date falls on a non-business day, then the first business day following the anniversary date of the first payment.

(c) Payments to Cease upon Winner's Death: The Win for Life^{SM} top prize of $1,000 per week for life will be paid to the winning player until such time as the winning player dies at which time all further prize payments shall cease.

(d) Five-Year Guaranteed Payment: Notwithstanding subsection (c) of this section, if the prize winner dies within five years of the date of prize

validation, the Lottery shall pay any remaining prize payments the prize winner would have received within the first five years after prize validation in one lump sum to the individual designated on a beneficiary designation form or to the prize winner's estate.

(e) Maximum Five-Year Guaranteed Payment: Notwithstanding subsections (c) and (d) of this section, for Win for Life^{SM} tickets purchased on or after December 1, 2010, if the prize winner dies within five years of the date of prize validation, the Lottery shall pay any remaining prize payment the prize winner would have received within the first five years after prize validation in one lump sum, up to a maximum of $260,000, to the individual designated on a beneficiary designation form or to the prize winner's estate.

(f) Election of Payment Schedule:

(A) Limitations of Election: At the time of the validation of a winning Win for Life^{SM} ticket for the top prize of $1000 per week for life, the winner of that prize must elect either the weekly or annual prize payment schedule described in subsection (b) of this section. A winner who elects the annual payment schedule cannot subsequently convert to the weekly payment schedule. The election of the annual payment schedule is irrevocable. A winner who elected the weekly payment schedule may convert to the annual payment schedule at any time, and the Lottery will issue payment to the winner for the sum of the remaining weekly payments from that date to the next anniversary date. Subsequent annual payments will be made on the anniversary date.

(B) Election When Child Support Owed: Notwithstanding subsection (A) of this subsection and subsection (g) of this section, when a search of delinquent child support obligors performed pursuant to ORS 461.715 and OAR 177-010-0090 Child Support Validation Check results in a positive match with the prize winner and the Division of Child Support of the Department of Justice (DOJ) or its successor initiates garnishment proceedings, the winner of the Win for Life^{SM} top prize of $1,000 per week for life has no payment options from which to select and will be placed on the annual payment schedule as described in subsection (7)(b)(B) of this section. This placement on the annual payment schedule is irrevocable.

(C) Conversion to Annual Payment Schedule upon Garnishment from Department of Justice: Upon receipt of garnishment proceedings from DOJ directed to the Lottery for monies due or to become due to a winner receiving weekly payments under the Win for Life^{SM} top prize, the Lottery will place that winner on the annual payment schedule as described in subsection (7)(b)(B) of this section. Conversion of the winner's payment schedule from weekly to annual under this section of the rule is irrevocable. The Lottery shall make payments to such a winner as follows:

(i) Payment Less Garnishment Amounts: Within a reasonable time after the disposition of the garnishment proceeding, the Lottery shall pay the winner the sum of the winner's weekly payments from the date the Lottery placed the winner's payments on hold to the winner's next anniversary date less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws.

(ii) Subsequent Payments: The Lottery shall make any subsequent annual payments, less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws, on the anniversary date of the validation of the prize.

(g) Limitation on Prize Amount for Multiple Top Prize Winners:

(A) More Than Three Winners: Notwithstanding the $1,000 per week amount referred to in this rule, if there are more than three individual winners of a Win for Life^{SM} top prize of $1,000 per week for life in a single drawing, the top prize payment per individual winner shall be limited to an amount equal to three times the top prize award divided by the number of actual top prize winners in that drawing.

(B) **Example**: For example, if there are four top prize winners in a single drawing and the prize payment year contains 52 weeks, then 52 weeks x $1,000 x 3 = $156,000 divided by 4 winners = $39,000 annual prize payment per each winner. If a winner has selected the weekly payment schedule, then the calculated annual prize payment shall be divided by the number of weeks in that prize payment year to arrive at the winner's weekly payment amount. In the above example, the $39,000 annual prize amount shall be divided by 52 weeks for a weekly payment of $750 to a winner on the weekly payment schedule less applicable taxes.

(C) Effect of Subsequent Events: Subsequent events, including, but not limited to, the death of one of the prize winners, shall not alter the other winners' original pro rata share of the calculated prize amount.

(h) Initiation of Payment: Prize payment is initiated upon validation of the winning ticket and will continue to be paid weekly or annually in accordance with the payment provisions contained in subsection (e) of this rule.

(i) Electronic Fund Transfer: After the initial prize payment issued to a Win for Life^{SM} top prizewinner, the Lottery shall pay both weekly and annualized Win for Life^{SM} prize installments via electronic funds transfer in the usual course of Lottery business.

(j) Annual Affidavit Required:

(A) General: Once each year and no earlier than thirty days prior to the anniversary of the original validation date, a winner of a Win for Life^{SM} top prize of $1,000 per week for life shall provide the Lottery with an affidavit on a form provided by the Lottery, signed by the winner, bearing the seal of a notary public, verifying the winner is living, containing the winner's current address, and a bank account number to which the prize shall be paid.

(B) Termination of Prize: If a winner of a Win for Life^{SM} prize of $1,000 per week for life does not provide the Lottery with the affidavit described in subsection (i)(A) of this section, then the Lottery shall not make further prize payments to the winner. If the failure of a winner to provide the affidavit continues to the next anniversary of the validation date, the remainder of the prize shall be terminated.

(C) Exception: Notwithstanding subsection (i)(B) of this section, when it is reasonable and prudent to do so based on the facts underlying a winner's failure to provide an annual affidavit, the Director may authorize prize payment even though an affidavit has not been provided or is not timely provided. No interest shall be paid by the Lottery on the value of the prize during the period a prize remained unclaimed.

(k) Death During a Payment Year: If a winner of a Win for Life^{SM} prize of $1,000 per week for life dies after five years have elapsed from the date of validation and if a sequence of weekly prize payments are paid over the course of the year in which the prize winner dies or if a single annual prize payment has been paid prospectively to the winning player for that year, the prize could be overpaid. It is the policy of the Lottery that the difference between the prize that should have been paid based on the date of the death of the prize winner relative to the anniversary date of validation of the prize and the prize amount that was actually paid during the year in which the winner died will not be subject to reimbursement by the Lottery. Any prize payment paid after the year in which the winner dies relative to the anniversary date of validation of the prize shall be subject to reimbursement to the Lottery.

(l) Non-Assignability: A Win for Life^{SM} top prize of $1,000 per week for life is based on the unknown duration of the life of the prizewinner and is therefore a prize of unspecified value and uncertain periodicity. Consequently, a Win for Life^{SM} top prize of $1,000 per week for life is not a future periodic prize payment as described in ORS 461.253(1) and cannot be assigned, gifted, sold, or transferred in any manner from the winner to another person or entity except under the circumstances as described in subsection (d) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 1-2001(Temp), f. & cert. ef. 1-22-01 thru 7-21-01; LOTT 7-2001, f. 4-25-01, cert. ef. 4-26-01; LOTT 8-2002(Temp), f. & cert. ef. 7-15-02 thru 1-3-03; LOTT 20-2002, f. & cert. ef. 9-30-02; LOTT 11-2010, f. 11-19-10, cert. ef. 12-1-10

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Rule Caption: Eliminates guaranteed estimated annuity jackpot; changes Match 5 Megapiler® prize to set amount of $1,000,000.

Adm. Order No.: LOTT 12-2010

Filed with Sec. of State: 11-19-2010

Certified to be Effective: 12-12-10

Notice Publication Date: 11-1-2010

Rules Amended: 177-098-0010, 177-098-0040, 177-098-0060, 177-098-0110

Subject: The Oregon State Lottery has amended four Megapiler® game rules to eliminate a guaranteed annuity jackpot prize and to change the way the prize amount is determined for the Match 5 Megapiler® option. This change is necessary to implement changes to the Mega Millions® game rules made by the national organization that administers the multi-state Mega Millions® game.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-098-0010

Definitions

The following definitions apply unless the context requires a different meaning:

(1) "**Drawing**" means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) "**Draw game terminal**" or "**Terminal**" has the meaning set forth in OAR 177-070-0005(4).

(3) "**Finance & Audit Committee**" means the committee established by the Multi-State Lottery Association Agreement.

(4) "**Game board**" or "**Boards**" means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-six squares, numbered one through fifty-six and the second set containing forty-six squares, numbered one through forty-six.

(5) "**Game ticket**" or "**Ticket**" means a ticket produced by a terminal which contains the caption Mega Millions®, one or more lettered game plays followed by the drawing date, the price of the ticket, whether or not the player has purchased the Megaplier® option, the number of draws, the drawing dates if more than one drawing was purchased, a six digit retailer number, and a serial number that is compatible with the Lottery's central computer system.

(6) "**Jackpot**" means the top prize of the Mega Millions® game. The annuity Jackpot Prize is an amount that would be paid in twenty-six annual installments.

(7) "**Mega Millions® Finance Committee**" means a committee of the Mega Millions® Lotteries which determines the Jackpot Prize amount (cash and annuity).

(8) "**Mega Millions® Lottery or Lotteries**" means those lotteries which have joined under the Mega Millions® Lottery Agreement and through a Cross-Selling Agreement with MUSL, to operate and sell the Mega Millions® game.

(9) "**Megaplier®**" means Mega Millions® game feature, known as "Megaplier®", by which a player, for an additional wager of $1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, excluding the Jackpot Prize by a factor of two, three, or four times depending upon the multiplier number that is drawn prior to the Mega Millions® game drawing.

(10) "**MUSL**" means the Multi-State Lottery Association.

(11) "**MUSL Board**" means the governing body of MUSL which is comprised of the chief executive officer of each Party Lottery.

(12) "**Participating Lottery**" or "Selling Lottery" means a state lottery or lottery of a political subdivision or entity which is participating in selling the Mega Millions® game and which may be a member of either group.

(13) "**Party Lottery**" means a state lottery or lottery of a political subdivision or entity which has joined the MUSL and, in the context of these Product Group Rules, which has joined in selling the games offered by the MUSL Mega Millions® Product Group.

(14) "**Play**" means the six numbers, the first five from a field of fifty-six numbers and the last one from a field of forty-six numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the game.

(15) "**Play Slip**" means a card used in marking a player's game plays and containing one or more boards.

(16) "**Product Group**" means the group of lotteries which has joined together to offer the Mega Millions® lottery game product pursuant to the terms of a Cross-Selling Agreement with the Mega Millions® Lotteries, the Multi-State Lottery Agreement and the Group's own rules.

(17) "**Quick Pick**" means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(18) "**Retailer**" means a person or entity authorized by a Party Lottery to sell lottery tickets.

(19) "**Set Prize**" means all other prizes except the Jackpot Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(20) "**Winning numbers**" means the six numbers, the first five from a field of fifty-six numbers and the last one from a field of forty-six numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10; LOTT 12-2010, f. 11-19-10, cert. ef. 12-12-10

177-098-0040
Prize Pool

(1) **Prize Pool**: The prize pool for all prize categories shall consist of up to fifty-five percent of each drawing period's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the prize reserve accounts are funded to the amounts set by the Product Group. The prize pool may be higher or lower than fifty-five percent based upon the number of winners at each prize level, as well as the funding required to meet a guaranteed Annuity Jackpot Prize as may be required by OAR 177-098-0060(5). Any amount remaining in the prize pool at the end of the Mega Millions® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with the law of the state or jurisdiction.

(2) **Prize Reserve Accounts**: An amount up to five percent of a Party Lottery's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be added to a Party Lottery's Jackpot Prize Pool contribution and placed in trust in one or more prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the prize reserve account(s) is below the amounts designated by the Product Group. The Product Group, with approval of the Finance & Audit Committee, may establish a maximum balance for the prize reserve account(s). The Product Group may determine to expend all or a portion of the funds in the accounts for the payment of prizes or special prizes in the game; subject to the approval of the Finance and Audit Committee. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. Any amount remaining in a prize reserve account at the end of the Mega Millions® game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with the law of the state or jurisdiction.

(3) Expected Prize Payout Percentages: The Jackpot Prize shall be determined on a pari-mutuel basis. Except as provided in these rules and except for winning prizes sold by the California Lottery, all other prizes awarded shall be paid as set cash prizes with the following expected prize payout percentages, which does not include an additional amount held in prize reserves:[Table not included. See ED. NOTE.]

(a) Division of Jackpot Prize Among Winners: The Jackpot Prize amount shall be divided equally by the number of game tickets winning the Jackpot Prize.

(b) Set Prizes: The prize pool percentage allocated to the set prizes (the single lump sum prizes of $250,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(c) Liability Cap: Should total prize liability for all lotteries selling the Mega Millions® game (exclusive of Jackpot Prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus $50,000,000 (fifty million dollars), whichever is less, (both hereinafter referred to as the "Liability Cap"), prize levels two through five ($250,000, $10,000, $150, and $150 set prize levels) shall be paid on a pari-mutuel basis, provided, however, that in no event shall the pari-mutuel prize be greater than the official advertised prize. The amount to be used for the allocation of such pari-mutuel prizes (prize levels two through five) shall be the liability cap less the amount paid for the Jackpot Prize and the prizes paid for levels six through nine ($10, $7, $3 and $2 set prize levels). To fund their portion of the Liability Cap, the Party Lotteries may utilize:

(i) the amount allocated to the set prizes in levels two through nine and carried forward from previous draws, if any, and

(ii) an amount from the prize reserve account described in section (2) of this rule.

(d) Prize Payments when Liability Cap Met: In the event the Liability Cap is met, the amount to fund the Jackpot Prize together with the amounts to fund the prize levels six through nine shall be first paid from the Liability Cap amount. The balance of the Liability Cap, after deducting the Jackpot Prize and payment for set prize levels six through nine (hereinafter referred to as the "Liability Cap Balance"), shall be applied to the second through fifth level set prize payments on a pari-mutuel basis in accordance with the following formula:

(A) Prize Level two (normally $250,000) shall be an amount equal to 64.53% of the Liability Cap Balance divided by the number of winning game tickets in Prize Level two;

(B) Prize Level three (normally $10,000) shall be an amount equal to 14.63% of the Liability Cap Balance divided by the number of winning game tickets in Prize Level three; and

(C) Prize Levels four and five (normally $150) shall be an amount equal to 20.84% of the Liability Cap Balance divided by the number of combined winning game tickets in Prize Levels four and five.

(4) **Advertised Jackpot Prize Annuity Amount**: Except as required by OAR 177-098-0060 the official advertised Jackpot Prize annuity amount is subject to change based on sales forecasts and/or actual sales.

(5) **Changes to Prize Categories**: The number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions® Lotteries, for promotional purposes. Such change shall be announced by the Lottery prior to the drawing to which the change applies.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10; LOTT 12-2010, f. 11-19-10, cert. ef. 12-12-10

177-098-0060

Prize Payment

(1) **Selection of Payment Type**: Jackpot Prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn, or otherwise changed.

(2) **Share of the Jackpot Prize**: Shares of the Jackpot Prize shall be determined by dividing the amount available in the Jackpot Prize pool equally among all winners of the Jackpot Prize. The prize money allocated from the current Mega Millions® prize pool for the Jackpot Prize, plus any previous portions of prize money allocated to the Jackpot Prize category in which no matching tickets were sold will be divided equally among all Jackpot Prize winners in all participating lotteries.

(3) **Lump Sum Payment**: Jackpot Prize winner(s) who elect a lump sum payment (cash value option) shall be paid their share(s) in a single lump sum payment. The lump sum payment amount shall be determined by the Product Group. The lump sum payment shall be paid upon completion of all internal validation procedures. Prize payments may be rounded down to the nearest $1,000.

(4) **Initial and Annual Annuitized Payments**: The annuity Jackpot Prize amount will be paid in twenty-six annual installments. The initial payment shall be paid upon completion of all internal validation procedures. The subsequent twenty-five payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven days of the anniversary of the annual auction date. All annuitized prizes shall be paid annually in twenty-six payments with the initial payment being made in cash, to be followed by twenty-five payments funded by the annuity. Prize payments may be rounded down to the nearest $1,000.

(5) **Jackpot Prizes and Increases**: The Mega Millions® lotteries may set a minimum guaranteed annuity Jackpot Prize amount, which shall be advertised by the selling lotteries as the starting guaranteed annuity Jackpot Prize amount.

(6) **Roll Over of Jackpot Prize**: If in any Mega Millions® drawing there are no Mega Millions® plays which qualify for the Jackpot Prize category, the portion of the prize fund allocated to such Jackpot Prize category shall remain in the Jackpot Prize category and be added to the amount allocated for the Jackpot Prize category in the next consecutive Mega Millions® drawing.

(7) **Funding the Annuity**: Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If individual shares of the cash held to fund an annuity is less than $250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Jackpot Prize pool. All annuitized prizes shall be paid annually in twenty-six payments with the initial payment being made in cash, to be followed by twenty-five payments funded by the annuity. Prize payments may be rounded down to the nearest one thousand dollars. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL.

(8) **Lack of Available Funds**: If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions® Game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(9) **Death of Winner**: In the event of the death of a lottery winner sold by a Party Lottery during the annuity payment period, the MUSL Finance & Audit Committee, in its sole discretion excepting a discretionary review by the Product Group, upon the petition of the estate of the lottery winner (the "Estate") to the lottery of the jurisdiction in which the deceased lottery winner purchased the winning ticket, and subject to federal, state, district or territorial applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If such a determination is made, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Finance & Audit Committee or the Product Group.

(10) **Low-Tier Cash Prize Payments**: All low-tier cash prizes (all prizes except the Jackpot Prize) shall be paid in cash through the Party Lottery which sold the winning ticket(s). A Party Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(11) **Rounding of Prize Payments**: Annuitized payments of the Jackpot Prize or a share of the Jackpot Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Jackpot Prize win shall be added to the first payment to the winner or winners. Prizes other than the Jackpot Prize which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(12) **Roll Over of Jackpot Prize**: If the Jackpot Prize is not won in a drawing, the prize money allocated for the Jackpot Prize shall roll over and be added to the Jackpot Prize pool for the following drawing.

(13) **One Prize per Board**: The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(14) **Claim Expires in One Year**: Claims for all prize categories, including the Jackpot Prize, shall be submitted within one year after the date of the drawing in accordance with these rules and OAR 177-070-0025(3).

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10; LOTT 12-2010, f. 11-19-10, cert. ef. 12-12-10

177-098-0110

Megaplier®

(1) General: Megaplier® is an optional, limited extension promotion of the Mega Millions® Game described in OAR Division 98. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Megaplier® option.

(2) Set Prizes Only: Megaplier® multiplies or increases the amount of any of the cash Set Prizes (the cash prizes normally paying $2 to $250,000) won in a drawing held during the promotion. The Jackpot Prize is not a Set Prize and will not be multiplied or increased by means of the Megaplier® promotion.

(3) Qualifying Play: A qualifying Megaplier® option play is any single Mega Millions® Play for which the player selects the Megaplier® option on either the Play Slip or by selecting the Megaplier® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Megaplier® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) Prizes to be Multiplied or Increased:

(a) Set Prizes: A qualifying play which wins one of the seven lowest lump sum Set Prizes will be multiplied by the number selected (either 2, 3, or 4), in a separate random Megaplier® drawing announced in a manner determined by the Product Group.

(b) Match 5+0 Prize: The Match 5+0 prize, for players selecting the Megaplier® option, shall be $1,000,000 unless a higher limited promotional dollar amount is announced by the Product Group or unless a lower dollar amount is announced by the Product Group under section (8) of this rule.

(5) Selection of Multiplier®: MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier®" drawing. Before each Mega Millions® drawing a single number (2, 3 or 4) shall be drawn. The Mega Millions® Product Group may

change one or more of these multiplier numbers and/or the Match 5+0 Megaplier® prize amount for special promotions from time to time.

(6) Megaplier® Prize Pool: The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each drawing period's sales, as determined by the Product Group, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the Mega Millions® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Mega Millions® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state or jurisdiction law.

(7) Megaplier® Prize Rollover or Reserve Accounts: Any amount not used to pay for multiplied prizes may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

(8) Expected Prize Payout: Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Mega Millions® set prize amounts, qualifying Megaplier® plays will pay the amounts shown below when matched with the Megaplier® number drawn: [Table not included. See ED. NOTE.]

(9) Probability of Winning: The following table sets forth the probability of the various Megaplier® numbers being drawn during a single Mega Millions® drawing. The Product Group may elect to run limited promotions that may increase the multiplier numbers. [Table not included. See ED. NOTE.]

(10) Prize Pool Carried Forward: The prize pool percentage allocated to the Megaplier® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw or may be held in a prize reserve account.

(11) Pari-Mutuel Prizes —All Prize Amounts: If the total of the original Mega Millions® set prizes and the Megaplier® prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the Megaplier® prize amounts) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any.

(b) An amount from the Mega Millions® reserve accounts not to exceed the lesser of 300% of draw sales or 50% of draw sales plus $50 million.

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including Megaplier® prize amounts), then the prize levels two through five shall become a pari-mutuel prize, as set out in OAR 177-098-0040. The Mega Millions® and Megaplier® prize pools shall be combined in the rare instance when the set prizes, pursuant to the rules, are paid on a pari-mutuel basis, so that the multipliers, as provided for in the rules, will remain in effect for all applicable prize levels. The Match 5+0 prizes may be reduced as announced by the Product Group.

(12) Prize Payment: All Megaplier® prizes shall be paid in one lump sum. The Lottery may begin paying Megaplier® prizes after receiving authorization to pay from the MUSL central office.

(13) Prizes Rounded: Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10; LOTT 12-2010, f. 11-19-10, cert. ef. 12-12-10

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Oregon State Treasury
Chapter 170

Rule Caption: Requirements for municipal financial advisors.
Adm. Order No.: OST 5-2010(Temp)
Filed with Sec. of State: 11-29-2010
Certified to be Effective: 12-1-10 thru 5-29-11
Notice Publication Date:
Rules Amended: 170-062-0000
Subject: New federal regulations require municipal financial advisors to register with the SEC (17 CFR Sec. 240.15Ba-2-6T) and prohibit a municipal financial advisor from serving as an underwriter in the same negotiated bond sale (municipal Securities Rulemaking Board (MSRB) Rule G-23). This temporary rule will keep Oregon bond issues in conformance with federal regulations until a permanent rule can be established.
Rules Coordinator: Sally Wood—(503) 378-4990

170-062-0000
Procedure for Submission, Review and Approval of an Advance Refunding Plan

(1) Plan Contents and Filing. An Advance Refunding Plan for a public body (as defined in ORS 287A.001(13)) consists of a:

(a) Request for approval for an advance refunding bond sale submitted to OST. The request should include the name, phone number, U.S. mailing and e-mail address for the public body and for their bond counsel, financial advisor, escrow verification agent, underwriter and trustee;

(b) Copy of the resolution, ordinance or other documents authorizing submission of the plan to the Office of the Oregon State Treasurer ("OST");

(c) Statement of the primary purpose of the advance refunding sale. Permissible purposes are:

(A) A present value savings. To effect a savings, discounted to present value;

(B) A favorable reorganization of debt. Bonds issued for a favorable reorganization of debt require submission of a detailed written analysis elaborating the financial, legal or other benefits of the reorganization to the public body or state agency. Valid reasons for a reorganization of debt may include, but are not limited to:

(i) Replacement of undesirable or overly restrictive bond covenants or terms, such as liquidity covenants and debt service coverage requirements or release of reserve requirements;

(ii) Restructuring of debt payments considered by the public body to be favorable to the financial health of the relevant jurisdiction or its taxpayers or ratepayers;

(C) Fiscal distress. To pay or discharge all or any part of a bonded obligation or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available.

(d) Description of the bonds to be refunded, including: date and premium, if any, when each is first callable; semi-annual debt service to final maturity for each issue; par amount originally issued, current amount outstanding, proposed amount and maturities to be refunded; the dated date; and the purpose for which the bonds were issued;

(e) Description of the advance refunding issue including the proposed: call date and premium, if any; semi-annual debt service to final maturity; present value of each semi-annual payment; par amount; dated date; sale and closing date; True Interest Cost as set forth in OAR 170-061-0000(l); and the federal arbitrage yield limit.

(f) A description of the escrow account, listing the type of securities to be used and the redemption date of the account;

(g) Preliminary Net Present Value Savings (NPVS): Present value savings is defined as the present value of the difference in debt service between the proposed refunded debt service and the proposed refunding debt service, discounted at the arbitrage yield of the refunding debt service. Any issuance expenses paid from sources other than bond proceeds and any other cash contributed to the escrow other than from bond proceeds must also be subtracted from proceeds to determine NPVS.

(h) Itemization of all administrative costs, expenses or fees associated with the refunding. OST will determine if the fees are comparable to similar offerings and if excessive, approval may be withheld;

(i) For a public body, a copy of the contract with their financial advisor;

(j) Completed MDAC Form 1;

(k) Final Official Statement, if the bonds have been publicly offered;

(l) Final Net Present Value Savings as described in subsection (g) of this section;

(m) Copy of the arbitrage or tax certificate for the refunding;

(n) Copy of bond counsel's approving legal opinion;

(o) Copy of the escrow verification report demonstrating the ability of the escrow account to meet all future debt service and related costs relative to the refunded bonds;

(p) Copy of the Escrow Deposit Agreement;

(q) Copy of the underwriting or bond purchase agreement, if sold on a negotiated basis;

(r) Copy of the letter from the financial advisor to the public body or state agency as described in section (2) of this rule;

(s) Completed MDAC Form 2; and

(t) Completed MDAC Form 3, if using a synthetic fixed rate refunding issue.

(2) Financial advisor required. A public body must employ a financial advisor whose function is to advocate the interest of and advise them on the refinancing transaction. The financial advisor must be registered with the Securities and Exchange Commission as a financial advisor as required under 17 CFR § 240.15Ba2-6T, or its successor permanent rule. The financial advisor cannot also serve as the underwriter in the same negotiated bond sale as required in Rule G23 of the Municipal Securities Rulemaking Board. Prior to closing, the public body must receive from the financial advisor a letter stating that the advisor has reviewed the assumptions included in the plan and that the plan is consistent with this rule. The letter must include a recommendation on the desirability or undesirability of doing the advance refunding and the reasons therefor. The contract with the financial advisor must reflect the obligations of the parties in the event the sale is not consummated as planned.

(3) Significant Savings Tests. Equating or surpassing any one of the following tests indicates that the present value savings purpose, as required by subsection (1)(c)(A) of this rule, has been met:

(a) Present value savings of $5 million or more; or

(b) A minimum savings ratio of 3.0 percent for a fixed rate refunding issue or a minimum savings ratio of 5.0 percent for a synthetic fixed rate refunding issue or other interest rate exchange agreement in conjunction with the refunding issue. If using an interest rate exchange agreement to synthetically fix a variable rate issue, the agreement must be for the maturity of the variable rate issue. The savings ratio is the net total present value savings divided by the proceeds of the refunding bonds, expressed as a percent.

(4) OST Approval Procedure.

(a) Preliminary Approval. Items in subsections (1)(a) through (1)(j) of this rule are initial components of an advance refunding plan and are required for preliminary approval. If approved, the OST will notify the public body of OST's preliminary approval and state its intention to issue a final approval conditional upon receipt and approval of items in subsections (1)(k) through (1)(t) of this rule;

(b) Preliminary advance refunding plans should be submitted to OST sufficiently in advance to allow 10 working days for review. The 10-day review period begins the working day after all items (1)(a) through (1)(j) of this rule and the application fee identified in OAR 170-061-0015 have been received;

(c) Preliminary approval is valid for a period of six months from the date of the preliminary approval letter. After the six month period expires a new application fee and advance refunding plan are required.

(c) Final Approval. Items in subsections (1)(k) through (1)(t) of this rule are the final components of an advance refunding plan and must be received at least five working days prior to final approval. The five-day period begins after receipt of all items required for final approval.

(d) At the discretion of OST, drafts of preliminary and final components of advance refunding plans may be acceptable with the understanding that finalized documents will be provided within five working days of the bond closing.

(5) Administrative Expenses.

(a) To reimburse OST for the services, duties and activities of OST in connection with reviewing proposals, a fee and other expenses will be charged to public bodies as identified in OAR 170-061-0015.

(6) Ongoing Evaluation. OST evaluates the statewide impact of advance refunding. Adverse trends associated with advance refunding bond sales may result in a review and revision of the savings tests, thereby diminishing any undesirable impact upon the higher priority "new money" bond issues.

(7) Waiver of Certain Provisions. OST may waive certain provisions of this rule to accommodate unusual circumstances.

(8) Noncompliance. If OST finds that an advance refunding plan is not in substantial compliance with ORS 287A.370 and this rule, the plan may not be approved. Notice that the plan does not comply, and the reasons for this finding will be sent to the public body or state agency and its bond counsel within 30 business days after receipt of the plan.

(9) Address. Submit Advance Refunding Plans as provided in OAR 170-055-0001(4).

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360 - 287A.380

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04; OST 2-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2010(Temp), f. 11-29-10, cert. ef. 12-1-10 thru 5-29-11

Oregon Student Assistance Commission
Chapter 575

Rule Caption: Nursing Faculty Loan Repayment Program.
Adm. Order No.: OSAC 2-2010
Filed with Sec. of State: 11-16-2010
Certified to be Effective: 11-16-10
Notice Publication Date: 10-1-2009
Rules Adopted: 575-080-0100, 575-080-0110, 575-080-0120, 575-080-0130, 575-080-0135, 575-080-0140, 575-080-0145
Subject: Provides loan repayments on behalf of nurse educators at nursing schools in Oregon who have earned a master's or doctoral degree from an accredited nursing education program.

This was adopted by the Commission on October 23, 2009 but there was a delay in filing.
Rules Coordinator: Beverly R. Boyd—(541) 687-7394

575-080-0100
Definitions

For the purposes of the Nursing Faculty Loan Repayment Program Services Program the following definitions shall be used:

(1) "Commission" means the Oregon Student Assistance Commission.

(2) "Nurse Educator" means any person licensed under ORS 678.010 to 678.410 as a Registered Nurse and who has earned a master's or doctoral degree from an accredited nursing education program.

(3) "Qualifying Loan" means any loan made under:

(a) Programs under Title IV, Parts B, D, and E, of the Higher Education Act of 1965, as amended; and

(b) The Nursing Student Loan Program and Health Education Assistance Loan Program administered by the U.S. Department of Health and Human Services.

(4) "Teach Full-Time" means to teach for one academic year as defined by the hiring nursing school in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0110
Purpose of the Program

The purpose of this program is to provide student loan repayments on behalf of nurse educators at nursing schools in Oregon who have earned a master's or doctoral degree from an accredited nursing education program. OAR 575-080-0040(2).

Stat. Auth.: ORS 348
Stats. Implemented: SB 331, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0120
Administration

(1) The Commission shall be responsible for the administration of this program.

(2) The Commission shall be responsible for making such rules as are required for the administration of the program.

(3) The Commission shall establish in the State Treasury the Nursing Faculty Loan Repayment Fund, separate and distinct from the General Fund. SB 701

(4) The Commission may charge an annual administrative charge for servicing the Program.

(5) The Commission, in consultation with the Oregon State Board of Nursing and the Oregon Center for Nursing, shall develop criteria to select program participants from the pool of eligible applicants.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0130
Application and Selection

(1) When funds are available, the Commission will provide application materials and information about the deadlines and selection process to interested individuals who have provided their names and contact information to the Commission and at the appropriate agency website.

(2) To be eligible to participate in this program a nurse educator employed by an Oregon nursing school shall submit an application to the Commission.

(3) Applicants selected for participation in this program shall sign an agreement with the Commission which sets forth the terms which the applicant must meet in order to qualify for benefits under this program.

(4) For purposes of selection, a selection committee, consisting of a representative each from the Oregon State Board of Nursing, Oregon Center for Nursing and other appropriate professional organizations will select participants annually.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0135
Selection Criteria

Selection of program participants will be made from the applicant pool of eligible nurse educators who teach full-time at nursing schools in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0140
Terms of Agreement

Nurse educators who are selected to participate in the Nursing Faculty Loan Repayment Program shall agree that:

(1) A total of the nurse educator's qualifying loan amount while in nursing school and in a teaching program shall be provided by the nursing educator. An annual repayment for this program will not exceed the lesser of 20 percent of this total or $10,000, as adjusted under subsection (5).

(2) Beginning the academic year following the execution of a Nursing Faculty Loan Repayment Agreement, a participant agrees to teach full time for one academic year, as defined by the hiring nursing school in Oregon, for each year of repayment. Repayment will take place at the end of the academic year.

(3) Nurse Educators with a master's degree may not receive more than three years of reimbursement.

(4) Nurse Educators with a doctorate degree may not receive more than five years of reimbursement

(5) On January 1 of each year, beginning in 2010, the Commission shall adjust the maximum dollar amount allowed under section (1) of this rule as a qualifying loan as specified in SB 701.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

575-080-0145
Cessation of Program Participation

(1) Program participation ceases when the participant can no longer teach full time at a nursing school in Oregon. Once the Commission is notified that the participant can no longer teach full time, the agreement signed by the applicant and the Commission will be considered invalid unless the participant qualifies under subsection (2).

(2) After consideration by the Commission, the Oregon Center for Nursing, the Board of Nursing and other appropriate professional organizations of a written appeal from the participant, an individual may remain a program participant although the participant may not teach full time.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10

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Oregon Student Assistance Commission, Office of Degree Authorization
Chapter 583

Rule Caption: Brings rules into compliance with 2009 OR Laws Ch. 172 (SB 114) .
Adm. Order No.: ODA 1-2010
Filed with Sec. of State: 11-16-2010
Certified to be Effective: 11-16-10
Notice Publication Date: 10-1-2009
Rules Amended: 583-030-0010
Subject: OR Laws Ch. 172 exempts all regionally accredited nonprofit degree-granting institutions from ODA oversight and requires ODA to oversee all for-profit degree-granters and all degree-granters lacking regional accreditation. Rule changes will adjust the language of OAR to reflect this change in jurisdiction. Rules will be effective January 1, 2010.

These were adopted by the Commission on October 23, 2009 but there was a delay in filing.
Rules Coordinator: Beverly R. Boyd—(541) 687-7394

583-030-0010
Exemptions

The standards and procedures in this rule shall not apply to a school that is exempt.

(1) A school in the public postsecondary educational system of the State of Oregon is exempt when offering degrees and credits exclusively in its own name and under its own control as the Oregon University System or constituent unit thereof, an Oregon community college, or the Oregon Health and Science University.

(2) A school is exempt on religious grounds if the school meets the requirements of ORS Chapter 546, 2005 Laws. No rules in 583-030 are applicable to a religious-exempt school except as permitted by ORS Chapter 346, 2005 Laws.

(3) A regionally accredited nonprofit school or separately regionally accredited campus of a nonprofit school that has operated at least one ODA-approved program in Oregon for at least five consecutive years is exempt.

Stat. Auth.: ORS 348.594
Stats. Implemented: ORS 348.594
Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2010, f. & cert. ef. 11-16-10

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Rule Caption: Revises standards related to faculty qualifications, job placement and admissions.
Adm. Order No.: ODA 2-2010
Filed with Sec. of State: 11-16-2010
Certified to be Effective: 11-16-10
Notice Publication Date: 7-1-2010
Rules Amended: 583-030-0035
Subject: Revises three parts of the standards applicable to schools and programs under ODA jurisdiction. Clarifies standards for use of high school diplomas. Clarifies expectations of faculty credentials. Clarifies standards related to placement of graduates.
Rules Coordinator: Beverly R. Boyd—(541) 687-7394

583-030-0035
Standards for Schools Offering Degree Programs In or From Oregon

In order to receive and hold authorization to offer in or from Oregon instruction or related services leading to one or more degrees, a school must remain open to inspection at all times and continuously satisfy each of the following standard requirements as written, except where the Office approves modification under OAR 583-030-0036 or substitution under 583-030-0011. Standards are applicable to all programs.

(1) Name. The school shall use for doing business publicly a name that is consistent with its purpose and educational programs.

(2) Control.

(a) All persons responsible for top management policy must be individually qualified by education, experience, and record of conduct to assure effective management, ethical practice, and the quality of degrees and services offered. Boards must collectively demonstrate financial, academic, managerial and any necessary specialized knowledge, but individual members need not have all of these characteristics. Any controlling organization or owner is subject to this standard.

(b) Administrators shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the administrator or the administrator's staff is considered payment by commission.

(c) Teachers shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the teacher is considered payment by commission.

(d) Nonprofit Schools:

(A) Persons who control a nonprofit school shall demonstrate a commitment to the school's best interest as a public trust.

(B) A nonprofit school shall have a published policy that is followed in practice against conflicts of interest at all organizational levels.

(e) For-profit Schools:

(A) A school operated for profit shall disclose fully to the Office, the specific financial interest of any organization or person, except that a large group of shareholders may be described generally. Any person or entity holding at least 5 percent of voting or common shares in a for-profit school must be named and the percentage of holdings disclosed. All business activities of interested organizations or persons are subject to disclosure.

(B) All board members, administrators, or owners of five percent or more of shares of an applicant school or parent corporation must disclose with explanation the following:

(i) Any prior felony convictions.

(ii) Any known violations of federal financial aid rules by a school of which the person was a board member or employee.

(iii) Any known violations of the policies of an accreditor by a school of which the person was a board member or employee.

(iv) Any previous or current ownership or administration of a school that closed or filed for bankruptcy.

(3) Organization.

(a) The school and any parent organization shall be organized so as to distribute responsibility clearly among positions in a logical structure that is consistent with services offered and qualifications needed to fulfill the duties of the positions. An individual may occupy more than one position.

(b) The school shall satisfy the Office that all top executive officers and other administrators are individually qualified by education, experience, and record of conduct to assure competent management, ethical practices, and effective educational service. Unless an exception is approved by the Office because of sufficient compensatory qualification, administrators above the entry level shall have experience related to their present duties, and all administrators with authority over academic programs shall possess appropriate degrees earned from schools that are regionally accredited or otherwise determined by the Office to be acceptable.

(c) The school shall make available to the Office an administrator generally responsible for school operations within the state and transaction of business with the Office. Unless an exception is approved by the Office because of sufficient compensatory qualification, that administrator shall possess a degree at least as high as any offered by the school in connection with operations in Oregon, together with appropriate administrative experience.

(d) There shall be an academic officer for the entire school responsible for faculty and academic programs offered in or from Oregon. Unless an exception is approved by the Office because of sufficient compensatory qualification, that officer shall possess at least a master's degree and shall possess a doctor's degree if the school offers any graduate or non-baccalaureate professional degree. That officer shall have experience in teaching and academic administration, both experiences appropriate to the level, size, and complexity of the school.

(e) There shall be a business officer for the entire school responsible for accounting and managerial services. Unless an exception is approved by the Office because of unusual compensatory qualification, that officer shall possess at least a bachelor's degree in a business-related field, together with appropriate administrative experience.

(4) Teachers.

(a) The school must obtain and keep official transcripts for all teaching faculty.

(b) The school shall satisfy the Office that all teachers are individually qualified by education and experience to give expert instruction or evaluation in their specialties. Unless an exception is approved by the Office because of sufficient compensatory qualification, teachers shall be qualified for the various levels of instruction or evaluation as described below, with degrees earned from schools that are accredited by a federally recognized accreditor or otherwise determined by the Office to be acceptable.

(c) Standards applicable to specific degree levels. A person who does not hold the appropriate level and major degree as stated in (B) through (D) below may demonstrate qualification by showing at least 12 semester or 18 quarter credits in the field at a level higher than the current teaching assignment combined with appropriate professional experience in the field. Teaching experience cannot be used to replace professional experience if this option is exercised, except for teacher education programs.

(A) Teachers in programs leading to degrees in the fine arts, including art, music, dance, cooking, theater, photography, writing and other programs involving a significant creative element, may demonstrate qualifications with a documented combination of academic and creative work.

(B) Standards applicable to associate degrees: A teacher on a faculty offering associate's degrees ordinarily shall possess a bachelor's degree appropriate to the subject taught or evaluated, except that compensatory nonacademic qualifications will be more readily accepted by the Office in programs leading to occupational degrees leading to professional licensure or the fine arts. Where the degree emphasizes transfer courses in the arts and sciences (primarily Associate of Arts degrees), the teacher ordinarily shall possess an appropriate master's degree.

(C) Standards applicable to bachelor's degree programs: A teacher on a faculty offering bachelor's degrees ordinarily shall possess an appropriate graduate degree in the field currently taught.

(D) Standards applicable to master's degree programs: A teacher on faculty offering master's degrees ordinarily shall possess an appropriate doctor's degree and some teaching experience, except that up to half of the teachers in an occupational or professional degree program may substitute for the doctorate a master's degree together with occupational or professional licensure or equivalent certification and related work experience. More substitutions may be permitted where the terminal degree for teachers in an occupational or professional field is not generally considered to be a doctorate.

(E) Standards applicable to doctoral programs: A teacher on a faculty offering doctor's degrees ordinarily shall possess an appropriate doctor's degree and substantial graduate or first-professional teaching experience, including experience overseeing advanced independent study or student practice, except that the doctor's degree alone may suffice for teaching courses at the master's level generally or at any level in the teacher's particular subspecialty.

(d) Teachers shall be numerous enough and so distributed as to give effective instructional and advisory attention to students in all programs offered by the school.

(e) A school having an undergraduate FTE student-faculty ratio of greater than 30-1 or a graduate FTE student-faculty ratio of greater than 20-1 for students taught in or from Oregon must demonstrate that students and faculty have adequate opportunities for one-to-one interaction.

(f) A school that does not have at least one full-time teacher resident in Oregon or directly teaching Oregon students in each specialty must demonstrate with specific examples the adequacy of faculty contribution to organizational integrity and continuity, to academic planning, and to resident student development.

(g) The school shall have a faculty development policy that continuously improves their knowledge and performance.

(h) The school must provide ODA with annual data regarding turnover of full-time teachers. ODA may limit use of part-time teachers upon finding that such turnover or use results in substandard education of students.

(i) The school shall demonstrate an effort when hiring teachers to avoid dependence on its own most recent graduates. No more than 20 percent of all applicant school teachers can hold their highest degree from the applicant school unless fewer than 10 schools in the United States offer the highest degree available in the field. Schools offering solely religious degrees are exempt from this requirement.

(j) A teacher of an academic or scientific discipline within an occupational or professional degree program (e.g., economics within a business program, psychology within education, anatomy within nursing) ordinarily shall possess the appropriate degree in the discipline rather than a non-disciplinary occupational or professional degree. Lower-division undergraduate courses may be taught by those with non-disciplinary degrees who have demonstrable and extensive acquaintance with the discipline.

(5) Credit. The school shall award credit toward degrees proportionate to work done by students and consequent upon the judgment of qualified teachers and examiners. Credits are generally expressed as either semester (SCH) or quarter credit hours (QCH). One semester credit represents approximately 45 hours of on-task student work in a semester (usually two study hours per faculty contact hour). A quarter credit hour represents approximately 30 hours of student work in a quarter. Credit hours earned through nontraditional learning schedules shall have proportionate value to credit hours based on customary term lengths.

(a) Instructional methods:

(A) Credit awarded by the school shall be based solely upon the judgment of teachers who have had extensive direct contact with the students who receive it, with the exception of methods listed in these rules if approved in advance by ODA

(B) At least one academic year of credit toward any degree, most of it near the end, shall represent teaching or direct evaluation by faculty members employed by the school, except that the Office may approve a lesser amount for an associate's degree.

(C) Credit may be awarded for distance learning if the school demonstrates that it has adequate methods in place to ensure that student work is

sufficient both in quality and quantity to meet ODA requirements, courses are developed and taught by qualified faculty and there will be sufficient interaction between students and faculty and, if possible, among students. The Office may limit or disallow credit awarded for any type of distance learning if the school cannot demonstrate adequate oversight and quality control measures.

(D) Transfer credit integral to the school's approved degree curriculum may be awarded at the corresponding degree level for academic work documented by other schools that are regionally accredited, authorized to confer degrees in or from Oregon, or otherwise individually or categorically approved by the Office. Such credit must be converted as needed from semester, quarter or nontraditional calendar systems.

(b) Noninstructional Methods No more than one year of an academic program can be completed using any combination of the noninstructional methods set forth in (A), (B), and (C) below:

(A) Advanced Placement credit integral to the approved degree curriculum may be awarded in the lower-division up to a limit of one academic year for passing examinations constructed by testing organizations satisfactory to the Office.

(B) Challenge examination credit as an actual component of the approved degree curriculum may be awarded only at the undergraduate level for successful performance on a final course examination, or on a similar test covering all course content, given by the school in lieu of requiring class attendance. No more than 25 percent of an undergraduate degree program may be earned through challenge examinations.

(C) Noncollegiate learning integral to the approved degree curriculum may be awarded credit only at the undergraduate level for learning validated by a student "portfolio," a credit evaluation guide issued by the American Council on Education, or a similar criterion. Such learning must be formulated through sufficient contact between teacher and student, communicated competently in terms of ideas (e.g., concept, generalization, analysis, synthesis, proof) rather than mere description, and judged by faculty members or contracted experts demonstrably qualified to evaluate it. Upper-division credit of this type may be awarded only in academic fields in which the school employs its own faculty. No more than 25 percent of an undergraduate degree program may be earned through award of credit for noncollegiate work.

(6) Curriculum. The school shall assure the quality of all attendant teaching, learning, and faculty-student interaction. The curriculum shall have a structure that reflects faculty responsibility for what is to be learned overall, as well as in each course, and thus for the logical sequence and increasing difficulty of subjects and instructional levels. While requirements are sometimes listed in both semester and quarter credit hours, ODA usually states credit hours as semester credit hours. If quarter credits are not listed, colleges using the quarter system should multiply the stated credits by 1.5 to obtain the correct requirement in quarter credit hours (QCH) under quarter systems. These are the basic requirements for different kinds of degrees available in Oregon. ODA may approve minor variations from these curriculum standards in order to allow programs to operate efficiently.

(a) Undergraduate Programs All associate and bachelor's degrees require one year (at least 6 semester (SCH) or 9 quarter credit hours (QCH) or equivalent alternate term credit hours) of English composition or equivalent ODA-approved writing courses. Students may meet this requirement by achieving a score on a nationally normed test that would permit a waiver of English composition requirements or the award of academic credit in English composition at an accredited college or university.

(b) Associate Degrees An associate's degree requires at least two academic years (60 semester credit hours or 90 quarter credit hours) in FTE postsecondary study. The degree requires at least 15 SCH or 22 QCH in general education courses, including the undergraduate English composition requirement

(A) Associate of Arts. A full-transfer degree, the A.A. requires two academic years applicable to B.A. or B.S. study fulfilling baccalaureate liberal arts requirements. A major is optional. Thus, the A.A. requires 24 SCH (36 QCH) in the liberal arts and sciences, with at least 6 hours (9 QCH) each in the humanities, sciences, and social sciences.

(B) Associate of Science. A limited-transfer degree, the A.S. requires a major and two academic years applicable to professional or technical baccalaureate study. The A.S. degree requires 24 SCH (36 QCH) in the humanities, sciences and social sciences, or in non-vocational courses closely related to them.

(C) Associate, Professional or Technical. A terminal degree, the professional or technical associate's degree requires a major (Degree title examples: Associate of Applied Arts, Associate of Applied Science, Associate of Technology, Associate of Occupational Studies, Associate of Business, Associate of Religion). In addition to the major requirements, this degree requires the basic 15 SCH or 22 QCH in general education courses, including the English composition requirement.

(c) Bachelor's Degrees A bachelor's degree, or baccalaureate, requires at least four academic years (120 SCH or 180 QCH) in FTE postsecondary study. At least 40 semester credit hours (60 QCH) shall be in upper-division courses, and no more than two academic years of instruction (no more than 50 percent of credit hours used for the degree) shall be from schools that do not offer baccalaureate degrees.

(A) General Education: The degree requires one academic year (at least 30 SCH or 45 QCH) of general education, which includes the one-year undergraduate English composition requirement.

(B) Major Field: The degree requires distinct specialization, i.e., a "major," which entails approximately one academic year of work (30 SCH or 45 QCH) in the main subject, with 20 SCH (30 QCH) in the upper division and 15 SCH (22 or 23 QCH) of upper-division hours taught by the resident faculty. A dual major simply doubles these numbers.

(C) An interdisciplinary major is also permitted. It requires two academic years (60 SCH) in either three or four disciplines, with at least 15 hours in each discipline and at least 9 upper-division hours in each. A school may offer a major or an interdisciplinary option in any field in which it has more than one fully qualified teacher if at least one teaches full time.

(D) Degrees. The following bachelor's degree names, levels and types are available in Oregon:

(i) Bachelor of Arts. An arts degree, the B.A. requires competency in a foreign language and one academic year in the humanities, i.e., 30 SCH, of which 12 can be in foreign languages. The language competency requirement is equivalent to the 12 hours, the second-year level, and ESL students can satisfy it with 12 hours of English language and literature. As general education outside the major, the B.A. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(ii) Bachelor of Science. A science degree, the B.S. requires one academic year in the social or natural sciences, i.e., 30 SCH, of which 12 can be in mathematics and state-approved computer courses. As general education outside the major, the B.S. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(iii) Bachelor, Professional. As general education outside the major, the professional bachelor's degree requires 24 SCH hours in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas: humanities, social sciences, and natural sciences.

(iv) Bachelor, Technical. As general education outside the major, the technical bachelor's degree requires 24 SCH in the liberal arts and sciences, or in non-vocational courses closely related to them, with at least 3 semester hours in each of the three areas: humanities, social studies, and natural sciences, and a total of at least 9 in the two areas most unrelated to the major.

(d) Graduate Degrees A graduate curriculum shall reflect a concept of the graduate school as a group of scholars, the faculty members of which have had extensive collegiate teaching experience and are engaged in the advancement of knowledge. A graduate degree must involve teaching by such qualified faculty and cannot be earned solely by testing and/or portfolio review.

(A) A master's degree shall require at least one full academic year in FTE post-baccalaureate study, except that a first-professional master's degree may be authorized for study beyond fulfillment of undergraduate requirements approved by the Office if the total period of study is at least five academic years. The curriculum shall specialize in a single discipline or single occupational or professional area and culminate in a demonstration of mastery such as a research thesis, a work of art, or the solution of a practical professional problem.

(B) A doctor's degree shall require at least three academic years in specialized post-baccalaureate FTE study, except that a first-professional doctor's degree may be authorized for four academic years of study beyond fulfillment of undergraduate requirements approved by the Office. Study for a closely related master's degree may be counted toward doctoral requirements. The doctor's degree shall represent a student's ability to perform independently basic or applied research at the level of the professional scholar or to perform independently the work of a profession that involves the highest levels of knowledge and expertise. Requirements for the degree shall include demonstration of mastery of a significant body of knowledge through comprehensive examination, unless a graduate must pass a similar examination in order to be admitted to professional practice

in Oregon. The curricular program of a research degree shall be appropriately broad and shall manifest full understanding of the level and range of doctoral scholarship, the function of a dissertation and its defense, the nature of comprehensive examination, and the distinction between matriculation and degree candidacy.

(7) Learning. The school shall require each student to complete academic assignments and demonstrate learning appropriate to the curriculum undertaken.

(a) Teachers or evaluators shall inform students clearly using a syllabus or similar instrument of what should be learned in each course and how it will be measured.

(b)(A) Expectations of student performance shall be increased with each ascending step in degree level. Higher degrees must represent an increase in the difficulty of work and expectations of students, not simply a cumulation or increase in quantity of student work.

(B) Evidence of expectation (e.g., syllabi and sample exams) and performance (e.g., student grades) shall be retained for all academic courses for at least one year.

(c) The school shall require students to make continuous progress toward a degree while they are enrolled and liable for tuition and shall suspend or dismiss those who do not make such progress, except that a period of probation with guidance may be instituted in order to obviate separation of a student who can be expected to improve immediately. Continuous progress for students receiving Title IV aid shall be defined according to federal Title IV standards. Students not receiving Title IV aid shall meet the school's own published standards for satisfactory progress.

(d) Grading and appeal procedures shall be fair and administered equitably, and criteria of student progress shall be validated by research if not obviously valid.

(8) Recruitment:

(a) The school is responsible for insuring that its recruitment agents are knowledgeable about the school's:

(A) History and accreditation;

(B) Programs of study;

(C) Admission and assessment requirements;

(D) Ability to assist in providing housing and/or job placement;

(E) Financial policies and procedures, including the point at which students can expect to receive financial aid disbursements;

(F) Refund policy;

(G) Graduation requirements and rates;

(H) Rules and regulations;

(I) Placement rates if they are used in recruiting.

(b) The school is responsible for insuring that its recruitment agents are providing accurate, realistic information about the school, its policies and achievements, and its ability to assist students.

(c) A prospective student shall receive a complete description of the school and its policies, including an estimate of annual or program costs, before being enrolled. This estimate is not binding on the institution but must give prospective students a reasonable idea of their financial commitment.

(d) Where a degree or certificate implies preparation for a specific occupation, the school shall explain clearly the true relationship between its curriculum and subsequent student qualification for occupational practice, including employment rates in the field and graduates' success rates in passing licensure examinations if applicable. Employment rates in the field claimed by a particular program shall treat graduates as employed in the field only if the position in which the graduate is employed meets the following conditions.

(A) is at least half-time.

(B) is usually filled by a person with a credential of the kind offered by the program or is one in which holders of such a credential have a competitive advantage in the workplace because of training of the kind provided by the program.

(C) employs the graduate within six months of program completion in a position that is intended to be permanent, i.e. not for a defined period of time. The school has the burden of showing that the position is intended to be permanent.

(e) The school shall take precautions to avoid unrealistic expectation of housing availability and cost when the school does not provide housing and job placement, including part-time employment and practica during the student's enrollment.

(f) A claim made to attract students shall be documented by evidence available to any person on request. The school shall make no attempt to attract anyone who does not appear likely to benefit from enrollment, and no attempt to attract students on any basis other than instruction and campus life appropriate to an educational institution.

(g) Outside the regular student financial aid process, there shall be no discounting of tuition as an incentive to enroll.

(9) Admission. The school shall offer admission only on receipt of evidence that the applying student can reasonably expect to complete a degree and to benefit from the education obtained.

(a) A student admitted to undergraduate degree study for the first time shall have either a standard high school diploma, a comparable credential issued outside the United States or a GED. Home-schooled students without a standard diploma or GED may only be admitted if they can demonstrate the ability to perform college-level academic work through use of an ability-to-benefit test. Modified diplomas, extended diplomas and other kinds of K-12 leaver certificates are not considered diplomas for purposes of college admissions. Students holding such nonstandard certificates can be admitted only through use of an ability-to-benefit test.

(b) A student admitted to undergraduate degree study with undergraduate experience shall have a record of successful performance therein or else a record of responsibility and achievement following unsuccessful collegiate performance.

(c) A student admitted to graduate degree study shall have a baccalaureate degree from a school that is accredited, authorized to confer degrees in Oregon, or otherwise approved by the Office either individually or by category.

(d) A student admitted to first-professional degree study shall have at least three academic years of accredited or ODA-approved undergraduate credit, graded average or better, including pre-professional courses specified by the school and approved by the Office.

(10) Guidance. The school shall help students to understand the curriculum and to make the best use of it.

(a) There shall be a program of general orientation for new students.

(b) Each student shall be assigned a qualified academic advisor to assist individually in planning, course selection, learning methods, and general adjustment.

(c) The school shall provide career guidance to the extent that curriculum is related to a specific prospective occupation or profession.

(11) Student Affairs. Through both services and supervision the school shall demonstrate commitment to the success of individual students and to maintenance of an atmosphere conducive to learning.

(a) Rules of student conduct shall be reasonable, sufficiently specific, fully communicated, systematically and equitably enforced, and accompanied by policy and practice of disciplinary due process, including notice and hearing and related rights.

(b) Health, counseling or psychological services provided to students must meet requirements for professional practice in Oregon.

(c) Housing where provided or endorsed by the school shall be conducive to study and adequately supervised.

(d) Financial aid services shall be provided by qualified administrators.

(e) Placement services where provided shall be described clearly to students, and the school shall take precautions to avoid unrealistic expectation of placement.

(f) Records documenting relationships between the school and a student shall be open to that student, who may request changes or enter dissenting comments, and the content of records shall be objective and fair. The private notes of a counselor are not to be considered educational records and shall not be transmitted as such, either inside or outside the school. All medical records are confidential and shall not be released without permission of the patient.

(g) There shall be available to undergraduate students and responsible for student affairs an official who possesses knowledge, skill, and managerial experience particularly appropriate to the function, unless the Office waives this requirement. In general, waivers are granted only for small startup schools in their first approval cycle and for schools that mainly teach people who are of nontraditional age (23 or older) or already in the workforce.

(h) Every school shall distribute a student handbook or similar publication describing services and regulations, unless such descriptions are complete in the school's main catalog.

(12) Information. The school shall be scrupulously ethical in all communication with the public and with prospective students. School publications, advertisements, and statements shall be wholly accurate and in no way misleading. Reference to state approval shall be limited to that described in OAR 583-030-0041. Reference to accreditation shall be limited to that defined in OAR 583-030-0015(2)

(a) The school shall publish at least every two years a catalog or general bulletin. The catalog shall contain a table of contents and adequate information concerning period covered, school name and address, telephone numbers, state approval, purpose, relationship to occupational qualification, faculty and administrators (listing position or teaching specialization together with all earned degrees and their sources, omitting unearned degrees and not confusing professional licenses with degrees), degree requirements and curricula, academic calendar, credit policy in accordance with OAR 583-030-0035(5), transferability of credit to other schools, admission requirements and procedures, academic advising and career planning, academic policies and grading, rules of conduct and disciplinary procedure, student services (counseling, health, placement, housing, food, bookstore, activities, organizations), student records, library, facilities, fees and refunds, estimated total expenses, financial aid, and job opportunities for current students. Electronic publication meets this standard provided that a paper version of the catalog is provided to ODA, is available to students upon request and is maintained as the "official" version in order to avoid confusion if electronic versions are changed.

(b) A school without regional accreditation shall print in a separate section of its catalog titled "transfer of credit to other schools" a statement warning students verbatim that "transfer of credit is always at the discretion of the receiving school, generally depends on comparability of curricula, and may depend on comparability of accreditation." Other comments may follow concerning the school's documented experience in credit transferability, but it must be clear that a student should make no assumptions about credit transfer.

(13) Credentials. The school shall provide accurate and appropriate credit transcripts for students who enroll and diplomas for students who graduate.

(a) The school shall maintain for every past and present student, and shall issue at the request of any student who is not delinquent in fee payment, a current transcript of credits and degrees earned. The transcript shall identify the school fully and explain the academic calendar, length of term, credit structure, and grading system. It shall identify the student and show all prior degrees earned, details of any credit transferred or otherwise awarded at entry, and periods of enrollment. It shall include for each period of enrollment every completed course or module with an understandable title, number of credits earned, and grade received. The transcript shall note with or without explanation if the student is not immediately eligible to continue enrollment, e.g., for reasons of academic probation or suspension.

(b) Upon satisfaction of degree requirements and payment of all fees owed, the school shall provide the graduating student with a diploma in a form approved by the Office, appropriately documenting conferral of the degree.

(14) Records. The school shall keep accurate and safe all records affecting students. There shall be at all times complete duplicate transcript information kept in a location away from the original transcripts, such that duplicates and originals are not exposed to risk of simultaneous damage. In addition to transcripts, which may never be destroyed, the school shall maintain detailed records documenting the significant parts of its formal relationship with each student: financial transactions and accounts, admission qualifications, validation of advanced standing, instructor course records as posted to transcripts, and status changes due to unsatisfactory performance or conduct. Such supporting records shall be kept safe for a period of at least three years after a student has discontinued enrollment. Instructor course records other than those posted to transcripts shall be kept for at least one year.

(15) Library. The school shall provide or arrange for its faculty and students direct or electronic access to verbal and sensory materials sufficient in all subjects of the curriculum to support instruction and to stimulate research or independent study.

(a) The school may arrange for comprehensive privileges from libraries of other organizations, provided it can prove convenient access and extensive use, but the school shall retain full responsibility for adequacy of resources available to students.

(b) Library services shall be under the direction of a person educated professionally in library and information studies, except that the Office may waive this requirement where the range of academic fields represented is narrow.

(c) Library resources shall be current, well distributed among fields in which the institution offers instruction, cataloged, logically organized, and readily located.

(d) The school should conform to the following guidelines for library services unless it can justify a deviation on the basis of unusual educational requirements.

(A) With the exception of those in specialized associate's degree programs, students should receive direct, contracted or electronic access to a minimal basic collection equivalent to that held by accredited schools offering similar programs. The applicant school must demonstrate this comparability.

(B) Staff should include a professional librarian for each 1,000 students, with clerical support adequate to relieve librarians of all non-professional duties.

(C) Students should have full access to all resources for at least 40 hours per week, and all services should be available for 20 hours per week. The facility, whether provided by the college directly or by contract, should seat no less than 10 percent of the students enrolled unless the program is primarily intended to train practitioners in technical or fine arts fields, in which case a lower percentage may be requested. If the school meets the library standard largely by electronic means, electronic services must be available to a comparable portion of the student body for a comparable period.

(16) Facilities. The school shall have buildings and equipment sufficient for the achievement of all educational objectives.

(a) Buildings in general, including student or faculty housing units, shall be uncrowded, safe, clean, well furnished, and in good repair; and they shall be well lighted, heated, ventilated, and protected from noise. School grounds where provided shall be appropriately used and adequately maintained.

(b) Instructional facilities shall be adequate and conducive to learning. There shall be no less than 15 square feet per student station in classrooms, with at least one station for every two FTE students enrolled. Total classroom and study area, including library space for reading, shall be no less than 10 square feet per FTE student.

(c) Laboratory space and instructional equipment shall be inventoried, its use explained on the resulting report, and its adequacy defended on criteria obtained from experts and documented by the school. A laboratory ordinarily shall have no less than 30 square feet per student station.

(d) Clinical facilities and other public service areas shall be appropriate for instruction of students as well as for service to patients or clients.

(e) Faculty offices shall be sufficient to prevent crowding and to allow private conversations with students.

(17) Finance. The school shall have financial resources sufficient to ensure successful continuing operation and to guarantee full refund of any unearned tuition. There shall be competent financial planning using complete and accurate records. The school shall demonstrate satisfaction of this standard upon application, and thereafter annually, by submitting independently audited financial statements with opinion by a certified public accountant.

(a) Financial reports shall be prepared in a format acceptable to the Office, clearly delineating assets and liabilities and informatively classifying revenues by source and expenditures by function. In some cases, the Office at its discretion may accept an audited balance sheet with opinion, together with annual operating statements that have been reviewed by the auditor. A school that is a subsidiary shall submit financial statements of the parent corporation on request. In unusual circumstances, the Office may require a special investigative audit and report.

(b) Current assets shall be entirely tangible and such that the school is not dependent for solvency on substantial increases in receivables collection rate, gifts, tuition rates, or enrollment. Prospective tuition for which a student is not legally liable is not an asset and shall not be shown as a receivable or other balance sheet asset. Tuition collected but still subject to refund shall be shown as a "prepaid" or "unearned" tuition liability.

(c) A school unable to demonstrate financial strength may be permitted at the discretion of the Office to submit a surety bond in amount equal to the largest amount of prepaid tuition held at any time. The bond would be subject to claims for tuition refund only.

(d) The school shall carry casualty and general liability insurance sufficient to guarantee continuity in case of accident or negligence, and it shall provide or else require by policy professional liability insurance for all of its officers and employees.

(18) Fees and Refunds. The school shall maintain fee and refund policies that are fair, uniformly administered, and clearly explained in the school catalog as well as in any contract made with students. A student shall not be enrolled without having received the explanatory material. The school shall not change its tuition or fees more than once during a calendar year.

(a) Tuition shall be charged by the credit hour or by fixed rate for instruction during an academic semester, quarter, or shorter term. No student is obligated for tuition charged for a term that had not commenced

when the student withdrew or a term that was truncated by cessation of school services.

(b) Except as noted below in this section, fees not included in tuition shall not exceed five percent of full-time tuition for any term in which separate fees are charged. One-time application or admission fees may exceed 5 percent of first-term tuition but shall not exceed $200. Lab or equipment fees related to the actual necessary operational costs of specific courses may exceed 5 percent of tuition provided that the fees are made known to students prior to enrollment in the course. Nominal fees for late payments, course withdrawals and the like are acceptable.

(c) After classes begin for a term, a student who withdraws from a course is eligible for a partial refund through the middle week of the term. Refunds shall be based on unused instructional time and shall be prorated on a weekly basis for schools using a semester, quarter or nontraditional calendar. Without specific Office approval, refund rates shall not be differentiated on the criteria of a student's source of income or loan repayment obligations except as otherwise required by law.

(d) Any fees for credit transferred, for credit attempted or earned by examination or portfolio must be based on the cost of service actually provided, ordinarily less than the cost of regular instruction. The mere award of credit does not justify a fee.

(e) Academic policies shall not artificially prolong the enrollment of a failing student with the effect of increasing financial obligation.

(f) Separation from the school for reason of discipline or other administrative action shall not cause forfeiture of ordinary refund amounts.

(19) Evaluation. The school shall, in order to improve programs, evaluate its own educational effectiveness continually in relation to purpose and planning, including in all aspects the opinions of students. There shall be evaluation of present curriculum and instruction, of attrition and reasons for student withdrawal, and of performance by students after their graduation. In addition to the comments of graduates, employer opinions and licensing examination records should be used in the post-graduation study.

(20) Fair Practice. Notwithstanding the absence of a specific standard or prohibition in this rule, no school authorized to offer degrees or seeking to qualify for such authorization shall engage in any practice that is fraudulent, dishonest, unethical, unsafe, exploitive, irresponsible, deceptive, or inequitable and thus harmful or unfair to persons with whom it deals.

Stat. Auth.: ORS 348.606
Stats. Implemented: ORS 348.603 & 348.606
Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2002, f. & cert. ef. 2-19-02; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 2-2010, f. & cert. ef. 11-16-10

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Rule Caption: Defines honorary and earned degrees. Clarifies limits on use of honorary degrees.
Adm. Order No.: ODA 3-2010
Filed with Sec. of State: 11-16-2010
Certified to be Effective: 11-16-10
Notice Publication Date: 7-1-2010
Rules Amended: 583-050-0011, 583-050-0016
Subject: Clarifies the definition of "degree" to include both earned and honorary degrees. Sets forth limits on use of honorary degrees.
Rules Coordinator: Beverly R. Boyd—(541) 687-7394

583-050-0011
Definitions of Terms

(1) "Office" means Office of Degree Authorization, as represented by the administrator or designated agent.

(2)(a) "Degree" means any earned or honorary title, rank, or status designated by a symbol or by a series of letters or words-such as, but not limited to, associate, bachelor, master, doctor, and forms or abbreviations thereof, that signifies, purports, or may generally be taken to signify:

(A) Completion of a course of instruction at the college or university level; or

(B) Demonstration of achievement or proficiency comparable to such completion; or

(C) Recognition for non-academic learning, public service, or other reason of distinction comparable to such completion.

(b) "Degree" does not refer to a certificate or diploma signified by a series of letters or words unlikely to be confused with a degree, clearly intended not to be mistaken for a degree, and represented to the public so as to prevent such confusion or error.

(c) "Honorary Degree" means a credential awarded by an accredited or approved school in recognition of the recipient's personal merits unrelated to academic achievement demonstrated through course work or equivalent work taken at the awarding school.

(d) "Earned degree" means a degree awarded based on academic work evaluated and accepted by qualified faculty in the context of a specific degree program, based on the Carnegie credit system as set forth in OAR 583-030-0035(5) or an equivalent as determined by ODA.

(3) "Confer a degree" means give, grant, award, bestow, or present orally or in writing any symbol or series of letters or words that would lead the recipient to believe it was a degree that had been received.

(4) "Claim a degree" means to present orally, or in writing or in electronic form any symbol or series of letters or words that would lead the listener or reader to believe a degree had been received and is possessed by the person speaking or writing, for purposes related to employment, application for employment, professional advancement, qualification for public office, teaching, offering professional services or any other use as a public credential, whether or not such use results in monetary gain.

(5) "School" includes a person, organization, school or institution of learning that confers or offers to confer an academic degree upon a person or to provide academic credit applicable to a degree. The activities attributable to a school include instruction, measurement of achievement or proficiency, or recognition of educational attainment or comparable public distinction.

(6) "Accredited" means accredited and approved to offer degrees at the specified level by an agency or association recognized as an accreditor by the U.S. Secretary of Education, under the 1965 Higher Education Act as amended at the time of recognition, or having candidacy status with such an accrediting agency or association whose pre-accreditation is also recognized specifically for HEA purposes by the Secretary of Education.

(7) "Foreign equivalent of such accreditation" means authorization by a non-U.S. government found by ODA to have adequate academic standards. This determination may be made through one or more of the following methods at ODA's discretion:

(a) Direct investigation of foreign standards;

(b) Reliance on an evaluation and determination made by the American Association of Collegiate Registrars and Admissions Officers (AACRAO); or

(c) Evaluation of the transferability of courses and degrees earned in the foreign country to accredited Oregon institutions at similar degree levels.

(8) "Academic Standards" means those standards in 583-030-0035 or the equivalent standards of an accrediting body that relate to admission requirements, length of program, content of curriculum, award of credit and faculty qualifications.

(9) "Standard School" means a school that meets the requirements of ORS 348.609(1) for degree use without a disclaimer.

(10) "Nonstandard School" means a degree provider that has legal authority to issue degrees valid in its authorizing jurisdiction, but which does not meet the requirements to be a standard school.

(11) "Diploma mill" or "degree mill" means an entity that meets any one of the following conditions as defined in ORS 348.594:

(a) A school against which a court or public body, as defined in ORS 174.109, has issued a ruling or finding, after due process procedures, that the school has engaged in dishonest, fraudulent or deceptive practices related to the award of degrees, academic standards or student learning requirements; or

(b) Is an entity without legal authority as a school to issue degrees valid as credentials in the jurisdiction that authorizes issuance of degrees.

(12) Valid degree means a degree issued by a standard school or by a nonstandard school if the disclaimer required by ORS 348.609(2) is used.

(13) "College level work" required for a degree means academic or technical work at a level demonstrably higher than that required in the final year of high school and demonstrably higher than work required for degrees at a lower level than the degree in question. From lowest to highest, degree levels are associate, bachelor's, master's and doctoral. Professional degree levels may vary. College level work is characterized by analysis, synthesis and application in which students demonstrate an integration of knowledge, skills and critical thinking. Award of credit for achieving appropriate scores on ODA-approved nationally normed college-level examinations such as those from College Level Examination Program, American Council on Education, Advanced Placement or New York Regents meets this standard.

(14) "Disclaimer" when appended to a published reference to a degree means the following statement from statute: "(Name of school) does not

have accreditation recognized by the United States Department of Education and has not been approved by the Office of Degree Authorization."

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 348.609
Stats. Implemented: ORS 348.603 & 348.609
Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 3-2000, f. & cert. ef. 8-8-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2005, f. & cert. ef. 3-3-05; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 1-06, f. & cert. ef. 6-23-06; ODA 1-2008, f. & cert. ef. 2-7-08; ODA 3-2010, f. & cert. ef. 11-16-10

583-050-0016
Validation of a Secular Degree

(1) Any person claiming in Oregon to possess an academic degree shall, upon request from the Office of Degree Authorization, have an official transcript of the degree sent directly to the Office from the registrar or other appropriate official of the conferring school.

(2) Where validation of a degree by telephone or electronic means seems readily obtainable from a school, the Office at its discretion may postpone with option of waiver the requirement for a transcript upon receiving from the degree claimant the name, address, and telephone number of the conferring school. Requirement of one or more transcripts may be reinstated at any time if other methods of validation are not sufficient for a conclusive determination.

(3) Upon receipt of evidence of a valid degree, the Office shall inform the degree claimant that a validation has been entered into the record, which shall specify any title and abbreviation that may be used to claim the degree.

(4) Honorary degrees must be distinguished from earned degrees.

(a) Any person claiming in Oregon to hold an honorary degree must label any written use of the degree using the word "honorary" or the abbreviation "hon." in order to make the public aware that the degree is not an earned credential. Any oral reference to the degree must be accompanied by a reasonable effort to ensure that listeners are made aware that it is honorary.

(b) Any person using an honorary doctorate may not use the title "Doctor" or "Dr." unless the word "honorary" or the abbreviation "hon." accompanies the claim in a clear and visible form, or is stated orally when an honorary doctorate is used as the basis for an oral use of the title.

(c) An honorary degree may not be used as a credential for employment in Oregon.

Stat. Auth.: ORS 348.609
Stats. Implemented: ORS 348.603 & 348.609
Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 3-2010, f. & cert. ef. 11-16-10

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Oregon University System, Southern Oregon University
Chapter 573

Rule Caption: Procedural Rules – Availability of Public Records.
Adm. Order No.: SOU 5-2010
Filed with Sec. of State: 12-8-2010
Certified to be Effective: 12-8-10
Notice Publication Date: 11-1-2010
Rules Amended: 573-001-0075
Subject: This rule describes the availability of public records.
Rules Coordinator: Treasa Sprague—(541) 552-6319

573-001-0075
Availability of Public Records

The public may review any Southern Oregon University documents that are designated public records. See ORS 192.005(5) for the definition of "public records". These documents are on file in University offices and may be reviewed during regular working hours. Copies of public records are available to the public upon request. The following charges will be made, payable in advance or when the materials are furnished:

(1) Copies of documents:

(a) $1.00 per page (2.00 if printed front and back);

(2) Other materials such as computer tapes, microfilm, and microfiche copies, audio tape cassettes, computer services, etc., shall be provided at a fee reasonably calculated to reimburse the University for actual costs incurred in making records available to the public.

(3) When materials are not readily available, such as in the case of files in the archives, or require an inordinate length of time to assemble due to the scope of the request, an additional charge of $10 per hour may be assessed to cover staff time required to make the information available.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 192, 351.070 & OAR 580-001-0020
Hist.: SOSC 1-1986, f. & ef. 5-5-86; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 5-2010, f. & cert. ef. 12-8-10

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Revision to OAR 860-084-0190 to comport with ORS 757.365.
Adm. Order No.: PUC 6-2010
Filed with Sec. of State: 11-19-2010
Certified to be Effective: 11-19-10
Notice Publication Date: 10-1-2010
Rules Amended: 860-084-0190
Subject: The adopted changes were necessary to align the Commission's administrative rules regarding Distributing Solar Capacity by Size to ORS 757.365. The targeted goal in 860-084-0190 should be a measurement of the capacity deployed to small-scale and medium-scale solar photovoltaic energy systems.
Rules Coordinator: Diane Davis—(503) 378-4372

860-084-0190
Distributing Capacity by System Size

(1) A solar photovoltaic system capacity is the total capacity contracted by a single retail electricity consumer.

(2) Three size classes of qualifying systems are established and defined by a range of nameplate capacity; the Commission may modify these capacity ranges.

(a) A small-scale system has a nameplate capacity of less than or equal to 10 kilowatts;

(b) A medium-scale system has a nameplate capacity greater than 10 kilowatts and less than or equal to100 kilowatts; and

(c) A large-scale system has a nameplate capacity greater than 100 kilowatts and less than or equal to 500 kilowatts.

(3) Small-scale and medium-scale systems must be targeted to attain a goal of 75 percent of the capacity deployed under the solar photovoltaic pilot program.

(4) An electric company must allocate certain percentages of its pilot capacity allocation for small-scale, medium-scale, and large-scale capacity systems as directed by Commission order.

(5) An electric company with less than one megawatt of total allocation must allocate 100 percent of its solar photovoltaic capacity limit to retail electricity consumers installing small-scale systems.

Stat Auth: ORS 757.360 - 757.380
Stats. Implemented: ORS 757.360 - 757.380
Hist.: PUC 2-2010, f. & cert. ef. 6-1-10; PUC 6-2010, f. & cert. ef. 11-19-10

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Rule Caption: In the Matter of Rulemaking to Require Energy Utility Reporting Relating to Major Shareholders.
Adm. Order No.: PUC 7-2010
Filed with Sec. of State: 12-2-2010
Certified to be Effective: 12-2-10
Notice Publication Date: 10-1-2010
Rules Adopted: 860-027-0175
Subject: The new rule addresses the concerns that major shareholders of a regulated utility have the potential to exercise substantial influence over a utility. The new rule clarifies when and how a utility is required to identify and report to the Commission new major shareholders. The rule creates new reporting requirements for the regulated energy utility companies; including but not limited to a new annual report and additional reports that are dependent upon the actions of major shareholders.
Rules Coordinator: Diane Davis—(503) 378-4372

860-027-0175
Energy Utility Reporting Requirements Relating to Major Shareholders

(1) As used in this rule:

(a) "Beneficial owner(ship)" has the meaning defined in 17 CFR § 240.13d-3 (April 1, 2009).

(b) "Board member" means a member of the board of directors of an energy utility or the board of directors of an entity or person authorized by the Commission to exercise substantial influence over an energy utility.

(c) "Major shareholder" means a person that is a beneficial owner, directly or indirectly, of five percent or more of an energy utility. In the event a person is a beneficial owner of shares of a parent of an energy utility, the person may also be an indirect beneficial owner of the energy utility. Indirect beneficial ownership of an energy utility is calculated by multiplying the person's percentage of beneficial ownership of the parent by the parent(s)'s percentage of beneficial ownership of the energy utility.

(d) "Person" has the meaning set forth in ORS 756.010(5).

(e) "Schedule 13D" means the statement filed with the Securities and Exchange Commission, as required by 17 C.F.R. 240.13d-1 (April 1, 2009), and containing the information required by 17 C.F.R. 240.13d-101 (April 1, 2009).

(f) "Schedule 13G" means the statement filed with the Securities and Exchange Commission, as required by 17 C.F.R. 240.13d-1 (April 1, 2009), and containing the information required by 17 C.F.R. 240.13d-102 (April 1, 2009).

(g) "Securities and Exchange Commission" means the federal agency created under Section 4 of the 1934 Securities Exchange Act, as codified at 15 U.S.C. 78d (January 5, 2009).

(h) "Tender offer" means an offer to purchase the equity securities of an energy utility, or the solicitation of an offer to sell the equity securities of an energy utility, that would constitute a tender offer, or a request or invitation for tender, for the purpose of Section 14(d) of the Securities Exchange Act of 1934, as codified at 15 U.S.C. 78n(d) (February 1, 2010).

(2) An energy utility must submit a written report to the Commission by March 1 of each calendar year.

(a) The report must list the energy utility's major shareholders and their respective percentages of beneficial ownership of the energy utility and parent(s), to the extent such information is then known to management of the energy utility; or, if there are no major shareholders, the report must state that there are none.

(b) Information in the report must be current as of December 31 of the previous year or a more recent date if so specified by the energy utility in the report.

(3) In addition to the March 1 report, within 10 business days after the energy utility acquires actual knowledge of the existence and identity of a major shareholder, the energy utility must submit a written report to the Commission that identifies the major shareholder and lists the shareholder's percentage of beneficial ownership of the energy utility and parent(s). The energy utility may rely on information in Schedule 13D or Schedule 13G filings with the Securities and Exchange Commission. The report must include copies of Schedule 13D or Schedule 13G filings made with the Securities and Exchange Commission by the listed major shareholders, when copies have not been provided previously to the Commission.

(4) Each energy utility must report to the Commission within 10 business days after the energy utility acquires actual knowledge of the existence of a Schedule 13D filing made with the Securities and Exchange Commission by a major shareholder with respect to beneficial ownership or intended beneficial ownership of the energy utility or parent(s).

(5) Each energy utility must file with the Commission a detailed report describing any of the following actions taken by, or on behalf of, a major shareholder within 10 business days after the energy utility acquires actual knowledge of the action:

(a) A request to insert in the proxy statement of the energy utility or a parent of the energy utility:

(A) The major shareholder's nominee for election to the board of directors of the energy utility or parent of the energy utility, or

(B) A proposal that could materially affect the policies or actions of the energy utility;

(b) The initiation of an independent solicitation of proxies to vote for:

(A) The major shareholder's nominee for election to the board of directors of the energy utility or a parent of the energy utility, or

(B) A proposal that could materially affect the policies or actions of the energy utility;

(c) The initiation of a withhold or "vote no" campaign against any existing member of the board of directors of the energy utility or parent of the energy utility;

(d) The placement on the ballot used at a meeting of the shareholders of the energy utility or a parent of the energy utility, :

(A) The major shareholder's nominee for election to the board of directors of the energy utility or such parent, or

(B) A proposal that could materially affect the policies or actions of the energy utility;

(e) The expression of an intent to take any of the actions set forth in sections (5)(a) through (5)(d), if the energy utility does not comply with a request by the major shareholder;

(f) The expression of an intent to buy or sell shares of the energy utility or a parent if the energy utility does not comply with a request by the major shareholder that would materially affect the policies or actions of the energy utility;

(g) The initiation of a tender offer with respect to the energy utility or parent;

(h) Any other expression by a major shareholder of intent to:

(A) Take an action that could materially affect the policies or actions of the energy utility if the energy utility does not comply with a request from the major shareholder, or

(B) Provide an inducement to the energy utility for complying with a request by the major shareholder that could materially affect the policies or actions of the energy utility; and

(i) An action or event that would require a major shareholder to make a 13D filing with the Securities and Exchange Commission.

(6) Each board member is required to report to the Chief Executive Officer or President of the energy utility any action of a major shareholder described in section (5) of this rule within five business days after the board member acquires actual knowledge of such action.

(7) The energy utility, directly or indirectly through a parent, must notify each board member in writing, at least once every 12 months, of the reporting obligations described in section (6) of this rule. The energy utility must maintain at its corporate office, copies of these notices for a period two years from the date of such notice, and must produce such notices to the Commission within five business days of a request by the Commission.

(8) An energy utility is not required to provide a report to the Commission for:

(a) A request made by a major shareholder, or the representative of a major shareholder, in the capacity of a shareholder, for information normally available to shareholders of the energy utility or a parent; or

(b) A request made by the major shareholder, or the representative of a major shareholder, in the capacity of a customer of the energy utility, regarding utility service.

(9) Unless expressly provided in a Commission order, this rule does not apply to any actions otherwise reportable by the energy utility or a parent or its respective board members under section (5) where the major shareholder has been authorized to exert control or influence by a Commission order entered under ORS 757.511.

(10) The energy utility must identify a report submitted to the Commission under this rule as a report filed under OAR 860-027-0175. The energy utility must describe the basis for a request that the report, or any portion thereof, be treated as containing information not subject to public disclosure, as required by OAR 860-001-0070. The Commission will review the report and determine if a filing by the major shareholder under ORS 757.511 is required.

Stat. Auth.: ORS 756.040, 757.511
Stats. Implemented: ORS 757.511
Hist.: PUC 7-2010, f. & cert. ef. 12-2-10

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Public Utility Commission, Board of Maritime Pilots
Chapter 856

Rule Caption: Amends apprentice selection and training program requirements.
Adm. Order No.: BMP 2-2010
Filed with Sec. of State: 12-14-2010
Certified to be Effective: 12-14-10
Notice Publication Date: 11-1-2010
Rules Amended: 856-010-0014
Subject: Amends apprentice training requirements to provide greater flexibility and requires previous maritime experience as a core apprentice program requirement.
Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0014
Pilot Trainee Selection and Apprentice Selection and Training Program

(1) Application for a Certificate as a Pilot Apprentice for the Columbia and Willamette River pilotage ground shall be made on a form provided by the Board.

(2) The Board of Maritime Pilots shall certify from among the eligible applicants the best qualified individual or individuals for apprenticeship. Selection shall be in accordance with selection criteria procedures, based upon numerical ranking, promulgated by the Board of Maritime Pilots.

(3) No more than two apprentices shall be in the apprenticeship program at any time. The Board shall accept new apprentices into training at intervals of two years or longer.

(4) Numerical ranking of apprentice applicants shall be based upon a 100-point system, with points for each of the following categories:

(a) Academic: Completion of a four-year course of study and receipt of a degree from an accredited maritime academy will be awarded 25 points.

(b) Previous Maritime Experience: Applicants shall be awarded 45 points based on federal licensure and a minimum of two years of actual experience as an officer in charge of a navigation watch while holding one or more of the following licenses:

(A) Master of Towing Vessels (Inland Waterways);

(B) Master of Towing Vessels (Ocean);

(C) Master, Vessels Greater than 1,600 Tons;

(D) Master, Vessels 1,600 Tons or Less;

(E) Chief or Second Mate on Vessels Greater than 1,600 Tons

(c) Applicants with a First Class Pilot Endorsement for any U.S. inland waterway will be awarded 5points.

(d) Interview: Every applicant shall be interviewed by the Board of Maritime Pilots. Each person interviewed shall be assigned from 0 to 25 points based upon objective scoring guidelines published by the Board of Maritime Pilots.

(5) The apprentice candidate with the highest point total shall be awarded a Certificate of Apprenticeship by the Board and enter the apprentice training program. Said Certificate shall terminate upon satisfactory completion of the apprentice training program or upon the termination of the apprentice for cause or resignation.

(6) Training and qualification of pilot apprentices are subject to the following provisions:

(a) The term of apprenticeship for every apprentice shall be a minimum of three years.

(b) The apprentice training and qualification program shall include the satisfactory completion of an Apprentice Training Course approved by the Board of Maritime Pilots. The apprentice training and qualification program shall consist of both the approved Apprentice Training Course and the term of apprentice training.

(c) Satisfactory completion of the Apprentice Training Course, as approved by the Board of Maritime Pilots, requires that the apprentice must have satisfactorily completed the following training activities:

(A) 500 vessel movements between Astoria and Portland or Vancouver under the supervision of state licensed pilots; and

(B) 500 vessel movements under the supervision of state licensed pilots between any two points on the pilotage grounds selected by the Course Monitor based upon an evaluation of the apprentice's skills and training needs. Assignments under this subsection may include, but are not necessarily limited to, transits between Astoria and Portland or Vancouver.

(C) Up to 30 days of industry-related training that the Course Monitor, in his or her discretion, may assign based upon the Course Monitor's evaluation of the apprentice's skills and training needs. Each day of training assigned under this subsection shall be substituted for a vessel movement otherwise required under subsection (B) above.

(d) In order to satisfactorily complete this training course, every apprentice must ride with a majority of the pilots, on every route, day and night, ebb and flood tides, and on every size category of vessel calling at the port. The curriculum of the approved course requires that apprentices learn to direct the movement of vessels, apply the proper rules of the nautical road and other maritime procedures, and interface and coordinate with other affected vessels and facilities.

(e) During each vessel movement to which the apprentice is assigned, the apprentice shall accompany the licensed pilot assigned to the vessel. The licensed pilot serves as the expert-master and interacts with the apprentice in observational and mastery learning process. The licensed pilot is obligated to interact with the apprentice to a degree sufficient to teach skills and impart information and to assess the apprentice's progress during periods of "hands on" piloting by the apprentice under supervision by the pilot.

(f) The progress of every apprentice must be marked semi-annually during his or her term of apprentice training by the pilots with whom he or she has received instruction in the areas of: procedures, skillfulness, communications, and attitude.

(g) Every apprentice must receive satisfactory evaluations from the majority of the pilots and the Training Course Monitor during each semiannual progress report period. The Course Monitor shall semiannually advise each apprentice regarding his or her progress and shall also advise the Board of Maritime Pilots.

(h) Failure to make satisfactory progress during the Apprentice Training Course can result in the termination of the apprentice-training program for any apprentice at any point in the program by the Board of Maritime Pilots.

(i) The discovery that any apprentice fails to satisfy the physical requirements for federal licensure shall be just cause for the termination of any such apprentice, without regard to progress in the Apprentice Training Course.

(j) Upon satisfactory completion of the approved Apprentice Training Course, the apprentice will be awarded a Certificate of Completion by the designated Course Monitor.

(7) Satisfactory completion of the Apprentice Training Program requires that the apprentice obtain a federal First Class Pilot license for the grounds from Astoria to Portland and Vancouver. However, any federal licensure as a federal First Class Pilot obtained by any apprentice before the completion of the apprenticeship training and qualification program shall not terminate nor shorten the three-year minimum term of apprentice training.

(8) No person shall represent himself or herself as an apprentice unless he or she has been approved and certified as an apprentice by the Board of Maritime Pilots. No pilot shall be required to train any uncertified person on board any vessel subject to the jurisdiction of the Board of Maritime Pilots. Any uncertified person posing as an apprentice aboard any vessel subject to the jurisdiction of the Board of Maritime Pilots shall be considered in violation of ORS 776.405.

(9) Upon the successful completion of the minimum three year apprenticeship training and qualification program, including certification by the Course Monitor of satisfactory completion of the Apprentice Training Course, the pilots shall provide the Board of Maritime Pilots with the name and complete training record of every successful apprentice along with their recommendations regarding his or her prospective licensure by the Board.

(10) Nothing shall prohibit the Board of Maritime Pilots from periodically reviewing the progress of any apprentice undergoing training, and reviewing the progress reports on every apprentice that have been submitted by the pilots.

(11) Every person who successfully completes the Apprenticeship Training Course shall begin the regular pilot training program for Class C, Class B, Class A and Unlimited licenses, upon the opening of a position by either the anticipated retirement or resignation of a licensed pilot, or the Board-approved increase in the number of pilots.

(12) If no person has successfully completed the Apprenticeship Training Course at the time a need for a pilot trainee arises, then the Board shall appoint a person who meets the requirements of OAR 856-010-0010(2) and (4)(a), and who has been selected by the Board from qualified applicants pursuant to procedures and criteria set forth in subsections (13), (14), and (15) below.

(13) Applicants for trainee positions under subsection (12) above must submit their applications to the Board of Maritime Pilots on forms provided by the Board. When the board determines that a need for a trainee pursuant to subsection (12) exists, it shall select from among the eligible applicants the best qualified for training. Selection shall be based upon numerical ranking according to the point system set forth in subsection (14) below.

(14) Applicants for trainee positions under subsection (12) above shall be ranked based upon a point system, with points awarded for each of the following categories:

(a) Academic: Graduation from high school or equivalent certification: 10 points. Two or more years at an accredited college or university: five points. Post-graduate or professional degree: five points. Completion of a four-year course of study at an accredited maritime academy: 15 points. Maximum total points under this section are 25.

(b) Previous Maritime Experience and Licensure: First Class Pilot License from Tansey point, Oregon to Ryan Point, Washington on the Columbia River, and from Kelley Point, Oregon to the Ross Island Bridge on the Willamette River: 25 points. Federal pilotage endorsement on the Columbia River from Vancouver, Washington to Pasco, Washington: five points. Federal unlimited radar observer endorsement: five points. 1,460 or more active working days as master of towing vessels on the Columbia River and tributaries: five points. Additional certified training in each of the

following categories: Bridge Resource Management, Emergency Medical Training, Hazardous Materials, Marine Firefighting, Oil Spill Control: one point each, up to a maximum of five points. Maximum total points under this section are 45.

(c) Interview: Every applicant with a combined point total of 50 or more from points awarded under subsections (14)(a) and (14)(b), shall be interviewed by three or more members of the Board, provided at least one member is a public member, one member is a pilot member, and one member is a member engaged in the activities of a company that operates commercial ocean-going vessels. Each person interviewed shall be assigned from 0 to 35 points based on the interviewee's poise and confidence, potential as an asset to the pilotage system, recommendations from within the maritime community, knowledge of trade and commerce on the Columbia River System, and such other factors as may be deemed relevant by the Board.

(15) Trainees selected by the Board shall be free to join the organization of pilots of their choosing upon completion of their training. No trainee may join an organization of pilots until after training is complete, except that trainees may associate with an organization of pilots on a provisional, temporary basis that ends upon receipt of an unlimited state pilot's license. Any such provisional, temporary association between trainees and organizations of pilots shall not obligate the trainee to join any particular organization of pilots after training is complete.

Stat. Auth.: ORS 776.115
Stats. Implemented: ORS 776.115 & 776.300
Hist.: MP 3-1995, f. & cert. ef. 3-16-95; MP 4-1995, f. & cert. ef. 8-16-95; BMP 1-1998, f. & cert. ef. 6-15-98; BMP 1-1999, f. & cert. ef. 2-19-99; BMP 1-2002, f. & cert. ef. 8-29-02; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 2-2010, f. & cert. 12-14-10

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Real Estate Agency
Chapter 863

Rule Caption: Property managers must provide owners certain information; principal broker exam valid for one yea; exam requirements.
Adm. Order No.: REA 2-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 11-1-2010
Rules Adopted: 863-025-0068
Rules Amended: 863-014-0020, 863-025-0065
Subject: The new rule, OAR 863-025-0068, requires property managers to provide, upon request, certain information to property owners on tenants and current rental or lease agreements. The amendment to OAR 863-025-0065 defines the term "deposit slip" in order to keep pace with changing banking terminology and technology. The amendments to OAR 863-14-0020 clarifies that a principal broker examination result is valid for one year and eliminates the requirement for certain licensees to take and pass both a real estate broker examination and a principal broker examination.

The rule is also available on the Real Estate Agency website at www.rea.state.or.us.
Rules Coordinator: Laurie Skillman—(503) 378-4630

863-014-0020
Examinations

(1) In addition to any other licensing eligibility requirements, a real estate broker license applicant must pass a real estate broker examination, consisting of a state portion and a national portion, and that includes subject matter determined by the Board.

(2) Effective January 1, 2011, in addition to any other licensing eligibility requirements, a principal real estate broker license applicant must pass a principal real estate broker examination that includes subject matter determined by the Board.

(3) Effective January 1, 2011, in addition to any other licensing eligibility requirements, an individual licensed as a salesperson prior to July 1, 2002 who applies for a principal broker license is not required to take the real estate broker examination, but is required to take the principal broker examination.

(4) If an applicant for a principal real estate broker license passes an examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must reapply for the examination as required by this rule.

(5) A real estate broker applicant may apply for an examination whether or not the Agency has finished processing the applicant's fingerprint card and background check or has received documentation on the applicant's licensing educational courses. However, the Agency will not consider an applicant for a license until the Agency has completed such processing and review.

(6) A real estate licensee who was licensed as a salesperson before July 1, 2002 must apply for and pass a real estate broker examination and a principal real estate broker examination in order to be licensed as a principal real estate broker.

(7) An applicant must apply for an examination by submitting to the Agency:

(a) An Agency-approved license examination application form; and

(b) An examination application fee authorized by ORS 696.270.

(8) If a real estate broker or principal real estate broker license has not been active for two or more consecutive years, before applying to reactivate such license under OAR 863-014-0065, the licensee must apply for and pass a reactivation examination. To apply for the reactivation examination, the licensee must submit to the Agency:

(a) An Agency-approved license reactivation examination application form; and

(b) The examination application fee authorized by ORS 696.270.

(9) Examination fees are not refundable if an applicant:

(a) Fails to appear for a scheduled examination;

(b) Fails to cancel or reschedule an examination appointment at least two business days before the appointment; or

(c) Fails to pass an examination.

(10) If an applicant for a real estate broker license examination passes both the national and the state portions of an examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must reapply for the examination as required by this rule.

(11) An applicant who passes only one portion of a license examination must reapply for and pass the remaining portion within 12 months of the examination date of the passed portion in order to qualify for a license on the basis of the examination.

(12) In lieu of the national portion of the examination required in this rule, the Board may accept an applicant's passing results of the national portion of a broker examination taken in another state if:

(a) The examination was taken after November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The examination was taken within the 12 months before the application date and the Agency has received the required forms and fees; and

(c) The applicant provides the Agency with the applicant's certified license history from the state where such examination was taken.

Stat. Auth.: ORS 696.385 & 696.425
Stats. Implemented: ORS 696.020, 696.022 & 696.425
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0020, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 2-2010, f. 12-15-10, cert. ef. 1-1-11

863-025-0065
Deposits and Funds Received

(1) All funds, whether in the form of money, checks, or money orders belonging to others and accepted by any property manager while engaged in property management activity, must be deposited prior to the close of business of the fifth banking day following the date of the receipt of the funds into a clients' trust account or security deposits account as defined in OAR 863-025-0010 and established by the property manager under ORS 696.241. The property manager must account for all funds received.

(2) Any person employed by the property manager must promptly transmit to the property manager any money, checks, money orders, or other consideration and any documents received while engaged in property management activity.

(3) A property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

(4) Except for funds received pursuant to OAR 863-025-0050(3) and 863-025-0025(16), for each deposit made under ORS 696.241, a property

manager must obtain a deposit slip and make a written notation of the owner's identifying code assigned to the property management agreement on the deposit slip. As used in this rule, "deposit slip" means an independently verifiable third party document created by the third party at the time of the deposit.

(5) A property manager must maintain a complete record of all funds or other consideration received in the property manager's property management activity. This record must show from whom the funds or other consideration was received, the date of the receipt, the place and date of deposit, and, the final disposition of the funds or other consideration.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09; REA 2-2010, f. 12-15-10, cert. ef. 1-1-11

863-025-0068
Owner Information Request

(1) Upon written request from a property owner, a property manager must deliver to the owner the information listed in subsections (a) through (e) of this section for each tenant within five business days of actually receiving the request for information, unless the owner and the manager agree to a different time period.

(a) The tenant's name, mailing address, and phone number;

(b) The current rent amount and all scheduled tenant charges;

(c) An accounting of all security deposits and fees held for the tenant;

(d) The name of each utility provider and the account number for each provider; and

(e) The name of each fire and life safety service provider and the account number for each provider.

(2) Upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

(3) For the purposes of this rule, to deliver information to the owner means delivering the information by U.S. Mail, by fax, or by sending it electronically to the owner at the address or number provided to the manager by the owner with the request for information. The information is considered delivered on the date it is mailed, faxed, or sent electronically.

(4) This rule is in addition to and does not replace OAR 863-025-0070 concerning the final accounting after termination of the property management agreement.

Stat. Auth.: ORS 696.385
Stats. Implemented.: ORS 696.280 & 606.381
Hist.: REA 2-2010, f. 12-15-10, cert. ef. 1-1-11

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Clarifies requirement for Oregon civil rights test, amends license requirements and updates list of statutes implemented.
Adm. Order No.: TSPC 9-2010
Filed with Sec. of State: 12-15-2010
Certified to be Effective: 1-1-11
Notice Publication Date: 9-1-2010
Rules Amended: 584-021-0165, 584-023-0005, 584-036-0055, 584-042-0044, 584-060-0162, 584-060-0171, 584-060-0181, 584-060-0182, 584-060-0190, 584-060-0200, 584-070-0001, 584-070-0111, 584-070-0112, 584-070-0132, 584-070-0310, 584-080-0031, 584-080-0153, 584-080-0161, 584-080-0171
Subject: AMEND: 584-021-0165: *Verifying Knowledge of Laws Prohibiting Discrimination* – Clarifies requirement for passage of the Oregon civil rights and ethics test for school nurses. Amends list of statutes implemented.

584-023-0005: *Registry of Charter School Teachers and Administrators* – Clarifies requirement for passage of the Oregon civil rights and ethics test for charter school registrants. Clarifies statute that requires charter school teachers to be registered or fully licensed. Other language and statue clarifications. Amends list of statutes implemented.

584-036-0055: *Fees* – Clarifies fees for LCA, Administrators, School Psychologists and Renewal of CTE licenses. Changes titles for CTE licenses to CTE I and CTE II. Deletes fee for NCLB Alternative Route License. Amends list of statutes implemented.

584-042-0044: *Career and Technical Education Endorsements* – Amends adding a CTE endorsement with and without work experience. Amends list of statutes implemented.

584-060-0162: *Restricted Transitional Teaching License* – Clarifies requirement for passage of the Oregon civil rights and ethics test for restricted transitional teachers. Amends list of statutes implemented.

584-060-0171: *Limited Teaching License* – Clarifies requirement for passage of the Oregon civil rights and ethics test. Simplifies licensing requirements and amends list of statutes implemented.

584-060-0181: *Substitute Teaching License* – Clarifies licensee must pass the Oregon civil rights and ethics test for substitute teachers. Amends list of statutes implemented.

584-060-0182: *Restricted Substitute License* – Clarifies license holder must pass the Oregon Civil rights and ethics test. Also clarifies that a master's degree waives requirements for basic skills test. Amends list of statutes implemented.

584-060-0190: *Teaching Associate License* – Adopts requirement for passage of the Oregon civil rights and ethics test. Amends list of statutes implemented.

584-060-0200: *American Indian Languages Teaching License* – Clarifies license holder must pass the Oregon civil rights and ethics test. Removes outdated language. Amends list of statutes implemented.

584-070-0001: *Purpose of Personnel Service Licenses* – Amends requirements for school social workers, school counselors, school psychologists and other licenses to accomplish objectives for guidance and counseling and support services in school. Amends list of statutes implemented

584-070-0111: *Transitional School Counselor* – Amends amount of time to move to Initial II license, shortens out-of-state time to complete Initial II requirements to one year. Amends list of statutes implemented

584-070-0112: *Restricted Transitional Teaching License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented

584-070-0132: *Emergency School Counselor License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented.

584-070-0310: *Limited Student Service License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented.

584-080-0031: *Distinguished Administrator License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented

584-080-0153: *Restricted Transitional Administrator License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented.

584-080-0161: *Exceptional Administrator License* – Amends rule to require that license holder must pass the Oregon civil rights and ethics test. Amends list of statutes implemented.

584-080-0171: *Emergency Administrator License* – Amends list of statutes implemented.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-021-0165
Verifying Knowledge of Laws Prohibiting Discrimination

All new applicants for a school nurse certificate must demonstrate knowledge of civil rights and ethics by obtaining a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.533
Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-023-0005
Registry of Charter School Teachers and Administrators

(1) No persons shall serve as a teacher or administrator (as defined in ORS 342.120) in a public charter school unless such person either holds a valid Oregon license issued by TSPC pursuant to 338.135 or is registered with TSPC as a charter school teacher or charter school administrator in accordance with 342.125(5).

(2) TSPC shall create a Public Charter School Registry for all non-licensed persons who are employed as teachers or administrators in any charter school.

(3) To obtain a charter school registration, an applicant and the employing charter school shall submit to TSPC, on forms established by the commission, a joint application, which shall include the following documentation:

(a) Description of the specific teaching or administrative position the applicant will fill with the employing charter school;

(b) Fingerprints on forms prescribed by the Oregon State Police and in the manner required by TSPC;

(c) Completed application;

(d) A description of the applicant's post-secondary education and other experience relevant to the teaching or administrator position the applicant is seeking;

(e) A list of any professional licenses held; and

(f) A passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(4) Successful completion of the background checks disclosing no disqualifying materials or information will entitle the registrant to serve as a teacher or administrator as defined in ORS 342.120 in the employing charter school for a period of up to three (3) years or until employment with the employing charter school ceases, whichever occurs first.

(5) The registration is not transferrable and is only valid to teach or administer in the position described in the application to TSPC and only in the charter school that petitions for a charter school registration.

(6) A charter school registration may be renewed for an additional three-year term upon joint application of the registrant and employing charter school on forms established by the Commission and upon the payment of the applicable fee.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120—342.430, 342.455 - 342.495 & 342.533
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-036-0055
Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) If the applicant is eligible for the license, registration, or certificate for which application is made and the license, registration or certificate is issued within 90 days of original application, the commission shall issue the license, without additional charge with the following exceptions:

(a) If the commission determines the application is incomplete and fails to notify the applicant in less than one calendar week, the commission will extend the 90 days by an amount equal to the number of days the commission delayed notifying the applicant of incomplete items.

(b) For renewable licenses with a 120 day grace period, the original application fee remains good throughout the 120 days.

(c) If the commission fails to issue the license within 90 days due to commission backlog, the fee shall remain good until the license is issued or 120 days, whichever is less.

(3) The fee for evaluating an initial application:

(a) Initial I License (3 years): $100;

(b) Initial I Teaching License (18 months): $50;

(c) Initial II Teaching License (3 years): $100;

(d) Basic License (3 years): $100;

(e) Continuing License (5 years): $100;

(f) Standard License (5 years): $100;

(g) Restricted Transitional License (1 year or 3 years): $100;

(h) Limited License (3 years): $100;

(i) American Indian Language License (3 years): $100;

(j) Substitute License (3 years): $100;

(k) Restricted Substitute License (3 years, 60 days per year): $100;

(l) Exceptional Administrator License (3 years): $100;

(m) Career and Technical Education I Teaching License (1 year): $100;

(n) Career and Technical Education II Teaching License (3 years): $100;

(o) Five-Year Career and Technical Education License (5 years): $100;

(p) Emergency License (term at discretion of Executive Director): $100;

(q) School Nurse Certification (3 years): $100;

(r) International Visiting Teaching License (1 year): $100;

(s) License for Conditional Assignment (1 to 3 years) $50;

(t) Initial Administrator License (3 years): $100; and

(u) Initial School Psychologist License (3 years): $100.

(4) The fee for evaluating all applications for a first Oregon license based on completion of an out-of-state educator preparation program or an out of state license is $120 regardless of the license issued.

(5) The fee for registration of a charter school teacher or administrator is $75 which includes the fee for required criminal records and fingerprinting costs.

(6) The fee for evaluating an application for renewal of any license or certification is $100 except as follows:

(a) Renewal of a one-year Restricted Transitional Teaching License is $25;

(b) Renewal of a charter school registration is $25;

(c) Renewal of an International Visiting Teacher License is $25;

(d) Renewal of Career and Technical Education I Teaching License is $25; and

(e) Renewal of License for Conditional Assignment is $25.

(7) The fee for each of the following circumstances is $20:

(a) A duplicate license, registration, or certificate for any reason;

(b) An approved extension to a provisional license; and

(c) Adding a district to an existing restricted license requiring a co-applicant school district.

(8) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is $100. No additional fee is required to add an endorsement or authorization in conjunction with an application for renewal or reinstatement of a license.

(9) The fee to evaluate an application for reinstatement of an expired license or certificate is $100 plus a late application fee of $25 for each month or portion of a month that the license or certificate has been expired to a maximum of $200 total.

(a) The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, registration or school nurse certification.

(b) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licenses so long as the applicant has a current active license, registration or certification in effect at the time of application.

(10) The fee for evaluating an application for reinstatement of a suspended license or certificate is $100 in addition to the $100 application fee for a total of $200. The fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license or certificate.

(11) The fee for evaluating an application for reinstatement of a suspended charter school registration is $50 and does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired registration.

(12) In addition to the application fees required by this rule, the Commission shall collect a late application fee not to exceed $25 per month up to a maximum of $125 from an applicant who fails to make timely application for renewal of the license, certificate or registration.

(13) The fee for evaluating an application for reinstatement of a revoked license or certificate is $150 in addition to the $100 application fee for a total of $250. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certificate.

(14) The fee for evaluating an application for reinstatement of a revoked charter school registration is $150 in addition to the $25 application fee for a total of $175. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(15) Forfeiture for a check which the applicant's bank will not honor is $25, unrelated to any evaluation fees. The total amount due shall be paid in cash, credit, or Money Order at the Commission's office.

(16) The fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries is $100.

(17) The fee for alternative assessment in lieu of the test for licensure endorsement is $100.

(18) The fee for expedited service for an emergency or other license, registration or certificate is $99 plus the fee for the license registration or certificate application as defined in this administrative rule.

(19) The fee to evaluate an application for reinstatement of an expired charter school registration is $25 plus a late application fee of $25 for each month or portion of a month that the registration has been expired to a maximum of $125 total. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(20) The fee for a criminal records check including fingerprinting is $62.

(21) The fee for a "highly qualified teacher" evaluation is $50.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.430 – 342.455; 342.533

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 1-2009(Temp), f. & cert. ef. 2-27-09 thru 8-25-09; Administrative correction 9-29-09; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-042-0044

Career and Technical Education Endorsements

(1) No persons shall serve as a teacher or administrator (as defined in ORS 342.120) in a public charter school unless such person either holds a valid Oregon license issued by TSPC pursuant to ORS 338.135 or is registered with TSPC as a charter school teacher or charter school administrator in accordance with ORS 342.125(5).

(2) TSPC shall create a Public Charter School Registry for all non-licensed persons who are employed as teachers or administrators in any charter school.

(3) To obtain a charter school registration, an applicant and the employing charter school shall submit to TSPC, on forms established by the commission, a joint application, which shall include the following documentation:

(a) Description of the specific teaching or administrative position the applicant will fill with the employing charter school;

(b) Fingerprints on forms prescribed by the Oregon State Police and in the manner required by TSPC;

(c) Completed application;

(d) A description of the applicant's post-secondary education and other experience relevant to the teaching or administrator position the applicant is seeking;

(e) A list of any professional licenses held; and

(f) A passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(4) Successful completion of the background checks disclosing no disqualifying materials or information will entitle the registrant to serve as a teacher or administrator as defined in ORS 342.120 in the employing charter school for a period of up to three (3) years or until employment with the employing charter school ceases, whichever occurs first.

(5) The registration is not transferrable and is only valid to teach or administer in the position described in the application to TSPC and only in the charter school that petitions for a charter school registration.

(6) A charter school registration may be renewed for an additional three-year term upon joint application of the registrant and employing charter school on forms established by the Commission and upon the payment of the applicable fee.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120—342.430; 342.455 - 342.495; 342.533

Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0162

Restricted Transitional Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional Teaching License.

(2) This license is issued jointly to an applicant and a district for up to three years and is not renewable.

(3) This license is valid for teaching with the requesting employer only at the designated grade levels and subject-matter endorsement areas specifically requested by the employer. This license may not be transferred to another employer without a specific request from the new district along with a duplicate license application to issue the new license.

(4) To be eligible for a Restricted Transitional Teaching License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a bachelor's degree or higher from a regionally accredited institution or approved foreign equivalent. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure;

(c) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(d) Show substantial preparation in the subject-matter area in which licensure is requested;

(e) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Submit a letter from the employing district describing the particular need in relation to the applicant's teacher qualifications. The district must agree to provide a mentor and identify that mentor in the letter of application. The district must attest that circumstances prevent hiring a suitable teacher holding an unrestricted full-time license appropriate for the assignment to be filled.

(g) Submit a resume, and any other evidence required by the Commission as proof of substantial completion of academic preparation or substantial work experience in the area in which the co-applicant educator is are seeking licensure.

(5) Restricted Transitional Teaching Licenses will be issued for one year at a time for a maximum of three years total subject to special renewal conditions:

(a) First Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Proof of admission and enrollment or proof of pending enrollment into a program for licensure in the area in which the applicant is teaching.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Significant proof of progress toward completion of their Initial I Teaching License requirements.

(c) Renewal under these conditions is not subject to the 120-day grace period and must be submitted sufficiently in advance of the license expiration date to ensure continuity of licensure. Failure to submit a timely application is grounds for denial of a renewal pursuant to this subsection and may be grounds for discipline under OAR 584-020-0040.

(d) The Executive Director may deny renewal of the license upon failure to show progress in the licensure program needed for the next stage license.

(6) Upon expiration of the Restricted Transitional Teaching License, recipients of this license must meet all the requirements of the Initial I Teaching License for which they may apply at any time or qualify for an Emergency Teaching License under the provisions provided below.

(7) Emergency Teaching License: When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Initial I Teaching License, within three years, an extension for up to one year may be issued upon joint application from an educator and the employing district. The applicant must complete a C-1 and fees for an Emergency Teaching and provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the Initial I Teaching License upon expiration of the Emergency Teaching License issued pursuant to this section.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 - 342.495; 342.533

Hist.: TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 7-2009, f. 12-15-09, cert. ef. 1-1-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0171
Limited Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Limited Teaching License.

(2) This license, issued for three years and renewable, is valid at any level and designated for one or more highly specialized subjects of instruction for which the commission does not issue a specific endorsement. The Executive Director has the authority to grant a Limited Teaching License for an exception to some discreet subjects within an established endorsement upon a showing of district need. Requests for exceptions to established endorsements may be submitted to the commission for approval at the Executive Director's discretion.

(3) This license is valid for substitute teaching at any level but only in subjects listed on the license.

(4) To be eligible for a Limited Teaching License the applicant must have:

(a) Transcripts documenting an accredited associate's degree or its approved equivalent in objectively evaluated post-secondary education related to the intended subject of instruction,

(b) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.

(5) The Limited Teaching License is restricted to use within a district that has applied for it jointly with the teacher, whose qualifications and job description are subject to commission approval.

(6) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant teacher's documented qualifications, agree to provide a mentor up to the first renewal of the license, and attest that circumstances prevent hiring a suitable teacher holding any other full-time license appropriate for the role to be filled.

(7) To be eligible for renewal of the Limited Teaching License, an applicant must:

(a) Provide a statement from the district attesting that the teacher's assignment is exactly the same as originally requested; and

(b) Establish, maintain, and report a professional development plan in accordance with OAR 584-090-0020.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TPSC 6-2003(Temp), f. & cert. ef 11-13-03 thru 5-9-04; TSPC 3-2004, f. & cert. ef. 5-14-04; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0181
Substitute Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Substitute Teaching License. This license, issued for three years and renewable, is valid at any level in any specialty to substitute for a teacher who is temporarily unable to work.

(2) To be eligible for a Substitute Teaching License, the applicant must:

(a) Have a bachelor's degree or higher from a regionally accredited institution or an approved foreign equivalent related to teaching at one or more levels. Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Notwithstanding OAR 584-017-0201, hold an unrestricted license for full-time teaching in any state or submit proof of completion of an approved teacher education program in any state.

(c) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(d) Furnish fingerprints in the manner prescribed by the commission if the applicant has not been fingerprinted or has not held an active license issued by the commission in the past three years; and

(3) The holder of a Substitute Teaching License may not continuously replace an individual teacher absent for more than three consecutive months without obtaining a full-time license. If the educator is only lacking recency to qualify for the full-time license, the educator must complete coursework to qualify for the long-term placement.

(4) To be eligible for renewal of the Substitute Teaching License an applicant must: Show evidence of having obtained a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited master's degree;

(5) A district and co-applicant educator may apply for an Emergency Teaching License for the holder of a Substitute Teaching License if the district is unable to obtain a regularly licensed teacher for any position lasting more than three consecutive months. The Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in subsection (3) above. The Executive Director may approve the Emergency Teaching License upon proof of the district's emergency.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2004, f. & cert. ef. 8-25-04; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0182
Restricted Substitute License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant and a co-applying district may be granted a Restricted Substitute Teaching License.

(a) This license, issued for three years and renewable, is valid to substitute for a total of 60 days a school year (September through June) at any level in any specialty to replace a teacher who is temporarily unable to work.

(b) The 60 days a year limit applies regardless if the holder of the license substitutes in multiple districts as may be the case if an applicant and an ESD hold the license.

(c) Districts who did not co-apply with the applicant may request permission to add the substitute to their district upon filing an additional application and fee.

(d) An assignment on this license may not exceed 10 days consecutively under any circumstances.

(2) To be eligible for a Restricted Substitute Teaching License, the applicant must:

(a)(A) Hold a bachelor's degree or higher from a regionally accredited institution or an approved foreign equivalent related to teaching at one or more levels;

(B) Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure;

(b) Furnish fingerprints in the manner prescribed by the commission if the applicant has not been fingerprinted or has not held an active license issued by the commission in the past three years; (c) Provide a letter from the co-applicant district stating the reasons for the license; and

(d) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(3) To be eligible for renewal of the Restricted Substitute Teaching License an applicant must:

(a) Submit letter from district requesting renewal; and

(b) Obtain a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant has a master's degree.

(4) A district and co-applicant educator may apply for an Emergency Teaching License for the holder of a Restricted Substitute Teaching License if the district is unable to obtain a regularly licensed teacher for any position lasting more than three consecutive months. The Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in subsections (1) above. The Executive Director may approve the Emergency Teaching License upon proof of the district's emergency.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0190
Teaching Associate License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Teaching Associate License. This license, issued for two years and not renewable. The Teaching Associate License is valid for regular teaching at

one or more designated levels in one or more designated specialties but is not valid for substitute teaching.

(2) The Teaching Associate License is issued only to an experienced teaching assistant engaged in an intensive professional development program for teaching assistants approved by the commission under institutional standards found in OAR 584-017.

(3) The Teaching Associate License is restricted to use within the district that has applied for it jointly with the applicant.

(4) To be eligible for a Teaching Associate License, an applicant must satisfy the following requirements:

(a) Be enrolled in a specified institutional program of undergraduate education and professional teacher preparation approved by the commission and have completed 75% of the program required to qualify for assignment as a full-time intern.

(b) Successfully complete one year as a full-time intern in an approved program under the supervision of a school-based supervisor and unit supervisor.

(c) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(d) Have three academic years of half-time or more experience as a teaching assistant assigned primarily to direct instruction and related support.

(e) Furnish fingerprints in the manner prescribed by the commission.

(5) The institutional program and school district will provide supervision for the individual holding a Teaching Associate License. The institutional program and the district will provide a mentor for the teaching associate. The mentor will be designated the teacher of record.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2001(Temp), f. & cert. ef. 1-17-01 thru 7-15-01; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-060-0200
American Indian Languages Teaching License

(1) Upon filing a correct and complete application in form and matter prescribed by the Commission, an applicant may be granted an American Indian Teaching License for one or more American Indian languages. The license shall be valid for three years and may be renewed upon application from the holder of the license.

(2) To be eligible for the American Indian Language Teaching License, the applicant must:

(a) Submit a joint application from the prospective teacher and the tribe whose language will be

taught. The tribe must certify that the applicant is qualified to teach the language of the tribe.

(b) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application.

(3) A holder of an American Indian languages teaching license who does not also have a teaching license or registration issued under ORS 342.125 may not teach any subject other than the American Indian language they are approved to teach by the sponsoring tribe.

(4) All first American Indian Language Teaching Licenses issued after September 1, 2009 may be renewed upon obtaining a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455, 342.495 & 342.533
Hist.: TSPC 5-2002, f. & cert. ef. 8-9-02; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-070-0001
Purpose of Personnel Service Licenses

These rules establish licensure requirements for school counselors, school psychologists, school social workers and other related licenses to accomplish objectives for guidance, counseling and education support services in Oregon schools. Licensure programs under this division have the following characteristics:

(1) The programs are designed to recognize the developmental levels of students.

(2) Continuing professional development is an integral part of the licensure renewal program.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-070-0111
Transitional School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Transitional School Counselor License.

(2)(a) The Transitional School Counselor License is issued for one year and is non-renewable

(b) The educator must qualify for an Initial II School Counselor License upon expiration of six (6) years following the date the first Initial or Transitional School Counselor License was issued

(c) All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of six (6) years following the date the first Initial or Transitional School Counselor License was issued.

(3) The Transitional School Counselor License is valid for regular or substitute school counseling at all age or grade levels. Applicants who wish to counsel more than three years will be advised on how they can qualify for the Initial I or the Initial II School Counselor License, for which they may apply at any time.

(4) To be eligible for a Transitional School Counselor License, the applicant must have:

(a)(A) A master's or higher degree in counseling, education, or related behavioral sciences, including but not limited to social work or psychology, from a regionally accredited institution or an approved foreign equivalent; a master's degree or higher from a regionally accredited institution validates a non-regionally accredited bachelor's degree.

(B) Have held an unrestricted school counseling license in any state; and

(b) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) The Transitional School Counselor License will not be restricted as to employer if the applicant has held an unrestricted license for school counseling in any state.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2010, f. & cert. ef. 4-2-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-070-0112
Restricted Transitional School Counselor License

(1) Upon filing a correct and complete application with a co-applicant district in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional School Counselor License.

(2) The Restricted Transitional School Counselor is issued for three years and is non-renewable.

(3) The Restricted Transitional School Counselor License will be restricted for use within a district that has applied for it jointly with the counselor and may not be used for substitute teaching unless the educator also holds another license valid for substitute teaching issued by the commission.

(4) To be eligible for a Restricted Transitional School Counselor License, the applicant must have all of the following:

(a) An application that includes the following:

(A) A joint request by an employing district; and

(B) The applicant counselor's qualifications summarized on a submitted resume; and

(C) A statement from the district describing the circumstances that prevent hiring a school counselor with an unrestricted license for the position being filled; and

(b) A bachelor's or higher degree from a regionally accredited institution or approved foreign equivalent;

(c) Have obtained a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(d) Furnished fingerprints and passed a background check in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application.

(See also, OAR 584-036-0062 for Criminal Records Check Requirement.); and

(e) One of the following:

(A) Be enrolled in a school counselor program approved for school counseling licensure by any state and have completed approximately one-half of the program; or

(B) Have been a full-time certified Child Development Specialist (CDS) for at least three academic years; or

(C) Have a master's degree in a counseling-related field.

(5) The Restricted Transitional School Counselor License is not transferable to another district. However, another district may co-apply for a Restricted Transitional School Counselor License for any time remaining in the three years from the date the first Restricted Transitional School Counselor License was issued. A C-1 application and full fee must accompany the request.

(6)(a) Upon filing an application and fee in the form and manner required by the commission; a restricted extension to the Restricted Transitional School Counselor License may be issued for up to one year.

(b) To be eligible for the restricted extension the following must be filed:

(A) A joint application between the educator and the employing school district;

(B) A description of the extenuating circumstances that have prevented the educator from completing the requirements for the Initial I or Initial II School Counselor License within the life of the Restricted Transitional School Counselor License; and

(C) A description of the steps the district will take to ensure the applicant will qualify for the Initial I or Initial II School Counselor License upon expiration of the restricted extension to the Restricted Transitional School Counselor License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-070-0132
Emergency School Counselor License

(1) An Emergency School Counselor License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency School Counselor License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director will consider the following:

(a) Efforts the educator has made in meeting school counselor licensure requirements;

(b) Whether educator has had any academic preparation or experience in the area of counseling; and

(c) Whether educator has obtained a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(3) An Emergency School Counselor License generally will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(4) The Emergency School Counselor License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127.

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120—342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-070-0310
Limited Student Service License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Limited Student Service License. This license, issued for three years and renewable, is valid at any authorization level and designated for a specialized type of direct service to students for which the commission at its discretion may not require a counselor or psychologist license. It is not valid for substitution of any kind.

(2) To be eligible for a Limited Student Service License the applicant must:

(a) Have a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally valid master's degree or other specialized preparation related to the intended service role and ordinarily equivalent to one academic year of graduate study. Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(3) The Limited Student Service License is restricted to use within a district that has applied for it jointly with the applicant, whose qualifications and job description are subject to commission approval. Upon application, the co-applicant district must describe its particular need in relation to the co-applicant specialist's qualifications summarized on a submitted resume, agree to provide a mentor during the first year of the assignment, and attest that the role to be filled has been structured so as not to require a licensed school counselor or psychologist.

(4) The holder of a Limited Student Service License shall use only the title specifically approved by the commission and shall not use any unapproved title or imply any unapproved function. Titles such as "advisor" or "student service specialist" or "student assistance specialist" will more readily be approved. The following provisos apply:

(a) No holder of a limited license shall use a title containing words derived from "psychology" nor claim to be a psychologist or to render psychological services without obtaining a school psychologist license from the commission unless licensed as a psychologist or psychologist associate by the Board of Psychologist Examiners. Under ORS 675.990(1)(b), a violation of this subsection is a Class A misdemeanor.

(b) The commission at its discretion may consider a title indicating a therapeutic student service role like counseling or social work, for a specialist who has a corresponding master's or doctor's degree, if the applicant is licensed by the Board of Licensed Professional Counselors and Therapists or is demonstrably prevented from gaining admission to a graduate program in school counseling or school psychology and therefore cannot reasonably be required to apply for a non-renewable transitional license.

(c) The commission will ordinarily approve an appropriate social work title for an applicant licensed by the Board of Clinical Social Workers.

(5) To be eligible for renewal of the Limited Student Service License, an applicant must obtain a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120—342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-080-0031
Distinguished Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Distinguished Administrator License.

(2) The Distinguished Administrator License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Distinguished Administrator License is voluntary and is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Distinguished Administrator License, an applicant must have:

(a) Completed, beyond the advanced administrator program specified in OAR 584-080-0022 an advanced education leadership or school administration program consisting of at least 12 semester hours or 18 quarter hours of graduate credit or the equivalent; or in the alternative, hold a regionally accredited doctor's degree in school administration or educational leadership.

(A) Completion of the advanced program must be verified by the institution offering the program or through official transcripts.

(B) Doctorates in programs other than school administration or educational leadership do not qualify for this license.

(b) Three years of half time or more experience on a transitional, initial, continuing, or out-of-state administrative license valid for the assignment functioning as a superintendent in a public school district, education service district, or regionally accredited private school system; and

(c) Have obtained a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics.

(5) The Distinguished Administrator License may be renewed for five years upon completion of continuing professional development pursuant to OAR 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-080-0153
Restricted Transitional Administrator License

(1) Upon filing a correct and complete joint application with a co-applicant employing school district in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional Administrator License.

(2) The Restricted Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and is restricted to the district from which the co-application is received.

(3) The Restricted Transitional Administrator License is not valid for substitute teaching at any level in any specialty.

(4) The Restricted Transitional Administrator License is only valid for up to three years and is not renewable. Upon expiration of the license, the educator must qualify for the Initial Administrator License.

(5) To be eligible for a Restricted Transitional Administrator License, the applicant must have all of the following:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher from a regionally-accredited institution or approved foreign equivalent;

(c) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics;

(d) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(e) Submit a letter from the employing district describing the particular need in relation to the applicant's administrator qualifications. The district must agree to provide a mentor and identify that mentor in the letter of application. The district must attest that circumstances prevent hiring a suitable administrator holding an unrestricted full-time license appropriate for the assignment to be filled.

(f) Submit a resume, and any other evidence required by the Commission as proof of substantial completion of academic preparation or substantial administrative work experience.

(6) Restricted Transitional Administrator Licenses will be issued for one year at a time for a maximum of three years total subject to special renewal conditions:

(a) First Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Proof of admission and enrollment or proof of pending enrollment into a program for administrative licensure.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Significant proof of progress toward completion of their Initial Administrator License requirements.

(c) Renewal under these conditions is not subject to the 120-day grace period and must be submitted sufficiently in advance of the license expiration date to ensure continuity of licensure. Failure to submit a timely application is grounds for denial of a renewal pursuant to this subsection and may be grounds for discipline under OAR 584-020-0040.

(d) The Executive Director may deny renewal of the license upon failure to show progress in the licensure program needed for the next stage license.

(7) Upon expiration of the Restricted Transitional Administrator License, recipients of this license must meet all the requirements of the Initial Administrator License for which they may apply at any time or qualify for an Emergency Administrator License under the provisions provided below.

(8) Emergency Administrator License: Upon filing an application and fee in the form and manner required by the commission; an Emergency Administrator License may be issued for up to one year upon joint application from an educator and the employing district when the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for an Initial or Continuing Administrator License.

(a) If the extenuating circumstances are due to the lack of due diligence in completing licensure requirements by the applicant, only enough time to prevent the district from experiencing a true hardship may be granted at the Executive Director's discretion.

(b) The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the regular license upon expiration of the Emergency Administrator License.

(9) An applicant may be eligible for an extension up to one year of the Restricted Transitional Administrator License, upon joint application with the same or another co-applicant district, if the applicant has completed all the requirements for the Initial Administrator License except for the experience described in OAR 584-080-0012.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2010, f. & cert. ef. 4-2-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-080-0161
Exceptional Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, an unconventionally qualified applicant may be granted an Exceptional Administrator License at the sole discretion of the commission as permitted under ORS 342.200.

(2) The Exceptional Administrator License is issued for three years and renewable under conditions that the Executive Director may specify, is valid only for a designated position with a job description approved by the Executive Director.

(3) To be eligible for an Exceptional Administrator License the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate extraordinary professional experience that compensates for lack of experience in prekindergarten-12 schools;

(d) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics; and

(e) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) Experience that included supervising teachers or working directly with students in some educational setting shall be required as a qualification for any Exceptional Administrator License to be used for supervising teachers or working directly with students in Oregon schools.

(5) The Exceptional Administrator License will be restricted to use in a district that has applied for it jointly with the administrator.

(a) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant administrator's qualifications summarized on a submitted resume; and

(b) The district must attest that no suitable candidate with any unrestricted administrator license is comparably qualified and available for the role to be filled.

(6) The Exceptional Administrator License may be renewed the first time upon demonstration of a passing score on the test of professional administrator knowledge approved by the Commission for the Continuing Administrator License; and

(7) After the first renewal, the Exceptional Administrator License may be continuously renewed upon completing continuing professional development requirements in accordance with OAR 584-090.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120—342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

584-080-0171
Emergency Administrator License

(1) An Emergency Administrator License may be issued to a qualified applicant upon joint application with the district and the applicant when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The district must file an electronic C-3 form in conjunction with the joint application if the license needs to be issued under expedited service pursuant to OAR 584-036-0070.

(3) The Emergency Administrator License is valid for regular or substitute administration at all grade levels. The Emergency Administrator License is restricted to the district which co-applied for the license with the educator.

(4) The Emergency Administrator License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(5) An Emergency Administrator License is not renewable and generally will not exceed one year unless the educator or the district has presented unusual extenuating circumstances to the Executive Director. In rare circumstances when the district demonstrates continuing need, an Emergency Administrator License may be extended beyond one year for a period to be determined by the Executive Director.

(6) The Emergency Administrator License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120 – 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11

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Water Resources Department
Chapter 690

Rule Caption: Procedures and standards for administration of the Columbia River Basin Water Development Loan Program.
Adm. Order No.: WRD 2-2010
Filed with Sec. of State: 12-14-2010
Certified to be Effective: 12-14-10
Notice Publication Date: 9-1-2010
Rules Adopted: 690-095-0005, 690-095-0010, 690-095-0015, 690-095-0020, 690-095-0025, 690-095-0030, 690-095-0035, 690-095-0040, 690-095-0045, 690-095-0050, 690-095-0055, 690-095-0060, 690-095-0065, 690-095-0070, 690-095-0075, 690-095-0080, 690-095-0085, 690-095-0090, 690-095-0095, 690-095-0100
Subject: HB 3369, enacted into law by the Oregon Legislature in 2009, directs the Oregon Water Resources Commission to adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund. In addition, HB 3369 establishes a separate and distinct process for certain applicants seeking a loan from the Water Development Fund. These applicants include qualified water developers that are not a municipality or a provider of water for municipal purposes and that are applying for a loan to enable the construction of a water development project in the Columbia River Basin. The adopted rules provide procedures an establish standards for administration of a Water Development Loan Program for applicants that are not a municipality or a provider of water for municipal purposes and that are applying for a loan to enable the construction of a water development project in the Columbia River Basin in accordance with HB 3369 (Chapter 907, Oregon Laws 2009).
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-095-0005
Purpose, Statutory Authorization

(1) The Water Development Fund [Article XI-I(1), Constitution of Oregon] provides financing for loans for the construction of water development projects for irrigation, drainage, fish protection, watershed restoration and municipal uses and for the acquisition of easements and rights of way for water development projects authorized by law.

(2) These rules establish procedures and standards for administration of the Columbia River Basin Water Development Loan Program to provide for loans that have a high probability of repayment and are adequately secured in the event of default. The Columbia River Basin Water Development Loan Program implements provisions of Chapter 907, Oregon Laws 2009 related to loans to finance water development projects in the Columbia River Basin and various provisions of ORS Chapter 541, as amended by Chapter 907. These rules are authorized by ORS 541.646 and ORS Chapter 183.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0010
Definitions

The words and phrases used in these rules have the meaning given in ORS 541.600 and ORS 541.700, unless they are otherwise specifically defined in this division.

(1) "Adequate Security" means the pledge of real or personal property or a credit enhancement or other collateral of value authorized by the director to secure a loan against default.

(2) "Applicant" means a qualified water developer applying to borrow moneys through the loan program for a water development project in the Columbia River Basin.

(3) "Application" includes all documents and forms required by the department under these rules and pursuant to ORS 541.600 to 541.855.

(4) "Bonds" mean the State of Oregon general obligation bonds issued under Article XI-I(1) of the Oregon Constitution to fund the loan program.

(5) "Columbia River Basin" means the area of land comprising the drainage areas of all river basins within Oregon that drain directly to the Columbia River or Snake River and includes the main stem of the Columbia River.

(6) "Commission" means the Oregon Water Resources Commission.

(7) "Community" means an incorporated or unincorporated town or locality with more than three service connections.

(8) "Department" means the Oregon Water Resources Department.

(9) "Director" means the director of the Oregon Water Resources Department or the director's designee.

(10) "Federal Water Development Project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

(11) "Loan" means the moneys loaned by the department under the loan program to finance a water development project.

(12) "Loan Advisory Board" means a board appointed by the director to review applications made under Section 20 of chapter 907, Oregon Laws 2009 and make recommendations thereon to the director.

(13) "Loan Document" means the loan agreement, any supplemental loan agreement, promissory note, mortgage, security agreement and any related documents, including but not limited to any pledge of or lien against collateral, entered into by the department and an applicant related to a loan from the department to a borrower under the loan program, and any documentation required by the department to change a loan's terms and conditions.

(14) "Loan Program" means the Columbia River Basin Water Development Loan Program.

(15) "Provider of water for municipal purposes" means a public body as defined in ORS 174.109, a community or a private entity whose primary purpose is to operate a water distribution system that delivers potable water for community needs, either to individual customers or through another water distribution system.

(16) "Municipality" means a city as defined in ORS 174.100(2); includes any incorporated village or town.

(17) "Qualified Water Developer" means a "water developer" as defined in ORS 541.700 that is not a municipality, a community or a provider of water for municipal purposes.

(18) "Security Value" means the value assigned by the department to the project or other security.

(19) "Water Development Fund" means the fund created through the adoption of Article XI-I of the Constitution of Oregon by general election in November, 1977, as amended.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0015
Eligibility: Applicant and Project

(1) To be eligible, an applicant must be a qualified water developer seeking to finance a water development project in the Columbia River Basin under the loan program.

(2) To be eligible, projects shall meet the definition of a "water development project" as defined in ORS 541.600.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0020
Eligible Costs

The department shall determine the eligible costs during the pre-application conference or the loan review process. Subject to these rules, a loan may be approved to pay the "startup costs" relating to a water development project. "Startup costs" must be allowable as capital costs or reimbursable costs that may be financed with federally tax-exempt bonds under the Internal Revenue Code and may include, but are not limited to:

(1) The costs of buying or otherwise acquiring, constructing, installing, rehabilitating or reconstructing a water development project, including site costs and acquisition of water rights relevant to the project;

(2) The costs of obtaining a loan from the department under these rules;

(3) Design and engineering costs;

(4) The costs to acquire licenses and permits for a water development project;

(5) Reserves, interest costs related to construction or interim financing;

(6) Grant matching funds or other costs of funds needed for a water development project; and

(7) Costs for preparation of claim of beneficial use and costs incurred up to and including obtaining applicable water right certificates and limited licenses.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0025
Ineligible Costs

The director may not issue a loan to provide assistance for 'on-going' operation or maintenance costs of a water development project. A loan may not be used to pay any capital costs incurred prior to execution of the loan document without prior approval of the director.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0030
Authority of Director

(1) Loans over three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules may only be approved by the commission.

(2) The director is authorized by the commission to approve loans under three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules; approve, deny, amend, or set conditions of loans; establish loan interest rates; execute bond and loan documents; and sign all loan documents.

(3) The director shall:

(a) Give a periodic written report on all loan activity to the commission;

(b) Assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and affected tribal governments, and notify other interested parties who may be consulted, as deemed appropriate. If a project may affect agricultural use, the department shall also assess the project in consultation with the State Department of Agriculture; and

(c) Take such steps as are needed to recover loan funds and prevent their misuse, or to prevent loan funds from being diverted from the originally approved purpose.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0035
Loan Advisory Board

(1) The director may appoint a loan advisory board to review applications made under the loan program and pursuant to these rules make recommendations thereon to the director. The scope of application review shall be limited to the adequacy of security, the potential for repayment, and economic feasibility of the project. Members shall be knowledgeable and experienced in the fields of banking, finance, economics, or related field. The members appointed to the board shall be subject to the approval of the commission.

(2) After its review, the loan advisory board shall advise the director in writing and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the loan advisory board.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0040
Application

(1) Applications for loans to fund water development projects in the Columbia River Basin shall be filed under these rules and pursuant to ORS 541.600 through 541.855. The terms used in the application shall have the meanings given in these rules, ORS 541.600 and 541.700.

(2) Loan applications shall be submitted in the manner and format and contain or be accompanied by any and all information as prescribed by the commission and required by the department.

(3) If an application submitted under this rule lacks any information required by the department, the department may reject the application or require the applicant to submit additional information.

(4) It is recommended that potential applicants contact the director for a pre-application conference prior to submitting an application. The director or designee may give advice on a loan before an application is submitted and may advise whether the proposed project appears to comply with these rules, whether funds are likely to be available under the loan program, and which costs may be eligible for financing through a loan. Any such advice, however, does not constitute a loan approval or any other binding commitment.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0045
Public Notice and Review Period

(1) Upon receipt of an application that the director determines is complete in accordance with these rules, the director will provide public notice of the application by posting it on the department website for 60 days beginning with the date the department determines the application is complete. The notice shall contain a summary of the application including the names of the applicant, the location, purpose of the loan, and other relevant information.

(2) The public may comment on the posted application by submitting comments as directed by the department on its website. The director need not respond to the commentator or the applicant in connection with any submitted comments. The director will determine the weight, if any, to be given to submitted comments in its evaluation of an application.

(3) The director shall begin review of a completed application no later than 60 days after receiving the completed application. The review shall comply with requirements of OAR 690-095-0050, these rules and any other requirements made by the department, and shall be done in a timely basis as determined by the director.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0050
Criteria for Granting a Loan

(1) Loans shall not be approved unless:

(a) The applicant demonstrates and the department finds that the loan will comply with the

requirements of Article XI-I(1) of the Oregon Constitution, ORS 541.600 to 541.855, and any

applicable federal and state requirement.

(b) The director determines that the applicant meets the following standards:

(A) Demonstrated revenues or other resources available to:

(i) Repay the loan in accordance with its terms, and

(ii) Provide for the continued operation and maintenance of the project.

(B) Satisfactory credit history or rating from a rating agency; or

(C) Good and sufficient collateral is available to secure and provide repayment of the loan, and

(D) The project plan assures timely completion and includes schedules with measurable performance benchmarks.

(c) The application requirements and qualifications are met.

(d) The commission finds that all conditions of ORS 541.720 are met.

(2) The director, under the authority of the commission, may issue an initial non-binding letter of intent to an applicant, indicating a present intention to approve a loan application in a specified amount but subject to:

(a) Receipt of certain additional and specified information in the letter,

(b) The director's review and approval of such additional information, or

(c) The applicant's receipt of any required permits or other regulatory licenses or approvals necessary to construct or operate the project.

(3) For application to fund a federal water development project, the director must determine that all required federal approval for funding and construction of the project has been obtained.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0055
Appeal Process

(1) If the director rejects an application or approves a loan amount different than that requested by the applicant, the applicant may file an appeal to the commission. The commission, upon making a finding, may reverse, modify or affirm the director's action on the application.

(2) An applicant must file a written request for an appeal of the director's action; the written request shall be received by the department on or before the thirtieth (30th) day after the date of the written notice to the applicant of the director's action on the application.

(3) An appeal of a decision of the commission as a final order of the agency as authorized under ORS Chapter 183.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0060
Loan Security

(1) The director shall require repayment of an approved loan to be secured by a first priority lien or by other good and sufficient collateral as described in ORS 541.740, as applicable to the applicant. The director, in his or her discretion, using the information in an application and any other information available, will determine the security value of the collateral provided under the loan document.

(2) An applicant may demonstrate adequate security or good and sufficient collateral if:

(a) The applicant has ad valorem taxing power that it has exercised and pledged to secure the loan;

(b) The applicant is an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65 whose principal income is from farming in Oregon, the loan shall be secured by a mortgage or security agreement in the full amount of the loan and the loan amount does not exceed 70 percent of the appraised value of the security for the loan; or

(c) The applicant is a qualified water developer that is not an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65, security may include:

(A) First lien to the State of Oregon attached to the real property of the water developer, and the user charges owed to or received by the water developer;

(B) A lien attached to all real property whether owned by the water developer or others, which is served by the water development project or which is served by a water source enhanced or restored by the water development project; or

(C) An agreement entered into by the water developer wherein assessments, user charges or other revenue is pledged for security of loan repayment and that such revenue shall be maintained at no less than 125 percent of the debt service on the loan.

(d) The commission determines, in consultation with the State Treasurer, that such other good tendered as collateral by the applicant is "sufficient" collateral to secure the loan instead of, or in addition to, a lien.

(3) Real property used for securing the loan shall have been appraised by a licensed appraiser, county assessor, or department appraiser, at the discretion of the director, within six months prior to the date of the letter of intent or if there is no letter of intent, the loan document.

(4) Where the applicant is a water developer described in ORS 541.700(7) (a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien upon such real property of the water developer as the commission shall require for adequate security. The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.

(5) A partial release of lien may be granted by the director upon written request of a borrower if the remaining property provides adequate security as required by law and these rules.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0065
Interest Rates

(1) The director shall consult the State Treasurer before setting the interest rate on a loan in order to determine that the interest rate on the loan is sufficient to pay all costs associated with the bond issuance and expenses incurred in issuing the bonds.

(2) If the bonds have been sold, the director will set the interest rate paid under a loan

document at a rate that is at least equal to the interest rate paid to bondholders and is sufficient to pay the State of Oregon for:

(a) The administrative expenses incurred by the department, the State Treasurer and any other agency of the state in connection with the issuance of the bonds and the loan program;

(b) Any costs related to administration of the bonds, including but not limited to the costs of any credit enhancement for the bonds and the establishment of the Water Development Administration and Bond Sinking Fund reserves; and

(c) An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.

(3) If, after consultation with the State Treasurer, the director believes that a project is unlikely to produce a net profit for the borrower, the director may set the loan interest rate in a loan document at a level that reduces or eliminates that portion of the loan rate above the bond interest rate.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0070
Loan Contract

(1) The loan contract shall contain the provisions required by Section 26(3) and (4) of chapter 907, Oregon Laws 2009, any provisions the director considers necessary to ensure expenditure of the loan proceeds for the purposes set forth in the approved application and any other provisions required by law or that the director determines are necessary to ensure timely repayment of the loan.

(2) Where the applicant is a water developer described in ORS 541.700(7)(e) through (o), the water developer shall represent and warrant in the loan contract that it is fully authorized to, and does, grant the State of Oregon, the liens required under the loan program and that granting the lien will not violate or conflict with any other agreement, pledge or contract to which the water developer is a party, or with any decree, order or judgment of any competent tribunal to which the water developer is subject.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0075
Conditions to Disbursement of Loan Funds

The director shall withhold payment of funds under a loan contract until any necessary federal and state environmental impact approval processes have been completed for the project and any relevant approvals and permits from any regulatory authority pertaining to the construction or operation of the project have been obtained.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0080
Fees and Charges

(1) At the time an applicant first submits any part of an application with the department, the applicant must pay an application fee equal to the lesser of 0.10 percent of the requested loan amount or $2,500.

(2) The director may require the applicant to pay for costs that exceed the initial application fee if the director determines that the costs are incurred solely in connection with processing the application. Before in-

curring the additional costs, the director will advise the applicant of the additional costs to be paid by the applicant.

(3) An applicant seeking a loan for a qualified water development project that is for fish protection or for watershed enhancement may be assessed a reduced fee as determined by the director when the applicant first submits any part of an application with the department.

(4) In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0085
Issuance of Bonds

Bonds may be issued at the request of the director and administered as provided in ORS chapter 286A and 541.780 to 541.840. Bonds may be issued prior to and after the execution of any loan contracts entered into with respect to the bonds.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0090
Loan Servicing

The provisions of OAR 690-090-0050 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027 & 541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0095
Collection of Delinquencies

The provisions of OAR 690-090-0055 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027 &541.646
Stats. Implemented: ORS 541-600 - 541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

690-095-0100
Property Management

The provisions of OAR 690-090-0060 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027; ORS 541.646
Stats. Implemented: ORS 541-600-541.646
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

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291-124-0035	11-19-2010	Amend	1-1-2011
291-124-0041	11-19-2010	Amend	1-1-2011
291-124-0055	11-19-2010	Amend	1-1-2011
291-124-0060	11-19-2010	Amend	1-1-2011
291-124-0065	11-19-2010	Amend	1-1-2011
291-124-0070	11-19-2010	Amend	1-1-2011
291-124-0075	11-19-2010	Amend	1-1-2011
291-124-0080	11-19-2010	Amend	1-1-2011
291-124-0085	11-19-2010	Amend	1-1-2011
291-124-0090	11-19-2010	Adopt	1-1-2011
291-124-0095	11-19-2010	Repeal	1-1-2011
309-114-0005	11-19-2010	Amend(T)	1-1-2011
309-114-0020	11-19-2010	Amend(T)	1-1-2011
309-114-0030	11-19-2010	Amend(T)	1-1-2011
309-114-0040	11-19-2010	Amend(T)	1-1-2011
309-114-0050	11-19-2010	Amend(T)	1-1-2011
309-114-0060	11-19-2010	Amend(T)	1-1-2011
309-114-0070	11-19-2010	Amend(T)	1-1-2011
330-090-0105	11-23-2010	Amend	1-1-2011
330-090-0105(T)	11-23-2010	Repeal	1-1-2011
330-090-0110	11-23-2010	Amend	1-1-2011
330-090-0110(T)	11-23-2010	Repeal	1-1-2011
330-090-0120	11-23-2010	Amend	1-1-2011
330-090-0120(T)	11-23-2010	Repeal	1-1-2011
330-090-0130	11-23-2010	Amend	1-1-2011
330-090-0130(T)	11-23-2010	Repeal	1-1-2011
330-090-0133	11-23-2010	Amend	1-1-2011
330-090-0133(T)	11-23-2010	Repeal	1-1-2011
330-090-0140	11-23-2010	Amend	1-1-2011
330-090-0140(T)	11-23-2010	Repeal	1-1-2011
330-090-0150	11-23-2010	Amend	1-1-2011
330-090-0150(T)	11-23-2010	Repeal	1-1-2011
330-090-0350	11-23-2010	Adopt	1-1-2011
330-090-0350(T)	11-23-2010	Repeal	1-1-2011
330-090-0450	11-23-2010	Adopt	1-1-2011
330-090-0450(T)	11-23-2010	Repeal	1-1-2011
330-112-0000	12-15-2010	Adopt	1-1-2011
330-112-0000(T)	12-15-2010	Repeal	1-1-2011
330-112-0010	12-15-2010	Adopt	1-1-2011
330-112-0010(T)	12-15-2010	Repeal	1-1-2011
330-112-0020	12-15-2010	Adopt	1-1-2011
330-112-0020(T)	12-15-2010	Repeal	1-1-2011
330-112-0030	12-15-2010	Adopt	1-1-2011
330-112-0030(T)	12-15-2010	Repeal	1-1-2011
330-112-0040	12-15-2010	Adopt	1-1-2011
330-112-0040(T)	12-15-2010	Repeal	1-1-2011
330-112-0050	12-15-2010	Adopt	1-1-2011
330-112-0050(T)	12-15-2010	Repeal	1-1-2011
330-112-0060	12-15-2010	Adopt	1-1-2011
330-112-0060(T)	12-15-2010	Repeal	1-1-2011
330-112-0070	12-15-2010	Adopt	1-1-2011
330-112-0070(T)	12-15-2010	Repeal	1-1-2011
330-112-0080	12-15-2010	Adopt	1-1-2011
330-112-0080(T)	12-15-2010	Repeal	1-1-2011

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330-112-0100	12-15-2010	Adopt	1-1-2011
330-112-0100(T)	12-15-2010	Repeal	1-1-2011
333-076-0101	12-15-2010	Amend	1-1-2011
333-076-0106	12-15-2010	Amend	1-1-2011
333-076-0108	12-15-2010	Amend	1-1-2011
333-076-0109	12-15-2010	Amend	1-1-2011
333-076-0111	12-15-2010	Amend	1-1-2011
333-076-0114	12-15-2010	Amend	1-1-2011
333-076-0115	12-15-2010	Amend	1-1-2011
333-076-0125	12-15-2010	Amend	1-1-2011
333-076-0130	12-15-2010	Amend	1-1-2011
333-076-0135	12-15-2010	Amend	1-1-2011
333-076-0140	12-15-2010	Amend	1-1-2011
333-076-0145	12-15-2010	Amend	1-1-2011
333-076-0155	12-15-2010	Amend	1-1-2011
333-076-0160	12-15-2010	Amend	1-1-2011
333-076-0165	12-15-2010	Amend	1-1-2011
333-076-0170	12-15-2010	Amend	1-1-2011
333-076-0175	12-15-2010	Amend	1-1-2011
333-076-0180	12-15-2010	Amend	1-1-2011
333-076-0190	12-15-2010	Amend	1-1-2011
333-076-0250	12-15-2010	Adopt	1-1-2011
333-076-0255	12-15-2010	Adopt	1-1-2011
333-076-0260	12-15-2010	Adopt	1-1-2011
333-076-0265	12-15-2010	Adopt	1-1-2011
333-076-0270	12-15-2010	Adopt	1-1-2011
333-500-0005	12-15-2010	Amend	1-1-2011
333-500-0010	12-15-2010	Amend	1-1-2011
333-500-0020	12-15-2010	Amend	1-1-2011
333-500-0025	12-15-2010	Amend	1-1-2011
333-500-0030	12-15-2010	Amend	1-1-2011
333-500-0031	12-15-2010	Adopt	1-1-2011
333-500-0034	12-15-2010	Amend	1-1-2011
333-500-0040	12-15-2010	Amend	1-1-2011
333-500-0065	12-15-2010	Amend	1-1-2011
333-501-0010	12-15-2010	Amend	1-1-2011
333-501-0015	12-15-2010	Amend	1-1-2011
333-501-0035	12-15-2010	Amend	1-1-2011
333-501-0040	12-15-2010	Amend	1-1-2011
333-501-0045	12-15-2010	Amend	1-1-2011
333-501-0055	12-15-2010	Amend	1-1-2011
333-501-0060	12-15-2010	Adopt	1-1-2011
333-505-0005	12-15-2010	Amend	1-1-2011
333-505-0020	12-15-2010	Amend	1-1-2011
333-505-0030	12-15-2010	Amend	1-1-2011
333-505-0033	12-15-2010	Amend	1-1-2011
333-505-0050	12-15-2010	Amend	1-1-2011
340-200-0040	12-10-2010	Amend	1-1-2011
340-223-0010	12-10-2010	Amend	1-1-2011
340-223-0020	12-10-2010	Amend	1-1-2011
340-223-0030	12-10-2010	Amend	1-1-2011
340-223-0040	12-10-2010	Amend	1-1-2011
340-223-0050	12-10-2010	Amend	1-1-2011
340-223-0060	12-10-2010	Adopt	1-1-2011
340-223-0070	12-10-2010	Adopt	1-1-2011
340-223-0080	12-10-2010	Adopt	1-1-2011
410-123-1000	1-1-2011	Amend	1-1-2011
410-123-1085	1-1-2011	Repeal	1-1-2011
410-123-1220	1-1-2011	Amend	1-1-2011
410-123-1260	1-1-2011	Amend	1-1-2011
410-123-1540	1-1-2011	Amend	1-1-2011
410-125-0047	1-1-2011	Amend	1-1-2011
410-125-0080	1-1-2011	Amend	1-1-2011
410-125-0085	1-1-2011	Amend	1-1-2011
410-125-0100	1-1-2011	Repeal	1-1-2011
410-125-0140	1-1-2011	Amend	1-1-2011
410-125-0360	1-1-2011	Amend	1-1-2011
410-125-0410	1-1-2011	Amend	1-1-2011
410-125-0450	1-1-2011	Adopt	1-1-2011
410-125-1020	1-1-2011	Amend	1-1-2011
410-125-2000	1-1-2011	Amend	1-1-2011
410-125-2020	1-1-2011	Amend	1-1-2011
410-125-2030	1-1-2011	Amend	1-1-2011
410-127-0020	1-1-2011	Amend	1-1-2011
410-127-0060	1-1-2011	Amend	1-1-2011
410-127-0065	1-1-2011	Amend	1-1-2011
410-127-0080	1-1-2011	Amend	1-1-2011
410-130-0200	1-1-2011	Amend	1-1-2011
410-130-0255	1-1-2011	Amend	1-1-2011
410-130-0580	1-1-2011	Amend	1-1-2011
410-130-0585	1-1-2011	Amend	1-1-2011
410-130-0587	1-1-2011	Amend	1-1-2011
410-136-0030	1-1-2011	Amend	1-1-2011
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410-136-0045	1-1-2011	Amend	1-1-2011
410-136-0050	1-1-2011	Amend	1-1-2011
410-136-0060	1-1-2011	Amend	1-1-2011
410-136-0070	1-1-2011	Amend	1-1-2011
410-136-0080	1-1-2011	Amend	1-1-2011
410-136-0140	1-1-2011	Amend	1-1-2011
410-136-0160	1-1-2011	Amend	1-1-2011
410-136-0180	1-1-2011	Amend	1-1-2011
410-136-0200	1-1-2011	Amend	1-1-2011
410-136-0220	1-1-2011	Amend	1-1-2011
410-136-0240	1-1-2011	Amend	1-1-2011
410-136-0300	1-1-2011	Amend	1-1-2011
410-136-0320	1-1-2011	Amend	1-1-2011
410-136-0340	1-1-2011	Amend	1-1-2011
410-136-0350	1-1-2011	Amend	1-1-2011
410-136-0440	1-1-2011	Amend	1-1-2011
410-136-0800	1-1-2011	Amend	1-1-2011
410-136-0820	1-1-2011	Amend	1-1-2011
410-136-0840	1-1-2011	Amend	1-1-2011
410-136-0860	1-1-2011	Amend	1-1-2011
410-142-0020	1-1-2011	Amend	1-1-2011
410-142-0100	1-1-2011	Amend	1-1-2011
410-142-0110	1-1-2011	Adopt	1-1-2011
410-142-0200	1-1-2011	Amend	1-1-2011
410-142-0225	1-1-2011	Amend	1-1-2011
410-142-0240	1-1-2011	Amend	1-1-2011

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410-142-0300	1-1-2011	Amend	1-1-2011
410-146-0021	1-1-2011	Amend	1-1-2011
410-146-0085	1-1-2011	Amend	1-1-2011
410-146-0086	1-1-2011	Amend	1-1-2011
410-146-0120	1-1-2011	Amend	1-1-2011
410-146-0140	1-1-2011	Repeal	1-1-2011
410-147-0120	1-1-2011	Amend	1-1-2011
410-147-0140	1-1-2011	Amend	1-1-2011
410-147-0200	1-1-2011	Amend	1-1-2011
410-147-0220	1-1-2011	Repeal	1-1-2011
410-147-0320	1-1-2011	Amend	1-1-2011
410-147-0480	1-1-2011	Amend	1-1-2011
410-147-0610	1-1-2011	Repeal	1-1-2011
411-031-0020	12-1-2010	Amend	1-1-2011
411-031-0020(T)	12-1-2010	Repeal	1-1-2011
411-031-0040	12-1-2010	Amend	1-1-2011
411-031-0040(T)	12-1-2010	Repeal	1-1-2011
411-320-0030	12-1-2010	Amend(T)	1-1-2011
411-320-0045	12-1-2010	Amend(T)	1-1-2011
411-320-0130	12-1-2010	Amend(T)	1-1-2011
411-320-0170	12-1-2010	Amend(T)	1-1-2011
411-340-0030	11-17-2010	Amend(T)	1-1-2011
411-340-0040	11-17-2010	Amend(T)	1-1-2011
411-340-0060	11-17-2010	Amend(T)	1-1-2011
411-340-0120	11-17-2010	Amend(T)	1-1-2011
441-505-1135	12-1-2010	Adopt	1-1-2011
441-710-0035	12-1-2010	Amend	1-1-2011
441-710-0071	12-1-2010	Adopt	1-1-2011
459-005-0040	11-24-2010	Adopt	1-1-2011
459-060-0020	11-24-2010	Amend	1-1-2011
471-010-0111	12-13-2010	Adopt	1-1-2011
471-031-0140	12-13-2010	Amend	1-1-2011
471-031-0141	12-13-2010	Amend	1-1-2011
471-031-0200	12-13-2010	Amend	1-1-2011
471-031-0225	12-13-2010	Repeal	1-1-2011
471-031-0230	12-13-2010	Repeal	1-1-2011
471-031-0235	12-13-2010	Adopt	1-1-2011
573-001-0075	12-8-2010	Amend	1-1-2011
575-080-0100	11-16-2010	Adopt	1-1-2011
575-080-0110	11-16-2010	Adopt	1-1-2011
575-080-0120	11-16-2010	Adopt	1-1-2011
575-080-0130	11-16-2010	Adopt	1-1-2011
575-080-0135	11-16-2010	Adopt	1-1-2011
575-080-0140	11-16-2010	Adopt	1-1-2011
575-080-0145	11-16-2010	Adopt	1-1-2011
583-030-0010	11-16-2010	Amend	1-1-2011
583-030-0035	11-16-2010	Amend	1-1-2011
583-050-0011	11-16-2010	Amend	1-1-2011
583-050-0016	11-16-2010	Amend	1-1-2011
584-021-0165	1-1-2011	Amend	1-1-2011
584-023-0005	1-1-2011	Amend	1-1-2011
584-036-0055	1-1-2011	Amend	1-1-2011
584-042-0044	1-1-2011	Amend	1-1-2011
584-060-0162	1-1-2011	Amend	1-1-2011
584-060-0171	1-1-2011	Amend	1-1-2011
584-060-0181	1-1-2011	Amend	1-1-2011
584-060-0182	1-1-2011	Amend	1-1-2011
584-060-0190	1-1-2011	Amend	1-1-2011
584-060-0200	1-1-2011	Amend	1-1-2011
584-070-0001	1-1-2011	Amend	1-1-2011
584-070-0111	1-1-2011	Amend	1-1-2011
584-070-0112	1-1-2011	Amend	1-1-2011
584-070-0132	1-1-2011	Amend	1-1-2011
584-070-0310	1-1-2011	Amend	1-1-2011
584-080-0031	1-1-2011	Amend	1-1-2011
584-080-0153	1-1-2011	Amend	1-1-2011
584-080-0161	1-1-2011	Amend	1-1-2011
584-080-0171	1-1-2011	Amend	1-1-2011
603-052-0347	11-23-2010	Amend	1-1-2011
635-004-0018	1-1-2011	Amend	1-1-2011
635-004-0019	12-7-2010	Amend(T)	1-1-2011
635-004-0019	1-1-2011	Amend	1-1-2011
635-004-0019(T)	12-7-2010	Suspend	1-1-2011
635-004-0025	1-1-2011	Amend	1-1-2011
635-004-0035	1-1-2011	Amend	1-1-2011
635-004-0070	1-1-2011	Amend	1-1-2011
635-004-0075	1-1-2011	Amend	1-1-2011
635-005-0045	12-10-2010	Amend(T)	1-1-2011
635-005-0190	1-1-2011	Amend	1-1-2011
635-006-0215	1-1-2011	Amend	1-1-2011
635-006-1075	11-23-2010	Amend(T)	1-1-2011
635-006-1095	12-15-2010	Amend(T)	1-1-2011
635-007-0545	12-6-2010	Amend	1-1-2011
635-007-0825	12-6-2010	Repeal	1-1-2011
635-007-0830	12-6-2010	Repeal	1-1-2011
635-039-0080	1-1-2011	Amend	1-1-2011
635-039-0090	1-1-2011	Amend	1-1-2011
635-042-0130	12-1-2010	Amend(T)	1-1-2011
644-010-0010	1-1-2011	Amend(T)	1-1-2011
660-001-0000	12-8-2010	Amend	1-1-2011
660-001-0005	12-8-2010	Amend	1-1-2011
660-001-0007	12-8-2010	Amend	1-1-2011
660-001-0201	12-8-2010	Amend	1-1-2011
660-001-0210	12-8-2010	Amend	1-1-2011
660-001-0220	12-8-2010	Amend	1-1-2011
660-001-0230	12-8-2010	Amend	1-1-2011
660-003-0005	12-8-2010	Amend	1-1-2011
660-003-0010	12-8-2010	Amend	1-1-2011
660-003-0015	12-8-2010	Amend	1-1-2011
660-003-0020	12-8-2010	Amend	1-1-2011
660-003-0025	12-8-2010	Amend	1-1-2011
660-003-0032	12-8-2010	Amend	1-1-2011
660-003-0033	12-8-2010	Amend	1-1-2011
660-003-0050	12-8-2010	Amend	1-1-2011
660-033-0130	11-23-2010	Amend	1-1-2011
660-033-0130(T)	11-23-2010	Repeal	1-1-2011
678-030-0027	11-19-2010	Amend	1-1-2011
690-095-0005	12-14-2010	Adopt	1-1-2011
690-095-0010	12-14-2010	Adopt	1-1-2011
690-095-0015	12-14-2010	Adopt	1-1-2011
690-095-0020	12-14-2010	Adopt	1-1-2011

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690-095-0035	12-14-2010	Adopt	1-1-2011
690-095-0040	12-14-2010	Adopt	1-1-2011
690-095-0045	12-14-2010	Adopt	1-1-2011
690-095-0050	12-14-2010	Adopt	1-1-2011
690-095-0055	12-14-2010	Adopt	1-1-2011
690-095-0060	12-14-2010	Adopt	1-1-2011
690-095-0065	12-14-2010	Adopt	1-1-2011
690-095-0070	12-14-2010	Adopt	1-1-2011
690-095-0075	12-14-2010	Adopt	1-1-2011
690-095-0080	12-14-2010	Adopt	1-1-2011
690-095-0085	12-14-2010	Adopt	1-1-2011
690-095-0090	12-14-2010	Adopt	1-1-2011
690-095-0095	12-14-2010	Adopt	1-1-2011
690-095-0100	12-14-2010	Adopt	1-1-2011
735-060-0000	1-1-2011	Amend	1-1-2011
735-060-0120	1-1-2011	Amend	1-1-2011
735-062-0002	1-1-2011	Amend	1-1-2011
735-062-0070	1-1-2011	Amend	1-1-2011
735-062-0200	1-1-2011	Amend	1-1-2011
735-176-0000	1-1-2011	Amend	1-1-2011
735-176-0010	1-1-2011	Amend	1-1-2011
735-176-0017	1-1-2011	Amend	1-1-2011
735-176-0019	1-1-2011	Amend	1-1-2011
735-176-0020	1-1-2011	Amend	1-1-2011
735-176-0021	1-1-2011	Amend	1-1-2011
735-176-0022	1-1-2011	Amend	1-1-2011
735-176-0023	1-1-2011	Adopt	1-1-2011
735-176-0030	1-1-2011	Amend	1-1-2011
735-176-0040	1-1-2011	Amend	1-1-2011
735-176-0045	1-1-2011	Amend	1-1-2011
801-001-0035	1-1-2011	Amend	1-1-2011
801-005-0010	1-1-2011	Amend	1-1-2011
801-010-0010	1-1-2011	Amend	1-1-2011
801-010-0050	1-1-2011	Amend	1-1-2011
801-010-0060	1-1-2011	Amend	1-1-2011
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801-010-0079	1-1-2011	Amend	1-1-2011
801-010-0080	1-1-2011	Amend	1-1-2011
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801-010-0170	1-1-2011	Amend	1-1-2011
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801-010-0340	1-1-2011	Amend	1-1-2011
801-010-0345	1-1-2011	Amend	1-1-2011
801-040-0010	1-1-2011	Amend	1-1-2011
801-040-0050	1-1-2011	Amend	1-1-2011
806-010-0105	12-14-2010	Amend	1-1-2011
812-001-0200	12-1-2010	Amend(T)	1-1-2011
813-001-0060	12-1-2010	Adopt(T)	1-1-2011
813-041-0020	12-15-2010	Amend	1-1-2011
833-020-0081	1-1-2011	Amend	1-1-2011
833-040-0021	1-1-2011	Amend	1-1-2011
833-050-0081	1-1-2011	Amend	1-1-2011
833-055-0001	1-1-2011	Repeal	1-1-2011
833-055-0010	1-1-2011	Repeal	1-1-2011
833-055-0020	1-1-2011	Repeal	1-1-2011
833-060-0012	1-1-2011	Amend	1-1-2011
833-060-0062	1-1-2011	Adopt	1-1-2011
833-100-0021	1-1-2011	Amend	1-1-2011
833-110-0021	1-1-2011	Amend	1-1-2011
833-130-0080	1-1-2011	Adopt	1-1-2011
836-011-0515	12-15-2010	Amend	1-1-2011
837-041-0050	12-1-2010	Amend	1-1-2011
837-047-0100	12-28-2010	Adopt	1-1-2011
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837-047-0120	12-28-2010	Adopt	1-1-2011
837-047-0130	12-28-2010	Adopt	1-1-2011
837-047-0135	12-28-2010	Adopt	1-1-2011
837-047-0140	12-28-2010	Adopt	1-1-2011
837-047-0150	12-28-2010	Adopt	1-1-2011
837-047-0160	12-28-2010	Adopt	1-1-2011
837-047-0170	12-28-2010	Adopt	1-1-2011
845-010-0146	11-20-2010	Adopt(T)	1-1-2011
845-013-0070	12-3-2010	Amend(T)	1-1-2011
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850-060-0226	12-13-2010	Amend	1-1-2011
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851-002-0040	11-29-2010	Amend	1-1-2011
851-021-0005	11-29-2010	Amend	1-1-2011
851-021-0010	11-29-2010	Amend	1-1-2011
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851-021-0055	11-29-2010	Amend	1-1-2011
851-021-0065	11-29-2010	Amend	1-1-2011
851-021-0090	11-29-2010	Amend	1-1-2011
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851-046-0020	12-2-2010	Repeal	1-1-2011
851-046-0030	12-2-2010	Repeal	1-1-2011
851-046-0040	12-2-2010	Repeal	1-1-2011
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851-070-0005	12-2-2010	Adopt	1-1-2011
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851-070-0010(T)	12-2-2010	Repeal	1-1-2011
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851-070-0020(T)	12-2-2010	Repeal	1-1-2011
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851-070-0070(T)	12-2-2010	Repeal	1-1-2011
851-070-0080	12-2-2010	Adopt	1-1-2011
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851-070-0090	12-2-2010	Adopt	1-1-2011
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860-027-0175	12-2-2010	Adopt	1-1-2011
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863-025-0065	1-1-2011	Amend	1-1-2011
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