

OREGON BULLETIN

Supplements the 2012 *Oregon Administrative Rules Compilation*

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KATE BROWN
Secretary of State
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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

2011–2012 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, 2011	January 1, 2012
January 13, 2012	February 1, 2012
February 15, 2012	March 1, 2012
March 15, 2012	April 1, 2012
April 13, 2012	May 1, 2012
May 15, 2012	June 1, 2012
June 15, 2012	July 1, 2012
July 13, 2012	August 1, 2012
August 15, 2012	September 1, 2012
September 14, 2012	October 1, 2012
October 15, 2012	November 1, 2012
November 15, 2012	December 1, 2012

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 910-2011, 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/pages/rules/index.html>>

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 ORDERS

EXECUTIVE ORDER NO. 12 - 02

AMENDING EXECUTIVE ORDER 12-01 AND DECLARING A STATE OF EMERGENCY IN CLACKAMAS, CLATSOP, COLUMBIA, CURRY, DOUGLAS, HARNEY, HOOD RIVER, LANE, LINN, MULTNOMAH, POLK, TILLAMOOK, WASHINGTON AND YAMHILL COUNTIES

On January 20, 2012, I issued Executive Order No. 12-01 declaring a state of emergency in **Benton, Coos, Lincoln and Marion Counties** due to severe winter weather including heavy snow, freezing rain, torrential rain, snow melt, and record flooding. Several other counties later declared local emergencies or saw significant impacts due to this same severe winter weather that caused evacuations, road damages, flooded buildings and homes, power outages and many areas of inaccessibility.

Pursuant to ORS 401.165, I find that the severe winter weather noted in Executive Order No. 12-01 also created a threat to life, safety, and property in **Clackamas, Clatsop, Columbia, Curry, Douglas, Harney, Hood River, Lane, Linn, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties**.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

1. Executive Order No. 12-01 is amended to include **Clackamas, Clatsop, Columbia, Curry, Douglas, Harney, Hood River, Lane, Linn, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties** in the list of counties in which a State of Emergency is declared to exist.

2. In addition to what I previously ordered in Executive Order 12-01, the Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect recovery to transportation systems from this emergency.

Done at Salem, Oregon this 6th day of February, 2012.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 12 - 03

PROMOTING DIVERSITY AND INCLUSION OPPORTUNITIES FOR OREGON MINORITY-OWNED, WOMEN-OWNED AND EMERGING SMALL BUSINESSES

Executive Order No. 08-16 ordered eleven state agencies to set aspirational targets and implement other initiatives for promoting diversity and equal opportunity for minority-owned and women-owned businesses.

Minority-owned and women-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise [MBE] and Women Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state's economy.

Aspirational targets and other initiatives can support Oregon's efforts to improve entrepreneurial opportunities for certified business enterprises, prevent race and sex-based discrimination and ensure state funds are used to foster an inclusive business climate. Aspirational

targets will reflect Oregon's commitment to oppose all forms of discrimination and demonstrate Oregon's intent to create an environment that supports economic growth in all sectors, including among them Oregon's minority-owned and women-owned firms. It is also necessary to have accurate data on the participation of MBE, WBE and ESB firms to allow the state to track its progress and ensure that Oregon's entrepreneurial opportunities are open to all.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. On or before February 15, 2012 and thereafter on a yearly basis, the Director of Economic & Business Equity (also known as the Advocate for Minority, Women and Emerging Small Business established by ORS 200.025) shall identify and circulate a list of industry clusters in which there are a sufficient number of MBEs/WBEs to warrant setting aspirational targets.

2. The following state agencies shall develop aspirational targets for MBE/WBE procurement of contracts valued \$150,000 or less, before March 31, 2012, which may be performed by MBEs/WBEs.

- a. Oregon Business Development Department
- b. Oregon Department of Administrative Services
- c. Oregon Department of Aviation
- d. Oregon Department of Consumer & Business
- e. Oregon Department of Environmental Quality
- f. Oregon Department of Human Services
- g. Oregon Department of Corrections
- h. Oregon Department of Public Safety Standards & Training
- i. Oregon Department of Education
- j. Oregon Department of Employment
- k. Oregon Department of Energy
- l. Oregon Department of Forestry
- m. Oregon Department of Housing
- n. Oregon Department of Revenue
- o. Oregon Department of Fish & Wildlife
- p. Oregon Department of Transportation
- q. Oregon Health Authority
- r. Oregon Liquor Control Commission
- s. Oregon Parks & Recreation
- t. Oregon State Police
- u. Oregon Youth Authority

3. On or before March 31, 2012, the agencies identified in paragraph 2 shall develop aspirational targets for soliciting MBEs/WBEs to submit bids for contracts valued less than \$150,000 in identified industry clusters.

4. Aspirational targets shall be set by agencies identified in paragraph 2 after considering the size, location and scope of work required for typical contracts. Agencies are encouraged to use the Oregon Department of Transportation's target setting process as a model in

EXECUTIVE ORDERS

establishing aspirational targets. Agencies shall reassess their aspirational targets on or before January 15, 2013, and annually thereafter.

5. The existence of aspirational targets shall not result in any preferential treatment, advantage or disadvantage for any particular business in obtaining contracts with the State of Oregon, but will, instead, be an indication of the extent of business that the State can expect to conduct with MBEs/WBEs.

6. Agencies shall report MBE/WBE solicitations and MBE/WBE and ESB actual utilization to the Director of Economic & Business Equity (also known as the Advocate for Minority, Women and Emerging Small Business established by ORS 200.025) on a quarterly basis; beginning with the first quarter ending March 31, 2012. The report should be submitted no less than 15 days following the close of the quarter.

7. To further Oregon's efforts to create an inclusive business climate, agencies identified in paragraph 2 shall ensure:

a. All contract procurement staff and management personnel with contract procurement responsibilities are trained on the requirements of DAS Statewide Policy 107-009-030, entitled "MWESB Procurement," and DAS Statewide Policy 125-09-020, entitled "Oregon Procurement Information Network (ORPIN)";

b. Collaborate with the Oregon Business Development Department's Office of Minority, Women & Emerging Small Business [OMWESB] certification, as established by ORS 200.055, and increase the number of certified firms;

c. Diligently record MBE/WBE and ESB certification status in contract award information collected in ORPIN;

d. Diligently record the MBE/WBE and ESB certification status of all businesses invited to submit a bid for a Small or Intermediate Procurement under ORS 279B; and

e. Evaluate and consider modifying unnecessary restrictive definitions in the procurement process to facilitate participation of all businesses wishing to do business with the state, without regard to gender, race, ethnic origin, religion, social class, or other affiliation.

8. Beginning on or before January 31, 2013, and continuing on an annual basis, the Director of Economic & Business Equity (also known as the Advocate for Minority, Women and Emerging Small Business established by ORS 200.025), the Chief Operating Officer, together with any appropriate Agency Director(s) shall present Certificates of Excellence to contract procurement staff and/or management personnel who have exhibited outstanding initiative in conducting outreach to MBEs/WBEs.

9. Notwithstanding this Executive Order, agencies not named in this Executive Order must continue to comply with the requirements of ORS 200.035. Agencies outside the scope of this Executive Order, including but not limited to the Oregon State Lottery, Oregon Bureau of Labor and Industries, and the Public Employees Retirement System, are encouraged to develop, implement and participate in the policies and processes outlined in this Executive Order, as appropriate and to the extent allowable by law.

10. This Executive Order shall expire on January 31, 2018.

11. This Executive Order hereby supersedes and replaces in total Executive Order No. 08-16 issued on August 6, 2008 by Governor Theodore R. Kulongoski.

Done at Salem, Oregon, this 6th day of February, 2012.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 12 - 04

AMENDS EXECUTIVE ORDER NO. 99-09 REGARDING GOVERNOR'S ADVISORY COMMITTEE ON MOTORCYCLE SAFETY

IT IS HEREBY DIRECTED AND ORDERED:

1. Executive Order No. 99-09, relating to the Governor's Advisory Committee on Motorcycle Safety, is restated and reaffirmed, with the following amendment.

2. Section 7 of Executive Order No. 99-09 is amended to state as follows:

"This Order shall expire on November 2, 2015."

Done at Salem, Oregon this 24th day of February, 2012.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION FOR RESER BUILDING

COMMENTS DUE: 5 p.m., April 2, 2012

PROJECT LOCATION: 228/234 S Main St., Condon

PROPOSAL: The Oregon Department of Environmental Quality's Voluntary Cleanup Program proposes to issue a conditional no further action determination for the Reser Building site located at 228/234 S Main St. in Condon. DEQ issues a conditional no further action determination when a cleanup has met regulatory standards.

HIGHLIGHTS: The site has been used for various purposes including a gas station, auto repair, and residential. Petroleum and other contaminants were documented at the site in 2011.

The Brownfield Program has reviewed the site assessment performed at the site. All of the potential exposure concerns are addressed through elimination during development of the site-specific conceptual site model or through use restrictions placed on the property.

HOW TO COMMENT: Send comments by 5 p.m., April 2, 2012, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 700 SE Emigrant, Suite 330, Pendleton, OR 97801, by e-mail at robertson.katie@deq.state.or.us or by fax at 541-278-0168. To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database" link, enter 4217 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4217 in the Site ID/Info column. To review the project file, contact the project manager above for a file review appointment.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision on the proposed no further action determination. DEQ will provide written responses to all public comments received.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION FOR THE NORTHWEST ALUMINUM COMPANY SITE IN THE DALLES

COMMENTS DUE: Friday, April 2, 2012, 4:30 p.m.

PROJECT LOCATION: 3313 W. Second Street, The Dalles, Oregon

PROPOSAL: The Oregon Department of Environmental Quality is proposing to issue a no further action determination following removal of contamination at the former Northwest Aluminum Company site. DEQ issues a no further action determination when a cleanup project has met regulatory standards.

HIGHLIGHTS: Northwest Aluminum manufactured aluminum at this site from 1958 until 2003. The owner began removal of buildings, equipment and other structures in 2007. Under DEQ review, the owner also conducted investigation and cleanup of contamination between 2007 and 2011. Cleanup included offsite disposal of approximately 20,000 tons of spent potliner and fume dust at Chemical Waste Management's hazardous waste landfill located near Arlington, Oregon. Potliner is waste from the reduction cells used to make the aluminum. Fume dust was associated with the plant's air pollution control equipment. In addition to this waste, approximately 77,000 tons of contaminated soil, rock, debris and sludge were disposed of at the Wasco County Landfill near The Dalles.

Localized areas of contamination in soil and groundwater remain at the site. However, based on current and likely future land use, this contamination does not exceed safe levels. Institutional controls will be prepared to inform future property owners of residual contamination. Once these notices are recorded with Wasco County, DEQ will issue a no further action determination for the site. This site will

remain on DEQ's Confirmed Release List as long as these controls are in place.

HOW TO COMMENT: Send written comments fax, mail or email to:

Bob Schwarz, DEQ Project Manager

400 E. Scenic Drive, Suite 307

The Dalles, Oregon 97058

Fax: 541-298-7330

Email: Schwarz.bob@deq.state.or.us

Written comments should be sent by Friday, April 2, 2012. To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz by email or by phone (541-298-7255, ext. 230).

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed no further action determination will be made after consideration of public 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 and 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 impairment may call DEQ's TTY number, 711.

REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT FORMER COE MANUFACTURING SITE IN TIGARD

COMMENTS DUE: 5 p.m., Friday, March 30, 2012

PROJECT LOCATION: 7930 SW Hunziker Road, Tigard, OR

PROPOSAL: The Oregon Department of Environmental Quality seeks comments on a proposed approval of a cleanup of petroleum, metals and polychlorinated biphenyls, commonly known as PCBs, contamination at the former Coe Manufacturing – Front Parcel site in Tigard.

HIGHLIGHTS: Tests conducted in the 1990s found that concentrations of metals, petroleum and PCBs in site soils exceeded protective criteria established by DEQ. Tests of sediment in Redrock Creek, a tributary of Fanno Creek, from 2007 to 2011, showed elevated concentrations of PCBs and a few metals above protective criteria. Tests of soils and sediment showed that releases were from upland areas of the site, south of the large factory building and that sediment contamination was coming from stormwater runoff from that area. The site owners entered into DEQ's Voluntary Cleanup Program in November 2006. Between November 2006 and December 2012, the owners completed several investigations to evaluate the nature and extent of the contamination. In 2010 and 2011, the owners removed 546 tons of contaminated upland soils and sediments. Post-removal samples demonstrate that upland soils no longer present a threat to Redrock Creek sediments from runoff or to current and future site workers through direct contact. Post-removal sediment samples show that concentrations of lead, zinc and PCBs are still present at levels that pose a risk to aquatic species. DEQ has concluded that while significant improvement resulted from the sediment removal action, that there are likely other sites that contributed to sediment contamination. Based on these findings, DEQ has determined that no cleanup action is required for the upland portions of the site and that no further investigation or remediation by the site owners is needed for sediments.

HOW TO COMMENT: Send comments by 5 p.m., Friday, March 30, 2012, to DEQ Project Manager Chuck Harman at DEQ's Northwest Region Office at 2020 SW Fourth Ave., Suite 400, Portland, OR 97201, harman.charles@deq.state.or.us, or fax to 503-229-6899

To review the project file, call Dawn Weinberger at 503-229-6729 for an appointment.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to www.deq.state.or.us/lq/ECSI/ecsi.htm, then enter '983' in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled '983' in the Site ID/Info column.

OTHER NOTICES

THE NEXT STEP: The DEQ project manager will review all comments received and determine if a no further action determination and project closure is appropriate. If DEQ receives no comments that warrant delaying a no further action decision, DEQ will issue a final letter confirming the decision.

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 and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL FOR FORMER KOCH'S CLEANERS

COMMENTS DUE: March 30, 2012

PROJECT LOCATION: 12720 SW Canyon Road, Beaverton, OR
PROPOSAL: The Department of Environmental Quality invites public comment on a proposed no further action decision for the former Koch's Cleaners site.

HIGHLIGHTS: The 3.6-acre site is currently occupied by a commercial building fronting SW Canyon Road, and a single-family residence to the south fronting SW Broadway Street. Surrounding land use is commercial. From the 1950s to 1980s the eastern portion of the commercial building was used by a succession of dry cleaners, during which releases from the dry cleaning machine and solvent storage tanks occurred. Tanks were removed in 1994, identifying groundwater contamination. Environmental investigation and cleanup actions were performed at the site between 1994 and 2011, including multiple phases of in-situ-groundwater treatment. Contaminants in groundwater have decreased with treatment, and are currently below DEQ risk-based concentrations or RBCs. Solvent levels in air within the building, and soil vapor below the building floor are likewise below DEQ screening values. DEQ has therefore determined that residual contamination at the site does not pose a risk to public health or the environment. Contaminants in deeper groundwater extend approximately 150 feet north of the site, but do not represent a risk to off-site properties or their users. DEQ will issue a No Further Action determination following this public notice period.

HOW TO COMMENT: Site files are available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files please call (503) 229-6729. The DEQ Project Manager is Daniel Hafley, (503) 229-5417. Send written comments to the Project Manager, DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or hafley.dan@deq.state.or.us by March 30, 2012.

THE NEXT STEP: DEQ will consider all public comments and the Northwest Cleanup Section Manager will make and publish the final decision after consideration of these comments.

REQUEST FOR COMMENTS PROPOSED SETTLEMENT FOR HALTON CO. SITES AND WHITAKER SLOUGH

COMMENTS DUE: Friday, March 30, 2012

PROJECT LOCATION: The Halton Co. properties, also referred as the Halton Co. (ECSI #121) and Halton Voith (ECSI #1503) cleanup sites, are located at 4421 NE Columbia Boulevard and 6654 NE 47th Avenue, Portland, Oregon, adjacent the Whitaker Slough and Whitaker Ponds. The Whitaker Slough is a side slough to the Columbia Slough that begins near NE 42nd Avenue and ends near the east end of Marx Street. The Columbia Slough is located south and parallel to the Columbia River and extends approximately 31 waterway miles from Fairview Lake in east Portland and west to the Willamette River.

PROPOSAL: DEQ is proposing to enter into a settlement with the Halton Co. concerning potential cleanup liability for contaminated

sediments in the Whitaker Slough. The settlement would be in the form of a consent judgment pursuant to ORS 465.325(4) and requires payment of \$405,000 to a DEQ-administered account dedicated to investigation and cleanup of sediment contamination in the Slough. The settlement includes payment of \$20,000 to DEQ to resolve remediation costs paid by DEQ during the cleanup of the Nu-Way Oil site (ECSI #88) related to the Halton Co. (ECSI #121). The Halton Co. would also settle potential natural resource damage claims through payment of \$50,000 to a DEQ-administered account dedicated to habitat restoration within the Columbia Slough watershed. In return, the settling parties would receive a covenant not to sue from the State and contribution protection from claims by third parties relating to historic releases. The Halton Co. would receive liability releases and contribution protection upon completion of investigation and source control measures at the upland portions of the sites under terms of the existing Voluntary Cleanup Program agreement with DEQ.

HIGHLIGHTS: Sediment sampling has shown that contaminants are present at and downstream of the facility in the Whitaker Slough and Whitaker Ponds. DEQ believes contamination from the facility was historical in nature caused by direct discharge of waste waters and stormwater runoff from the properties. The Halton Co. operations have mainly consisted of retail, rental, and maintenance of heavy equipment since 1959. Halton Voith site operations from the 1960s to 2005 included the manufacture of industrial paper-making machines and repair services. The facilities operate under a stormwater discharge permit implemented by the current operator. In 2005, DEQ issued a Record of Decision for the Columbia Slough that describes the framework for addressing the sediment contamination. The selected remedy involves stormwater management to prevent ongoing releases, selective removal of sediment hot spots associated with individual or multiple sources, and natural recovery of remaining sediment contamination over time.

HOW TO COMMENT: Send written comments to the DEQ Project Manager Erin McDonnell at DEQ Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201, or mcdonnell.erin@deq.state.or.us by Friday, March 30, 2012. The project file is available for public review at DEQ. For a review appointment call (503) 229-6729. Information is also available on DEQ's Environmental Cleanup Site Information (ECSI) database: <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 121 to view information on the Halton Co. site and 1503 for the Halton Voith site.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to enter the consent judgments, the consent judgments will be executed by the parties and filed with the Multnomah County Circuit Court. The court must approve the consent judgment for it to take effect.

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 and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

A CHANCE TO COMMENT ON PROPOSED PLAN FOR THE AIR NATIONAL GUARD'S FORMER 104TH AIR CONTROL SQUADRON COOS BAY, OREGON

COMMENT PERIOD: March 1 to March 31, 2012

PROJECT LOCATION: One-half mile west of Charleston

PROPOSAL: The Air National Guard, (ANG) the Oregon Department of Environmental Quality, (DEQ) and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) invite public comment on the preferred remedial action alternative for cleanup of contaminated soil and groundwater present at multiple areas of concern (AOC).

BACKGROUND: The Former 104th Air Control Squadron (the Site) was located on 43 acres of land just north of the Cape Arago

OTHER NOTICES

Highway about one-half mile west of Charleston, Oregon. The Site sits atop a bluff overlooking Coos Bay and Bastendorf Beach. The ANG occupied the property from 1987 to 1996. Prior to 1996, the property was used by the U.S. Navy and the U.S. Army. The property was transferred to the CTCLUSI in 2005.

Using information from a 1995 preliminary assessment and site investigation, 11 areas of concern (AOC) were identified at the Site. The ANG conducted investigations between 1995 and 2010 to evaluate the presence of hazardous substances in each AOC. Based on the results of these investigations, and evaluation of various cleanup alternatives, the ANG, DEQ, and the CTCLUSI are recommending that remedial action be implemented at:

1. AOC B – Wash Rack and Drain Line. Approximately 57 cubic yards of contaminated soil would be excavated and transported to an offsite DEQ permitted landfill.

2. AOC C – Outfall 1 and Outfall 2. Approximately 250 cubic yards of contaminated soil would be excavated and transported to an offsite DEQ permitted landfill.

3. AOC C – Multiple Former USTs. Approximately 2,800 cubic yards of contaminated soil would be excavated and transported to an offsite DEQ permitted landfill. Following excavation, contaminated groundwater underlying and extending several hundred feet west of the excavation footprint would be sparged (bubbled) with air to remove volatile organic contaminants.

4. AOC K – Fire Training Area. Approximately 90 cubic yards of contaminated soil would be excavated and transported to an offsite DEQ permitted landfill.

Remedial action to address contaminated soil present at AOC D has already been completed by the U.S. Navy, and a no further action determination by DEQ is pending following receipt of confirmation sampling results. No further action is recommended for the remaining seven AOCs.

Since 2005 the ANG has worked closely with representatives from the CTCLUSI, the DEQ, the Bureau of Indian Affairs (BIA), and the U.S. Navy to investigate soil and groundwater contamination at the

Site. This collaboration has resulted in the evaluation and identification of a preferred remedial action alternative that will cleanup contaminated soil and groundwater to unrestricted use levels.

Project documents including the Proposed Plan are available for review at the following locations:

CTCLUSI Department of Natural Resources

1245 Fulton Avenue

Coos Bay, Oregon 97420

Telephone: (541) 888-7511

Web site address: <http://www.ctclusi.org/ctclusinew/>

Coos Bay Public Library

525 Anderson Ave

Coos Bay, OR 97420

Telephone: (541) 269-1101

DEQ – Eugene Office

165 E. 7th Avenue, Suite 100

Eugene, OR 97401

ATT: Norman Read

Telephone: (541) 687-7348

HOW TO COMMENT: Please send written comments via letter or e-mail to:

Mr. Richard McCoy

NGB/A7OR

Shepperd Hall

3501 Fetchet Avenue

Joint Base Andrews MD 20762-5157

e-mail: richard.mccoy@ang.af.mil

The ANG must receive written comments by March 31, 2012.

NEXT STEP: A public meeting will be held at the CTCLUSI Community Center, 338 Wallace Street, Coos Bay, Oregon on March 14, 2012 at 700 PM. ANG, DEQ, and CTCLUSI will consider all public comments before selecting a final remedy for the Site.

NOTICES OF PROPOSED RULEMAKING

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 Chiropractic Examiners
Chapter 811

Rule Caption: Changes chiropractic assistant application fees to non-refundable and establishes a retention schedule for inactive applications.

Date:	Time:	Location:
5-17-12	2 p.m.	OBCE Administrative Office 3218 Pringle Rd. SE, Suite 150 Salem, OR 97302

Hearing Officer: Dave McTeague

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.054 (3) & 684.155(c)(A)

Proposed Amendments: 811-010-0110

Last Date for Comment: 5-17-12, 2 p.m.

Summary: Changes chiropractic assistant application fees to non-refundable and establishes a retention schedule for inactive applications.

(4) The Board shall maintain an incomplete application file for one year from the date the application was received; afterward, applicants will need to re-apply.

Rules Coordinator: Donna Dougan

Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302

Telephone: (503) 373-1579

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Board of Medical Imaging
Chapter 337

Rule Caption: Specifies limit on temporary license renewal and the process for issuance before graduation.

Date:	Time:	Location:
3-22-12	4 p.m.	Portland State Office Bldg. Rm. 445 800 NE Oregon St. Portland, OR

Hearing Officer: Ed Conlow

Stat. Auth.: ORS 688.405-688.605

Stats. Implemented: ORS 688.520

Proposed Amendments: 337-010-0045

Last Date for Comment: 3-30-12, 4:30 p.m.

Summary: This rules amendment completes two actions:

1. Specifies that a medical imaging student may be approved by the board to utilize a temporary license to work in the practice of medical imaging beginning three months prior to graduation, if a letter is submitted by the director of the student's school to the board of medical imaging to indicate that 1) the student is in good standing; 2) the student is in the process of meeting educational requirements for graduation on a date specified; and 3) the student is competent to work under supervision.

2. Specifies that the board may renew a six-month temporary license one time only.

Rules Coordinator: Ed Conlow

Address: Board of Medical Imaging, 800 NE Oregon St., Suite 1160A, Portland, OR 97232

Telephone: (971) 673-0216

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Board of Pharmacy
Chapter 855

Rule Caption: Adopt/amend rules related to Drug Outlet conduct, Pharmacy Depots, Technician Checking Validation Programs etc.

Date:	Time:	Location:
3-22-12	9:30 a.m.	800 NE Oregon St. Conf. Rm. 1A Portland, OR 97232

Hearing Officer: Courtney Frank

Stat. Auth.: ORS 689.151, 689.155(2), 689.205 & 689.225(4)

Stats. Implemented: ORS 689.151, 689.155, 689.205 & 689.225

Proposed Adoptions: 855-041-0016, 855-041-5100, 855-041-5120, 855-041-5130, 855-041-5140, 855-041-5150, 855-041-5160, 855-041-5170

Proposed Amendments: 855-041-0095

Proposed Repeals: 855-041-0110

Proposed Ren. & Amends: 855-041-0105 to 855-041-5005, 855-041-0115 to 855-041-5015

Last Date for Comment: 3-22-12, 4:30 p.m.

Summary: The Board amends, adopts, repeals and renumbers a variety of rules in Division 041. The Div. 041 Pharmacy Depot Rules previously amended in December 2011 are amended to further clarify where a patient may designate delivery of a prescription. The Div. 041 Residential Drug Outlet rules are renumbered, amended and repealed to update rules that have not been updated since 1990. The Div 041 Drug Outlet conduct rules are new rules that define the Grounds for Discipline for outlets that fail to provide a working environment that protects the health, safety and welfare of patients. The Div 041 Technician Checking Validation Program (TCVP) rules will allow hospitals to implement TCVP's to allow the redirection of a pharmacist from a distributive task to a cognitive task.

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St., # 150, Portland, OR 97232

Telephone: (971) 673-0001

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Modifies educational requirements for licensure and application procedures; adds licensure by endorsement; modifies investigation procedures.

Date:	Time:	Location:
3-30-12	9 a.m.	3218 Pringle Rd. SE Salem, OR 97302

Hearing Officer: Debra McHugh

Stat. Auth.: ORS 675.010-675.150

Stats. Implemented: ORS 675.030, 675.065 & 675.110

Proposed Amendments: 858-010-0001, 858-010-0010, 858-010-0011, 858-010-0012, 858-010-0013, 858-010-0015, 858-010-0016,

NOTICES OF PROPOSED RULEMAKING

858-010-0017, 858-010-0020, 858-010-0025, 858-010-0030, 858-010-0036, 858-010-0037, 858-010-0038, 858-010-0039, 858-020-0045, 858-030-0005

Proposed Repeals: 858-020-0065, 858-020-0095

Last Date for Comment: 3-22-12, Close of Business

Summary: Defines "practicum." Modifies the educational requirements for licensure for applicants who possess a doctoral degree from a program accredited by the American Psychological Association or the Canadian Psychological Association. Removes requirement that doctoral degree program must have authorization to operate in Oregon by the Office of Degree Authorization. Modifies and makes corrections to the standard application procedure. Removes the "non-standard" application procedure and replaces it with "Licensure by Endorsement." Creates new application procedures for applicants licensed as a psychologist in another jurisdiction. Removes incorrect references to "clinical" titles. Establishes that complete applications will be archived two years after approval. Establishes that a third failed Examination for Professional Practice (EPPP) in Psychology will result in application denial. Adds provision for refund of the jurisprudence exam fee in extraordinary circumstances. Removes the requirement that the respondent be notified when a complaint is filed. repeals the complaint disposition procedures of 858-020-0065 and 858-020-0095. Also includes various minor housekeeping items.

Rules Coordinator: Debra Orman McHugh

Address: Board of Psychologist Examiners, 3218 Pringle Rd. SE, Suite 130, Salem, OR 97302

Telephone: (503) 378-4154

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Department of Agriculture
Chapter 603

Rule Caption: Establishes treatment and labeling requirements for firewood imported from outside the Pacific Northwest.

Date:	Time:	Location:
3-15-12	11 a.m.	OR Dept. of Agriculture Hearing Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: Jim Johnson

Stat. Auth.: ORS 561.305, 561.510 & 570.720

Other Auth.: ORS 561.190

Stats. Implemented: ORS 570.720

Proposed Adoptions: 603-052-1080, 603-052-1090

Last Date for Comment: 3-31-12

Summary: The purpose of this proposed rule is to prevent the introduction of wood boring pests and plant diseases in imported firewood. Invasive species including emerald ash borer, Asian long-horned beetle, and sudden oak death can be vectored by firewood. The rule would require that firewood imported from outside the Pacific Northwest (OR, WA, ID) be heat-treated and labeled. The required treatment would be 56C (133 F) for 30 minutes. Firewood treated in this manner could be labeled as "Approved Pest-Free." Violators would be subjected to civil penalties, ranging from a Notice of Violation to a \$10,000 fine, depending on the severity of the infraction.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

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Rule Caption: Amends OAR 603-024-0211 to adopt 2009 revision of Grade A Pasteurized Milk Ordinance.

Date:	Time:	Location:
3-23-12	9 a.m.	Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Eric Edmunds

Stat. Auth.: ORS 561.020 & 621.060

Stats. Implemented: ORS 621.058

Proposed Amendments: 603-024-0211

Last Date for Comment: 3-27-12, 5 p.m.

Summary: The administrative rule currently refers to the 2003 version of the Pasteurized Milk Ordinance (PMO) and related documents. The amendment updates the rule by referring to the 2009 version of the PMO and related documents to maintain consistency with federal standards.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

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Rule Caption: Licensing exemptions for slaughter of 1,000 poultry or fewer per year while meeting other conditions.

Date:	Time:	Location:
3-21-12	3 p.m.	Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Eric Edmunds

Stat. Auth.: ORS 561.020, 561.190, 616.835 & 619.046

Other Auth.: Enrolled HB 2872

Stats. Implemented: ORS 561.020, 603.085, 616.835, 619.046 & Enrolled HB 2872

Proposed Adoptions: 603-028-0710, 603-028-0715, 603-028-0720, 603-028-0725, 603-028-0730, 603-028-0735, 603-028-0740

Last Date for Comment: 3-22-12, 5 p.m.

Summary: The proposed rule create exemption from food establishment license requirements for a person that slaughters no more than 1,000 poultry per year. The person must raise the poultry from two weeks of age or younger, and the poultry must be free from disease and used as human food. The person must slaughter the poultry at a slaughter facility on his or her premises, and the poultry is subject to interstate commerce restrictions.

The rules implement HB 2872 by providing an exemption with sanitation standards for poultry businesses that sell poultry from the farm and at farmers markets, and also provide an exemption which clarifies the required sanitation standards for poultry businesses that limit themselves to on-farm sales. All exempted poultry business must maintain sanitation and sales records that will be made available to the Department of Agriculture upon request.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

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Department of Agriculture,
Oregon Strawberry Commission
Chapter 668

Rule Caption: Amend 668-030-0020 "Two members will be handlers" to "One member will be a handler."

Date:	Time:	Location:
3-16-12	1:30 p.m.	4845 B SW Dresden Ave. Corvallis, OR 97333

Hearing Officer: Philip Gutt

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Proposed Amendments: 668-030-0020

Last Date for Comment: 3-16-12, 5 p.m.

Summary: Amend OAR 668-030-0020(2)(c) "Two members will be handlers" to state "One member will be a handler".

This proposed rule will allow the Oregon Strawberry Commission to consist of seven commissioners to be appointed by the Oregon Department of Agriculture with the commission consisting of a majority of the members being producers, one member being a public member, and one member being a handler.

Rules Coordinator: Rachel Denué

NOTICES OF PROPOSED RULEMAKING

Address: Department of Agriculture, Oregon Strawberry Commission, 4845 B SW Dresden Ave., Corvallis, OR 97333
Telephone: (541) 758-4043

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Rule Caption: Amend 668-010-0015 to change the assessment reporting months for the current reporting deadline dates.

Date:	Time:	Location:
3-16-12	2 p.m.	4845 B SW Dresden Ave. Corvallis, OR 97333

Hearing Officer: Philip Gutt

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.325, 576.335, 576.345

Proposed Amendments: 668-010-0015

Last Date for Comment: 3-16-12, 5 p.m.

Summary: Amend OAR 668-010-0015(a) "January, February, March, April reported by May 15th" to state "December, January, February, March reported by May 15th".

Amend OAR 668-010-0015(b) "May, June, July, August reported by September 15th" to state "April, May, June, July reported by September 15th".

Amend OAR 668-010-0015(c) "September, October, November, December reported by January 15th" to state "August, September, October, November reported by January 15th".

This proposed rule change will allow the commodity commission to collect complete and signed assessment reports on approved forms by first purchasers and handlers for the four months prior to the reporting deadline and give the first purchasers and handlers adequate time to submit their assessment reports for each deadline of the four month reporting periods.

Rules Coordinator: Rachel Denué

Address: Department of Agriculture, Oregon Strawberry Commission, 4845 B SW Dresden Ave., Corvallis, OR 97333

Telephone: (541) 758-4043

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Department of Consumer and Business Services, Insurance Division Chapter 836

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: 3-28-12, Close of Business

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, Rm. 440, Salem, OR 97301

Telephone: (503) 947-7272

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Department of Energy, Energy Facility Siting Council Chapter 345

Rule Caption: Rules implementing the Council's regulatory authority for siting energy facilities and other matters.

Date:	Time:	Location:
4-25-12	9 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR

Hearing Officer: Jo Morgan

Stat. Auth.: ORS 469.470 & 469.992

Other Auth.: OAR 345-001-0000

Stats. Implemented: ORS 469.300-469.619 & 469.992

Proposed Amendments: 345-001-0005, 345-001-0010, 345-001-0030, 345-001-0050, 345-011-0020, 345-011-0050, 345-015-0014, 345-015-0085, 345-015-0110, 345-015-0120, 345-015-0160, 345-015-0180, 345-015-0190, 345-015-0220, 345-015-0230, 345-015-0240, 345-015-0300, 345-015-0310, 345-020-0011, 345-020-0016, 345-020-0040, 345-021-0000, 345-021-0010, 345-021-0050, 345-021-0055, 345-021-0090, 345-022-0020, 345-022-0080, 345-023-0005, 345-023-0030, 345-023-0040, 345-024-0015, 345-024-0550, 345-024-0560, 345-024-0570, 345-024-0590, 345-024-0600, 345-024-0610, 345-024-0620, 345-024-0630, 345-024-0640, 345-024-0680, 345-024-0710, 345-024-0720, 345-026-0080, 345-026-0170, 345-027-0020, 345-027-0023, 345-027-0028, 345-027-0030, 345-027-0050, 345-027-0060, 345-027-0070, 345-027-0080, 345-027-0090, 345-027-0100, 345-027-0110, 345-027-0210, 345-027-0220, 345-027-0230

Last Date for Comment: 4-25-12, Close of Hearing

Summary: In this rulemaking, the Energy Facility Siting Council (Council) will review Chapter 345 Divisions 1, 11, 15, 20, 21, 22, 23, 24, 26 and 27. The proposed amendments are to make corrections, modify procedures to increase efficiency and make minor word changes. The Council will correct cross-references, conform the rules to changes in Oregon statutes that have occurred since the last review, and clarify procedures based on knowledge gained from recent energy facility siting experience. Amendments to accomplish these purposes would affect the rules listed above. The proposed amendments are available online for public review at www.oregon.gov/ENERGY/SITING/announce.shtml

A public hearing will be held on April 25, 2012 at 9:00 AM. The deadline for submission of written comments is the close of the hearing as determined by the hearing officer. In addition, the Council will accept oral public comments, but no further written comments, at a later Council meeting when the Council takes final action on the proposed amendments.

Rules Coordinator: Kathy Stuttaford

Address: Department of Energy, Energy Facility Siting Council, 625 Marion St. NE, Salem, OR 97301

Telephone: (503) 378-4128

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Department of Environmental Quality Chapter 340

Rule Caption: Title V operating permit fee increases authorized in statute.

Date:	Time:	Location:
3-21-12	4 p.m.	811 SW 6th Ave. Portland, OR 97204

Hearing Officer: DEQ Staff

Stat. Auth.: ORS 468.020, 468.065, 468A.025, 468A.040, 468A.050, 468A.310 & 468A.315

Other Auth.: 42 U.S.C. § 766a(b)

Stats. Implemented: ORS 468 & 468A

Proposed Amendments: 340-215-0060, 340-220-0030, 340-220-0040, 340-220-0050

Last Date for Comment: 3-26-12, 5 p.m.

Summary: The proposed rulemaking would increase Title V operating permit fees by the change in the Consumer Price Index authorized by federal and state law. The fee increases are necessary to cover the reasonable costs associated with DEQ's operation of Oregon's Title V program.

The proposed amendments to the Title V operating permits would increase base fees under OAR 340-220-0030, emission fees under OAR 340-220-0040 and specific activity fees under OAR 340-220-0050. If amended, the fee increases would affect the 2012 and 2013 invoice years for the 2012-13 and 2013-14 operating periods. Fees would increase by about 2.4% for the 2012 invoice year. DEQ calculated the estimated fees for the 2013 invoice year using the 2011 change in the CPI. DEQ will calculate the 2013 fee when the United States Department of Labor, Bureau of Labor Statistics publishes the 2012 CPI change in September 2012.

NOTICES OF PROPOSED RULEMAKING

The proposed amendments to make administrative corrections to OAR 340-215-0060, concerning greenhouse gas reporting fees, by correcting references to 340-215-0030 and 340-220-0050.

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: Amend Rules for Commercial Crab Fisheries.

Date:	Time:	Location:
4-20-12	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.109, 506.129, 508.760, 508.762 & 508.921-508.941

Proposed Adoptions: Rules in 635-005, 635-006

Proposed Amendments: Rules in 635-005, 635-006

Proposed Repeals: Rules in 635-005, 635-006

Last Date for Comment: 4-20-12, Close of Hearing

Summary: These rule amendments increase the clarity and enforceability of Oregon's commercial Dungeness crab fishery regulations. The modifications will: (1) Require buoy tags on crab rings that are fished in the Pacific Ocean or Columbia River; (2) Allow crab permitted vessels to retain crab taken while recovering derelict gear; (3) Clarify that vessels must be either en route to or returning from participating in another state's crab fishery to qualify as a "transiting" vessel; and (4) Minimize the number of rule modifications needed in the temporary rule process when crab season openings are delayed in one or more fishing areas.

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: Salmon Seasons for Commercial and Sport Fisheries In the Pacific Ocean.

Date:	Time:	Location:
4-20-12	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.119, 506.129 & 506.750 et Seq.

Other Auth.: Magnusson-Stevens Sustainable Fisheries Act.

Stats. Implemented: ORS 496.162, 506.036, 506.109, 506.129 & 506.750 et Seq.

Proposed Adoptions: Rules in 635-003, 635-013

Proposed Amendments: Rules in 635-003, 635-013

Proposed Repeals: Rules in 635-003, 635-013

Last Date for Comment: 4-20-12, Close of Business

Summary: Amend rules related to commercial and sport salmon fishing in the Pacific ocean. 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: Amendments to the Sauvie Island Wildlife Area Management Plan.

Date:	Time:	Location:
4-20-12	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 497.071

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.071

Proposed Amendments: 635-008-0146

Last Date for Comment: 4-20-12

Summary: Amendments to Oregon Administrative Rules for the Sauvie Island Wildlife Areas Management Plan. Amendments will guide management activities for the next 10 years.

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 Division 008 and 010 to bring into compliance with new Habitat Conservation Stamp rules.

Date:	Time:	Location:
4-20-12	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.071 & HB 2127 (2011) (2011 OL Ch. 50)

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.071 & HB 2127 (2011) (2011 OL Ch. 50)

Proposed Amendments: 635-008-0151, 635-010-0170

Last Date for Comment: 4-20-12

Summary: Adopted by the 2011 Oregon State Legislature (HB 2127), the Habitat Conservation Stamp allows Oregonians to purchase an annual stamp to benefit conservation of Oregon's native species and habitats. Stamps sell for \$40 a year and include a free ODFW Wildlife Area Parking Pass (a \$22 value). This will amend division 008-0151 to add the Habitat Conservation Stamp to the list of documents that include a free annual parking permit.

Amendment of division 010-0170 allows Oregonians to purchase an annual stamp via mail order, fax or internet and will add the Habitat Conservation Stamp as a postal delivery document. These documents will also allow daily and annual ODFW Wildlife Area Parking Permits to be purchased via mail order, fax or internet.

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 for Sport and Commercial Halibut and Commercial Sardine Fisheries.

Date:	Time:	Location:
4-20-12	8 a.m.	Oregon Dept. of Fish & Wildlife 3406 Cherry Ave. NE, Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, 506.109, 506.129 & 508.921-508.941

Proposed Adoptions: Rules in 635-004, 635-006, 635-039

Proposed Amendments: Rules in 635-004, 635-006, 635-039

Proposed Repeals: Rules in 635-004, 635-006, 635-039

Last Date for Comment: 4-20-12, Close of Hearing

Summary: Amendments to Oregon's regulations for sport and commercial halibut and commercial sardine fisheries will bring the State concurrent with federally adopted regulations. Modifications establish 2012 seasons and/or quotas for these fisheries. Additionally, some modifications either change or remove sardine permit renewal requirements. 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

NOTICES OF PROPOSED RULEMAKING

Department of Human Services, Seniors and People with Disabilities Division Chapter 411

Rule Caption: Nursing Facilities — Annual License Renewal.

Date: 3-19-12
Time: 1 p.m.
Location: 500 Summer St. NE, Rm. 160
Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070, 441.025, & 441.060

Other Auth.: HB 2054 (2011 Regular Session), 2011 OL Ch. 35

Stats. Implemented: ORS 441.025 & 441.060

Proposed Amendments: 411-085-0010, 411-085-0015

Last Date for Comment: 3-21-12, 5 p.m.

Summary: To implement House Bill 2054 (2011 Regular Session), the Department of Human Services (Department) is proposing to amend OAR 411-085-0010 and 411-085-0015 relating to the licensing of nursing facilities to:

- Change the nursing facility license renewal date from calendar year to annually;
- Require substantial compliance with on-site inspections for license renewal; and
- Authorize delay of annual facility license renewal until substantial compliance is certified following an on-site inspection.

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

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Update all definitions to ensure consistency with statute; Update Correctional Officer, Add DPSST, Update Recall.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0005

Last Date for Comment: 3-21-12, Close of Business

Summary: The 2011 legislative session saw many changes to the Department of Public Safety Standards and Training definitions. SB 76 updated the definition of correctional officer to include supervisors and managers of correctional officers. SB 405 and SB 412 expanded the definition of law enforcement unit and police officer to include universities with police departments and tribal governments.

All definitions have been reviewed to ensure consistency between ORS 181.610 and Oregon Administrative Rule. As a result, district attorney's offices/investigators and animal care agencies/agent were added to the definition of law enforcement unit/police officer and certified reserve officers were added to the definition of public safety professional.

Finally, housekeeping changes were made for clarity. The acronym "DPSST" was defined because it is used throughout the Chapter 259, Division 008 rule set. Also, the definition of "recall" was updated to include any administrative requirements that might be required to restore certification.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

Rule Caption: Clarifies the maintenance process for part-time parole and probation officers.

Stat. Auth.: ORS 181.640 & 181.653

Stats. Implemented: ORS 181.640 & 181.653

Proposed Amendments: 259-008-0066

Last Date for Comment: 3-21-12, Close of Business

Summary: This rule update clarifies the maintenance process for part-time parole and probation officers. The language and procedures

are updated to mirror the language and procedures used for the maintenance cycles of police officers and telecommunicators/emergency medical dispatchers.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

Rule Caption: Allow for telecommunicators/emergency medical dispatchers to meet pre-certification hearing standards with correction.

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Proposed Amendments: 259-008-0011

Last Date for Comment: 3-21-12, Close of Business

Summary: Current rule language requires telecommunicator and emergency medical dispatcher applicants to meet the National Emergency Number Association (NENA) hearing standard 54-002 for uncorrected hearing loss. There is no language in the standard allowing for applicants to re-test with correction, making it necessary to request a medical waiver when the standard could have been met with amplification devices. This rule update would allow applicants to re-test with corrective devices allowing them to meet the NENA hearing standard.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

Rule Caption: Update list of persons exempt from regulation as private security providers. (SB 635 and SB 878)

Stat. Auth.: ORS 181.873, 181.871 & 181.878

Stats. Implemented: ORS 181.873, 181.871 & 181.878

Proposed Amendments: 259-060-0015

Last Date for Comment: 3-21-12, Close of Business

Summary: SB 635 and SB 878 passed during the 2011 legislative session. Both bills update the list of persons exempt from regulation as private security providers. SB 635 adds to the exemption list persons who provide security services for non-profit organizations and students of community colleges contributing to campus security. SB 878 clarifies the definition of alarm monitor and crowd management.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

Rule Caption: Revise requirements for Fire Ground Leader certification.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-009-0062

Last Date for Comment: 3-21-12, Close of Business

Summary: This rule change updates the Oregon-specific Fire Ground Leader standard as a result of significant changes to the NFPA Fire Officer standard which allows individuals to achieve the educational requirements for NFPA Fire Officer I within their home agencies.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

Rule Caption: Separate Wildland Interface Fire Fighter into two levels of certification (FFT1 and FFT2).

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-009-0005, 259-009-0062

Last Date for Comment: 3-21-12, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: Since its adoption into administrative rule, the National Wildfire Coordinating Group (NWCG) has made changes to the Wildland Interface Fire Fighter Standards which presented difficulties for the Oregon fire service in relation to supervision component in the FFT1 task book. To remedy this, this rule update separates Wildland Interface Fire Fighter into two levels of certification: Wildland Interface Fire Fighter (FFT2) and Advanced Wildland Interface Fire Fighter (FFT1).

Rules Coordinator: Linsay Hale
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

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Rule Caption: Clarifies the process for retired public safety professionals to receive retirement cards.

Stat. Auth.: ORS 176.260 & 181.640
Stats. Implemented: ORS 176.260 & 181.640
Proposed Amendments: 259-008-0100

Last Date for Comment: 3-21-12, Close of Business
Summary: The rule updates clarifies the process for retired public safety professionals to receive retirement cards.

Rules Coordinator: Linsay Hale
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

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Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Provides exception to allow commercial motor carrier passenger vehicles to haul trailers.

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 825.232
Stats. Implemented: ORS 825.210 & 825.255
Proposed Amendments: 740-100-0230

Last Date for Comment: 3-21-12, Close of Business
Summary: This rule prohibits a commercial motor vehicle (CMV) that transports passengers from using a trailer unless written authorization is obtained through the Department. The rule was intended to eliminate passengers from being transported in trailers attached to busses for safety reasons; however, a literal reading of the current rule prohibits a pickup truck, which has the capability to transport passengers, from pulling a trailer without authorization. The revisions clarify the original intent of this rule to prohibit a person from using a passenger-carrying commercial motor vehicle (bus or van) to transport passengers in a trailing vehicle. Other revisions establish criteria regarding when authorization from the Department is needed for a passenger-carrying commercial motor vehicle to operate with a trailing vehicle. Authorization is not needed for a passenger-carrying CMV if the trailer does not exceed 8,000 pounds, does not exceed the manufacturer's gross vehicle weight rating and does not transport passengers. The proposed changes are needed because there are a number of motor carriers that, for example, use passenger-carrying CMVs in combination with trailers to transport passengers in the CMV and transport equipment or supplies on a trailer to a job site. Such operations do not normally create a safety hazard and should be allowed without written authorization from the Department. An existing allowance in the rule that allows passengers to be transported in special equipment is not changed.

Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Motor Carrier Transportation Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 986-3171

Mortuary and Cemetery Board Chapter 830

Rule Caption: Implements statutory requirements related to dissolution, alternative disposition facilities; updates industry practices, uses plain language.

Date:	Time:	Location:
3-15-12	9 a.m.	800 NE Oregon St. NE, Suite 445 Portland, OR 97232

Hearing Officer: Lynne Nelson
Stat. Auth.: ORS 692.320 & 97.931
Stats. Implemented: ORS 692.010, 692.275, 692.160 & 692.190
Proposed Amendments: 830-011-0000, 830-011-0020, 830-011-0050, 830-011-0070, 830-020-0020, 830-020-0030, 830-020-0040, 830-020-0050, 830-030-0000, 830-030-0008, 830-030-0010, 830-030-0030, 830-030-0040, 830-030-0050, 830-030-0090, 830-030-0100, 830-040-0000, 830-040-0010, 830-040-0020, 830-040-0040, 830-040-0050

Last Date for Comment: 3-15-12, 4 p.m.
Summary: The amendments implement changes to the Agency's statutory authority from 2009 Or Laws c. 706, including changes that allow it to license and regulate alternative disposition facilities. The amendments clarify recordkeeping requirements for licensed facilities. The amendments acknowledge changes in education and technology in the industry, including amendments to the requirements for completion and supervision of apprenticeships. The amendments amend the scope of practice for an immediate disposition company. The amendments use plain language.

Rules Coordinator: Lynne Nelson
Address: Mortuary and Cemetery Board, 800 NE Oregon St., Suite 430, Portland, OR 97232
Telephone: (971) 673-1503

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Oregon Business Development Department Chapter 123

Rule Caption: The Water/Wastewater rules have been amended to reflect changes in the definitions and appeals and exceptions.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560-285B.599
Proposed Amendments: 123-043-0010, 123-043-0025, 123-043-0115
Proposed Repeals: 123-043-0010(T), 123-043-0025(T), 123-043-0115(T)

Last Date for Comment: 3-21-12
Summary: The Water/Wastewater rules include updating the definition of "project" as well as adding language to the Appeals and Exceptions rule to allow for the director or his designee to waive non-statutory requirements.

Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: Development of new rules for the Business Retention and Expansion Program established in 2011 Legislative Session through SB 219.

Stat. Auth.: ORS 285A.075, 285B & OL 549
Other Auth.: OL Ch. 549, Sec. 1-8 & 10-11
Stats. Implemented: ORS 285B
Proposed Adoptions: 123-091-0001, 123-091-0010, 123-091-0015, 123-091-0020, 123-091-0025, 123-091-0030

Last Date for Comment: 3-21-12
Summary: The Business Retention and Expansion Program (OBEP) was established through SB 219 in the 2011 Legislative Session. Business Oregon, through OBEP, will provide forgivable loans to certified employers to allow for expanded operations and increased hiring. These rules establish criteria for eligibility of funding and describe the loan agreement.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: These rules have been amended to update the limitations for unanticipated amendments.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.75 & 279A.070

Proposed Amendments: 123-006-0035

Last Date for Comment: 3-21-12

Summary: These rules have been amended to update the limitations for unanticipated amendments for contracts as well as removing the 90 day limit to request for reinstatement of an expired contract.

Rules Coordinator: Mindee Sublette

Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

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Rule Caption: These new rules are being adopted to implement the Manufacturing Business Energy Tax Credit Program.

Stat. Auth.: ORS 285C.540-285C.559 & 315.341

Other Auth.: 2011 OL Ch. 474

Stats. Implemented: ORS 285C.540-285C.559 & 315.341

Proposed Adoptions: 123-600-0100, 123-600-0105, 123-600-0110, 123-600-0120, 123-600-0130, 123-600-0135, 123-600-0140, 123-600-0150, 123-600-0250

Last Date for Comment: 3-21-12

Summary: In the 2011 Legislative Session, the passage of Oregon HB 2325 transferred the duties of the Business Energy Tax Credit for renewable energy resource equipment manufacturing program from the Oregon Department of Energy to Business Oregon. These rules implement the program.

Rules Coordinator: Mindee Sublette

Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

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Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Patient-Centered Primary Care Home program revisions and clarifications.

Date:	Time:	Location:
3-19-12	10 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301,

Hearing Officer: Cheryl Peters

Stat. Auth.: ORS 413.042, 414.065 & 413.032

Stats. Implemented: ORS 414.065, 413.032 & 413.042

Proposed Amendments: 410-141-0860, 410-147-0362, 410-146-0020

Proposed Repeals: 410-141-0860(T), 410-147-0362(T), 410-146-0020(T)

Last Date for Comment: 3-21-12, Close of Business

Summary: The Division will permanently amend OAR 410-141-0860 to modify the Oregon Health Plan Primary Care Manager provider qualification and enrollment criteria to include Patient Centered Primary Care Homes. The Division also will permanently amend 410-146-0020 in the American Indian/Alaska Native Program and 410-147-0362 in the Federally Qualified Health Clinics/Rural Health Clinics Program, filed in conjunction with and referencing the more detailed 410-141-0860.

Rules Coordinator: Cheryl Peters

Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

Telephone: (503) 945-6527

Rule Caption: CHIP Prenatal care expansion program to include Umatilla county.

Date:	Time:	Location:
3-19-12	10 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Cheryl Peters

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Proposed Amendments: 410-120-0030

Last Date for Comment: 3-21-12, Close of Business

Summary: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to clients. The Division needs to amend 410-120-0030 to add an additional county to participate in the prenatal care expansion project implemented April 1, 2008. Subject to the Centers for Medicare and Medicaid Services (CMS) approval, the Division added Umatilla county providing prenatal care during pregnancy and labor and delivery services for CAWEM women, to be effective on or before April 1, 2012. Early prenatal care positively influences healthy outcomes for both mother and child to mitigate adverse outcomes of high-risk pregnancies and is an accepted standard of care. Lack of access to prenatal care may result in increased risk at birth and in infancy for children, and may result in increased costs of medical care to the state. This program is operated under an amendment to Oregon's State Children's Health Insurance Program (CHIP) plan. Oregon anticipates receiving federal approval for the expansion, effective on or before April 1, 2012. Text within this rule specifies effective dates for each county.

Rules Coordinator: Cheryl Peters

Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

Telephone: (503) 945-6527

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Rule Caption: Amending to update HCPCS codes, and clarify when documentation is required for authorization.

Date:	Time:	Location:
3-19-12	10 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Cheryl Peters

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-122-0340, 410-122-0540, 410-122-0630, 410-122-0660

Last Date for Comment: 3-21-12, Close of Business

Summary: The Division needs to amend the administrative rules governing incontinence supplies to allow provision of the appropriate combination of incontinent supplies without prior authorization and to correct a reference in rule explaining when additional documentation is required. The Division needs to amend the administrative rules governing wheelchair accessories, ostomy supplies, and orthotics and prosthetics to add new HCPCS codes and to remove HCPCS codes that have been discontinued or replaced with new codes effective 1/1/12.

Rules Coordinator: Cheryl Peters

Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

Telephone: (503) 945-6527

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Rule Caption: Amending Preferred Drug List and Prior Authorization Guide — January 26, 2012 DUR/P&T Action.

Date:	Time:	Location:
3-19-12	10 a.m.	500 Summer St. NE, Rm. 137C Salem, OR 97301

Hearing Officer: Cheryl Peters

Stat. Auth.: ORS 409.025, 409.040, 409.110, 413.042, 414.065, 414.325, 414.334, 414.355, 414.360, 414.365, 414.370, 414.380 & 2011 OL Ch. 720 (HB 2100)

Stats. Implemented: ORS 414.065, 2011 OL Ch. 720 (HB 2100)

Proposed Amendments: 410-121-0030, 410-121-0040

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 3-21-12, Close of Business
Summary: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division permanently amended 410-121-0030 and 410-121-0040 per the Drug Use Review (DUR) Pharmacy & Therapeutics (P&T) Committee's recommendations made in the January 26, 2012 meeting.
Rules Coordinator: Cheryl Peters
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6527

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**Oregon Health Authority,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Amendments to the OEGB procurement and contracting rules.
Date: 3-21-12 **Time:** 10 a.m. **Location:** OEGB/PEBB Boardroom
1225 Ferry St. SE
Salem, OR 97301

Hearing Officer: OEGB Staff
Stat. Auth.: ORS 243.860–243.886
Stats. Implemented: ORS 243.864
Proposed Amendments: 111-005-0040, 111-005-0042
Last Date for Comment: 3-31-12, Close of Business
Summary: The current rule language in 111-005-0040 and 111-005-0042 does not specifically support the most judicious process for releasing the names of vendors submitting proposals for the OEGB Board's consideration. The amendments made in 111-005-0040 and 111-005-0042 reflects the process OEGB has used since its inception and is consistent with the type of services the OEGB Board contracts for.
Rules Coordinator: April Kelly
Address: Oregon Health Authority, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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**Oregon Health Licensing Agency,
Board of Direct Entry Midwifery
Chapter 332**

Rule Caption: Amend date for implementing risk information packets given to clients.
Stat. Auth.: ORS 676.606, 676.607, 676.615 & 687.485
Stats. Implemented: ORS 676.607, 676.615 & 687.485
Proposed Amendments: 332-025-0120
Proposed Repeals: 332-025-0120(T)
Last Date for Comment: 3-28-12
Summary: Amend OAR 332-025-0120 to extend the implementation date for risk information packets to be given to clients by licensed direct entry midwives (LDM). Beginning on July 1, 2012 an LDM must provide risk information regarding out-of-hospital birth, malpresentation birth (breech), multiple gestations (twins), vaginal birth after cesarean (VBAC), and births exceeding 42 weeks gestation (post-dates) to clients, as prescribed by the Oregon Health Licensing Agency (Agency) and published on the Agency website.
Rules Coordinator: Samantha Patnode
Address: Oregon Health Licensing Agency, Board of Direct Entry Midwifery, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-1917

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**Oregon Housing and Community Services Department
Chapter 813**

Rule Caption: Amend the Application process and Review Requirements for Participation in the Program.
Date: 3-21-12 **Time:** 8:30 a.m. **Location:** 725 Summer St. NE, Rm. 124B
Salem, OR

Hearing Officer: Sandy McDonnell
Stat. Auth.: ORS 458.705–458.740
Stats. Implemented: ORS 458.705–458.740
Proposed Amendments: 813-140-0096
Last Date for Comment: 4-6-12, Close of Business
Summary: Amend the Application Process and Review Requirements for Participation in the Program.
Rules Coordinator: Sandy McDonnell
Address: Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301
Telephone: (503) 986-2012

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**Oregon Medical Board
Chapter 847**

Rule Caption: Incorporates changes in the Attorney General's Model Rules of Procedure for Office of Administrative Hearings.
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 183.452, 677.265 & 677.275
Proposed Amendments: 847-001-0000, 847-001-0005, 847-001-0007, 847-001-0010, 847-001-0015, 847-001-0020, 847-001-0022, 847-001-0025, 847-001-0030
Last Date for Comment: 3-21-12
Summary: The proposed rule amendments incorporate the changes in the Attorney General's Model Rules of Procedure for the Office of Administrative Hearings, which became effective 1/31/2012. A late request for a hearing will be considered using a "good cause" standard; agency review of certain legal actions has been omitted; the agency may consider a request for a delay of hearing on emergency suspension; discovery rules have been reorganized and now include requests for admission and written interrogatories and provides a method of denying a discovery request.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Implements a fine for providing false, misleading or deceptive information on a license application.
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.190 & 677.205
Proposed Amendments: 847-008-0010
Last Date for Comment: 3-21-12
Summary: Proposed rule amendment adds a fine for violating ORS 677.190(8), providing false, misleading or deceptive information on an application for licensure. Proposed rule amendment also contains general grammar housekeeping.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Corrects a statutory reference in the rule for compensation of committee members.
Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Proposed Amendments: 847-035-0011
Last Date for Comment: 3-21-12
Summary: Proposed rule amendment corrects a statutory reference in the rule for compensation of committee members and contains language and grammar housekeeping.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Clarifies administration of medication, revises type of injuries treated, and allows tuberculosis testing.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 183.452

Proposed Amendments: 847-035-0030

Last Date for Comment: 3-21-12

Summary: Proposed rule amendment clarifies administration of medication, replaces “soft tissue injuries” and “suspected fractures” with “musculoskeletal injuries,” adds tuberculosis skin testing for EMS agency personnel, and makes housekeeping changes.

Rules Coordinator: Nicole Krishnaswami

Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

Telephone: (971) 673-2667

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Oregon Patient Safety Commission
Chapter 325

Rule Caption: Updates the 2011–2013 biennial budget of the Patient Safety Commission by amending OAR 325-005-0015.

Date:	Time:	Location:
3-21-12	11 a.m.	1020 SW Taylor, Suite 700 Portland, OR 97205

Hearing Officer: Shannon O’Fallon

Stat. Auth.: ORS 442.820–442.835

Other Auth.: 2003 OL Ch. 686, Sec. 9

Stats. Implemented: ORS 182.462(1) & (2)

Proposed Amendments: 325-005-0015

Last Date for Comment: 3-21-12, 5 p.m.

Summary: In accordance with the rules governing semi-independent state agencies, this action updates the 2011–2013 biennial budget of \$1,933.351 for the Patient Safety Commission. This update reflects an increase in grant revenue and expenses in the biennium.

Rules Coordinator: Bethany A. Higgins

Address: Oregon Patient Safety Commission, PO Box 285, Portland, OR 97207-0285

Telephone: (503) 224-9226

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Update contested cases rules based on changes to Division 137 Office of Administrative Hearings rules.

Date:	Time:	Location:
4-25-12	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 183.310–183.550, 183.600–183.690, 238.320, 238.650 & 238A.450

Stats. Implemented: ORS 183.413–183.470, 238.005–238.715 & 238A.235

Proposed Adoptions: 459-001-0037

Proposed Amendments: 459-001-0005, 459-001-0035, 459-015-0030, 459-015-0035, 459-015-0040, 459-076-0025, 459-076-0050

Proposed Repeals: 459-015-0035

Last Date for Comment: 4-30-12, 5 p.m.

Summary: The Department of Justice amended the Chapter 137 Attorney General’s model rules for the Office of Administrative Hearings (OAH), effective January 31, 2012. The amendments to PERS Chapter 459 rules are necessary to update the agency’s rules for contested cases. Changes include but are not limited to provisions regarding model rules of procedure, content of a hearing request, acceptance of late hearing requests, discovery methods and procedure, pre-hearing conferences, immediate review by the chief administrative law judge (ALJ), and further hearing and issuance of final orders.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Amend rules to implement Roth 457 provisions of House Bill 2113 (2011).

Date:	Time:	Location:
4-25-12	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401–243.507 & 2011 OL Ch. 722

Proposed Adoptions: 459-050-0045, 459-050-0076

Proposed Amendments: 459-050-0000, 459-050-0001, 459-050-0005, 459-050-0030, 459-050-0050, 459-050-0070, 459-050-0072, 459-050-0075, 459-050-0077, 459-050-0080, 459-050-0090, 459-050-0150, 459-050-0200, 459-050-0210, 459-050-0220, 459-050-0230, 459-050-0250, 459-050-0300

Last Date for Comment: 4-30-12, 5 p.m.

Summary: The 2011 Oregon Legislative Assembly passed House Bill 2113 (chapter 722, Oregon Laws 2011), which became effective on August 5, 2011. The bill was amended to include the SB 950 provisions authorizing the Oregon Savings Growth Plan (OSGP) to offer a Roth 457 account to conform to a change in federal law. New and amended OSGP administrative rules are needed to implement these provisions.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Address allocation of administrative expenses based on ruling in Murray contested case.

Date:	Time:	Location:
4-25-12	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.260, 238.650 & 238A.450

Stats. Implemented: ORS 238 & 238A.350

Proposed Amendments: 459-007-0005

Last Date for Comment: 4-30-12, 5 p.m.

Summary: In a recent contested case, Murray v. Public Employees Retirement Bd., 235 Or App 262, 230 P3d 993 (2010), the Court of Appeals held that the PERS Board “erred in concluding that the Variable Account was required in 2001 and 2002 to pay a pro rata share of PERS administrative expenses from principal rather than from interest.”

The Court of Appeals decision requires the Board to change the way administrative expenses of Variable are paid in years in which the earnings in that account are insufficient to cover its expenses. To the extent the earnings are sufficient to cover all or a portion of the expenses, the expenses will continue to be charged to each participant on a pro rata basis. Following the Court of Appeals decision, any shortfall must be paid from a different source. That source does not need to be determined until the next year in which Variable earnings are less than the expenses of that account.

The amendments to OAR 459-007-0005, Annual Earnings Crediting, reflect the changes to the allocation of administrative expenses resulting from the Murray case.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

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Rule Caption: Updates connection date to federal Internal Revenue Code and other provisions of federal tax law.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.370

Proposed Amendments: 459-080-0500

Last Date for Comment: 3-22-12, 3 p.m.

Summary: The rule was incorrectly listed as being repealed on a prior notice. The rule is being resubmitted with the correct status of "Amend." No changes have been made to the rule since last notice. Housekeeping edits were needed to update the connection date to the federal Internal Revenue Code and other provisions of federal tax law.

Rules Coordinator: Daniel Rivas

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

Telephone: (503) 603-7713

Oregon State Marine Board
Chapter 250

Rule Caption: Corrects alleged procedural irregularities related to rules prohibiting internal combustion motorboats/floatplanes on Waldo Lake.

Date:	Time:	Location:
4-10-12	6 p.m.	Willamalane Park & Recreation District, Willamalane Center Ken Long Rm. 250 S 32nd St. Springfield, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-020-0221, 250-030-0030

Last Date for Comment: 4-10-12, Close of Hearing

Summary: The agency proposes to re-adopt OAR 250-020-0221 and 250-030-0030 in order to correct alleged procedural irregularities related to their previous adoption. Those rules implement the Oregon Scenic Waterway Act by prohibiting internal combustion motorboats and floatplanes on Waldo Lake, a statutorily designated state scenic waterway, in order to preserve the natural setting of Waldo Lake, minimize disturbance of its natural beauty, protect its aesthetic values, and provide an unimpaired quality of recreational experience. An exception is provided in the rules for official governmental use and emergency landings of floatplanes.

In a rule challenge pending in the Oregon Court of Appeals, Columbia Seaplane Pilots Assoc. v. State Marine Board, Oregon Court of Appeals Case No. A148192, certain procedural irregularities have been alleged, including the assertion that the fiscal impact statements for the challenged rules were inadequate. In order to provide an opportunity to correct the alleged procedural irregularities related to the previous rule adoption, the agency is initiating further rulemaking to enable the Board to take action on the basis of new fiscal impact statements and other relevant information. Such action could potentially take the form of re-adopting the rules, amending the rules to modify the prohibition of internal combustion motorboats and floatplanes on Waldo Lake, or repealing the rules.

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

Rule Caption: Restricts vessel speed and operation in the area of the Sellwood Bridge construction zone.

Date:	Time:	Location:
3-20-12	6 p.m.	The Portland Bldg. 1120 SW Fifth Ave. Portland, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-020-0280

Proposed Repeals: 250-020-0280(T)

Last Date for Comment: 3-30-12, Close of Business

Summary: The agency proposed to amend OAR 250-020-0280 restricting boat operation adjacent to the Sellwood Bridge construction project on the Willamette River in Multnomah County. The rule will close to boating the area directly beneath temporary work bridges that create unusual and significant hazards to recreational boaters. The rule will create a slow-no-wake zone through the remainder of the construction zone. The rule will sunset at the completion of construction in December 2015. The rule does not prevent commercial or recreational navigation up or down the river

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

Rule Caption: Applies existing Holgate Channel/Ross Island Lagoon speed restriction to certain commercial passenger vessels.

Date:	Time:	Location:
3-20-12	6 p.m.	The Portland Bldg. 1120 SW Fifth Ave. Portland, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.110 & 830.115

Proposed Amendments: 250-020-0280, 250-010-0150

Proposed Repeals: 250-020-0280(T)

Last Date for Comment: 3-30-12, Close of Business

Summary: The current rule (OAR 250-020-0280(2)) limits boat operation in the Holgate Channel and Ross Island Lagoon in Multnomah County but specifically exempts commercial vessels. This designation is inconsistent with ORS 830.115(3)(a) which states that passenger vessels under 100 gross tons may not be exempted. The proposed rule clarifies the inconsistency by specifically exempting "federally documented commercial vessels required to be inspected under Federal law, including those operated for sand and gravel operations, with the exception of passenger vessels of less than 100 gross tons, which are subject to the restriction;"

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

Oregon Student Access Commission
Chapter 575

Rule Caption: Amending conditions of award for the Oregon Opportunity Grant to define satisfactory academic progress.

Date:	Time:	Location:
3-30-12	9:30 a.m.	OR Student Access Commission 1500 Valley River Dr. Suite 100 Columbia Rm. Eugene, OR 97401

Hearing Officer: Bart Howard, Commission Chair

Stat. Auth.: ORS 348

Stats. Implemented: ORS 348

Proposed Amendments: 575-031-0030

Last Date for Comment: 3-30-12, Close of Hearing

Summary: Amendment to the above rules to define satisfactory academic progress for the Oregon Opportunity Grant conditions of award.

Rules Coordinator: Lacie A. Morgan

Address: Oregon Student Access Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7394

NOTICES OF PROPOSED RULEMAKING

Oregon Student Access Commission, Office of Degree Authorization Chapter 583

Rule Caption: Expands limits on award of credit for non-instructional methods (proficiency and prior learning) in degree programs.

Date:	Time:	Location:
3-30-12	9:30 a.m.	OR Student Access Commission 1500 Valley River Dr., Suite 100 Eugene, OR 97401

Hearing Officer: Bart Howard, Commission Chair

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Proposed Amendments: 583-030-0035

Last Date for Comment: 3-30-12, Close of Hearing

Summary: Current rule limits the amount and level of credit that may be awarded for learning outside the traditional classroom environment. This amended rule will expand the options for awarding credit and thereby allow the Office of Degree Authorization (which will become part of the Higher Education Coordinating Commission in July 2012, per SB 242 passed in 2011):

(1) To approve degree programs having significant experiential components, innovative educational methodologies and technology-enhanced delivery models.

(2) To establish parameters for the evaluation of credit for prior learning and proficiency gained through military training, professional experience, and other learning opportunities that may occur outside the traditional academic setting.

Rules Coordinator: Beverly R. Boyd

Address: Student Access Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7394

Oregon Youth Authority Chapter 416

Rule Caption: The proposed rule changes clarify OYA and DCS roles in enforcing child support obligations.

Date:	Time:	Location:
3-22-12	9 a.m.	530 Center St. NE, Suite 200 Salem, OR 97301

Hearing Officer: Winifred Skinner

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108 & 416.400-416.486

Proposed Amendments: 416-100-0000, 416-100-0005, 416-100-0010, 416-100-0020, 416-100-0030, 416-100-0040, 416-100-0050, 416-100-0060

Proposed Repeals: 416-100-0070

Last Date for Comment: 4-2-12, 5 p.m.

Summary: The proposed rule changes clarify OYA's role in enforcing child support obligations of parents whose children are in OYA custody. The repeal of OAR 416-100-0070 is proposed to comply with child support law changes as reflected in Senate Bill 43 (2011).

Rules Coordinator: Winifred Skinner

Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

Telephone: (503) 373-7570

Rule Caption: The proposed rule changes clarify OYA volunteer service application and coordination.

Date:	Time:	Location:
3-22-12	10 a.m.	530 Center St. NE, Suite. 200 Salem, OR 97301

Hearing Officer: Winifred Skinner

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010 & 420A.021

Proposed Amendments: 416-450-0000, 416-450-0010, 416-450-0020, 416-450-0030, 416-450-0040, 416-450-0050, 416-450-0060, 416-450-0070

Last Date for Comment: 4-2-12, 5 p.m.

Summary: The proposed rule changes clarify the OYA volunteer application process and establishes an agency volunteer coordinator.

Rules Coordinator: Winifred Skinner

Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

Telephone: (503) 373-7570

Rule Caption: OYA's executive team structure has changed as reflected in the rule definition changes.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.011 & 420.014

Proposed Amendments: 416-410-0010

Last Date for Comment: 4-2-12, 5 p.m.

Summary: OYA's executive team structure has changed since this rule was originally written, as reflected in definition changes. Specifically, the definitions of the Agency Case Review Committee and the agency's Cabinet.

Rules Coordinator: Winifred Skinner

Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

Telephone: (503) 373-7570

Parks and Recreation Department Chapter 736

Rule Caption: Amendment of OAR 736-018-0045 to adopt the Cape Lookout State Park Comprehensive Plan.

Date:	Time:	Location:
4-10-12	6 p.m.	Netarts-Oceanside RFD Community Hall 1235 Fifth Street Loop Netarts, OR

Hearing Officer: Ron Campbell

Stat. Auth.: ORS 390.180

Stats. Implemented: ORS 390.180(1)

Proposed Amendments: 736-018-0045

Last Date for Comment: 5-10-12, 4 p.m.

Summary: ORS 390.180(1) authorizes the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a plan for each state park. Accordingly, OPRD is adopting a new plan for Cape Lookout State Park. Plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new plan for Cape Lookout as a state rule.

The new plan for the park responds to the most current information on park resource conditions and public recreation needs as they pertain to this park setting. The plan was formulated through OPRD's mandated planning process involving meetings with the general public, an advisory committee, recreation user groups, environmental advocacy groups, affiliated Tribes, affected state, federal and local government agencies, and park neighbors.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

Telephone: (503) 986-0719

Rule Caption: Veterans and War Memorial Grant program changes as required by SB 342.

Stat. Auth.: ORS 390.124 & 390.180

Stats. Implemented: ORS 390.180 & 2011 OL Ch. 643

Proposed Amendments: 736-017-0005, 736-017-0020, 736-017-0035

Last Date for Comment: 3-22-12, 4 p.m.

Summary: The proposed rules will redefine the grant application as being a local government entity instead of a non-profit veteran's organization per Section 6 of Senate Bill 342 from the 76 Oregon Legislative Assembly — 2011 Regular Session.

Rules Coordinator: Vanessa DeMoe

NOTICES OF PROPOSED RULEMAKING

Address: Parks and Recreation Department, 725 Summer St. NE,
Suite C, Salem, OR 97301
Telephone: (503) 986-0719

Psychiatric Security Review Board
Chapter 859

Rule Caption: PSRB Conditional Release Plan Review of Tier Two Offenders.

Date:	Time:	Location:
3-22-12	10 a.m.	620 SW 5th Ave. Fourth Floor Conference Rm. Portland, OR 97204

Hearing Officer: Mary Claire Buckley
Stat. Auth.: 2011 OL Ch. 708 § 33(2) (SB 420) & ORS 161.387
Stats. Implemented: 2011 OL Ch. 708 (SB 420) & ORS 161.295–161.400
Proposed Adoptions: 859-070-0040
Proposed Amendments: 859-030-0005, 859-030-0010
Proposed Repeals: 859-030-0005(T), 859-030-0010(T), 859-070-0040(T)
Last Date for Comment: 3-23-12

Summary: Section 11a of SB 420 (Act) classifies individuals who have been found guilty except for insanity into tier-one offenders (i.e. Measure 11 offenders) and tier-two offenders (i.e. non-Measure 11 offenders). The Act directs that tier-two offenders who are committed to the state hospital be placed under the jurisdiction of the Oregon Health Authority (OHA), effective January 1, 2012. After OHA orders tier-two offenders to be placed on conditional release, their jurisdiction transfers to the PSRB pursuant to Section 1 of the Act. Section 5 of the Act directs OHA to notify PSRB prior to conducting a conditional release hearing. The Act also permits PSRB to provide OHA with conditions of release that PSRB determines are advisable.

PSRB's current rules do not describe a permanent process for PSRB to provide conditions for release to OHA as described in Section 5 of the Act. PSRB must adopt OAR 859-70-0040 to create such a process. The adoption of 859-70-0040 creates a procedure for PSRB to begin considering and providing to OHA conditions for the release of tier-two offenders when OHA notifies it under Section 5 of the Act. The amendments to 859-030-0005 and 0010 are necessary in order to update the Board's existing administrative rules to reflect its new responsibilities as noted above as well as housekeeping changes to reflect the Oregon Health Authority's new name.

Rules Coordinator: Mary Claire Buckley
Address: Psychiatric Security Review Board, 620 SW 5th Ave.,
Suite 907, Portland, OR 97204
Telephone: (503) 229-5596

Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Amends charter school registration and educator licensure rules; adopts new program standards; adopts disciplinary rule.

Date:	Time:	Location:
3-22-12	1–2 p.m.	250 Division St. NE Salem, OR 97301

Hearing Officer: Lynn Beaton
Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120–342.430, 342.455–342.495 & 342.533

Proposed Adoptions: 584-017-1028, 584-018-0305, 584-018-0310, 584-066-0001, 584-066-0010, 584-050-0021

Proposed Amendments: 584-023-0005, 584-023-0015, 584-060-0051(T), 584-060-0062, 584-080-0161

Last Date for Comment: 4-26-12, 2 p.m.

Summary: ADOPT: 584-017-1028, *Selection, Recruitment, Admission and Retention of Candidates:* Adopts standards for educator licensure program admission and retention of new candidates.

584-018-0305, *Knowledge, Skills, Abilities, Cultural Competencies and Professional Dispositions for Initial School Counselor License:* Adopts new program standards for Initial School Counselor Licenses.

584-018-0310, *Knowledge, Skills, Abilities and Cultural Competencies and Professional Dispositions for Continuing School Counselor License:* Adopts new program standards for Continuing School Counselor Licenses.

584-066-0001, *Purpose of Specialization on a License:* Distinguishes a “specialization” from an “endorsement” or “authorization.”

584-066-0010, *Autism Spectrum Disorder (ASD) Licensed Specialist Standards and Competencies:* Establishes Autism Spectrum Disorder standards to add an Autism Spectrum Disorder specialization to a teaching license.

584-050-0021, *Reinstatement of Right to Apply for a License Following Revocation of a Provisional License:* Clarifies applicant's “status” when the Commission revokes a license that cannot be reinstated.

AMEND: 584-023-0005, *Registry of Charter School Teachers and Administrators:* Clarifies that the registration is not transferrable to another charter school and that the assignment of charter school teachers is up to the charter school.

584-023-0015, *Standards of [Competence] Professional Practices and Ethics for Charter School Registrants:* Housekeeping language to clarify that it applies to charter school registrants not to a “registry.”

584-060-0051, *Teaching Authorization Levels:* Expands high school authorization on Initial and Continuing Teaching Licenses to grades 7 and 8 in a school designated by a high school.

584-060-0062, *Adding Endorsements to Initial or Continuing Teaching Licenses:* Adds Chinese as a world language for which an academic program must be completed in order to add to the license since the Commission does not currently have a Chinese language licensure test.

584-080-0161 — *Exceptional Administrator License:* Clarifies that district must submit a letter of support, and that applicant is not eligible for positions requiring supervision or evaluation of teachers or working directly with children and other clarifications.

Rules Coordinator: Lynn Beaton
Address: Teacher Standards and Practices Commission, 250
Division St. NE, Salem, OR 97301
Telephone: (503) 373-0981

ADMINISTRATIVE RULES

Board of Psychologist Examiners Chapter 858

Rule Caption: Modifies educational requirements for licensure; adds licensure by endorsement application procedure.

Adm. Order No.: BPE 1-2012(Temp)

Filed with Sec. of State: 2-15-2012

Certified to be Effective: 2-15-12 thru 8-12-12

Notice Publication Date:

Rules Amended: 858-010-0010, 858-010-0011, 858-010-0012, 858-010-0013, 858-010-0016, 858-010-0017

Subject: Modifies the educational requirements for licensure for applicants who possess a doctoral degree from a program accredited by the American Psychological Association or the Canadian Psychological Association. Removes requirement that doctoral degree program must have authorization to operate in Oregon by the Office of Degree Authorization. Modifies and makes corrections to the standard application procedure. Removes the “non-standard” application procedure and replaces it with “Licensure by Endorsement.” Creates new application procedures for applicants licensed as a psychologist in another jurisdiction.

Rules Coordinator: Debra Orman McHugh—(503) 373-1155

858-010-0010

Education Requirements — Clinical Psychologist

To meet the education requirement of ORS 675.030(1), applicants for licensure must:

(1) Possess a doctoral degree in psychology from a program accredited by the American Psychological Association or the Canadian Psychological Association as of the date the degree was awarded; or

(2) Possess a doctoral degree in psychology from:

(a) A program at an institution of higher learning that was accredited by a regional accrediting agency as of the date the degree was awarded;

(b) For Canadian universities, an institution of higher education that is provincially or territorially chartered; or

(c) A foreign program evaluated to be equivalent to American Psychological Association accreditation as of the date the degree was awarded. Evaluation must be completed by a credentialing body recognized by the Board. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(3) An applicant who possesses a degree under section (2) must show that his or her doctoral program in psychology meets all of the following requirements:

(a) A minimum of three academic years of full-time graduate study.

(b) A minimum of one continuous year in residence at the institution from which the degree is granted.

(A) One continuous year means two consecutive semesters or three consecutive quarters.

(B) In residence means physical presence, in person, at an educational institution or training facility in a manner that facilitates acculturation into the profession, the full participation and integration of the individual in the educational and training experience, and includes faculty and student interaction.

(C) The doctoral program may include distance education, but a minimum of one continuous year of the program shall be in-residence. Programs that use physical presence, including face-to-face contact for durations of less than one continuous year, (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution in order to meet the residency requirement are deemed not to be acceptable for licensure.

(D) Training models that rely exclusively on physical presence for periods of less than one continuous year (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution do not meet the in residence requirement.

(c) The program, wherever it may be administratively housed, must be clearly identified and labeled as a program in psychology. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(d) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(e) There must be a clear authority and primary responsibility for the core and specialty areas, whether or not the program cuts across administrative lines.

(f) The program must be an integrated, organized sequence of study.

(g) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities and a psychologist responsible for the program.

(h) The program must have an identifiable body of students who are matriculated in that program for a degree.

(i) The program must include a coordinated, sequential and supervised practicum appropriate to the practice of psychology as described in OAR 858-010-0012.

(j) The program must include a coordinated, sequential and supervised internship, field or laboratory training appropriate to the practice of psychology as described in OAR 858-010-0013.

(k) The curriculum of the program must:

(A) Encompass a minimum of three academic years of full time graduate study, including a minimum of one continuous year in residence at the educational institution granting the doctoral degree; and

(B) Require an original dissertation or equivalent that was psychological in nature that meets the requirement for an approved doctoral program.

(l) The core program shall require every student to demonstrate competence in each of the following substantive areas. This typically will be met through substantial instruction in each of these foundational areas, as demonstrated by a minimum of three graduate semester hours, five or more graduate quarter hours (when an academic term is other than a semester, credit hours will be evaluated on the basis of 15 hours of classroom instruction per semester hour).

(A) Scientific and professional ethics and standards;

(B) Research design and methodology;

(C) Statistics;

(D) Psychometric theory;

(E) Biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

(F) Cognitive-affective bases of behavior such as learning, thinking, motivation, and emotion; and

(G) Social bases of behavior such as social psychology, group processes, organizational and systems theory.

(m) All professional education programs in psychology must include course requirements in developed practice areas/specialties.

(n) The program must demonstrate that it provides training relevant to the development of competence to practice in a diverse and multicultural society.

(o) Demonstration of competence in clinical psychology shall be met by including a minimum of at least 3 or more semester hours or 5 or more quarter hours in each of the following clinical psychology content areas:

(A) Individual differences in behavior (e.g. personality theory, cultural difference and diversity);

(B) Human development (e.g. child, adolescent, geriatric psychology);

(C) Dysfunctional behavior, abnormal psychology or psychopathology;

(D) Theories and methods of intellectual assessment and diagnosis;

(E) Theories and methods of personality assessment and diagnosis including practical application;

(F) Effective interventions and evaluating the efficacy of interventions; and

(G) Consultation and supervision (e.g. community mental health, organizational behavior, consultation liaison).

(4) Provide syllabi or other documentation regarding course content upon the Board's request.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030(1)(b)(c)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

858-010-0011

Education Requirements — Applied Psychologist

To meet the education requirement of ORS 675.030(1), applicants for licensure must:

ADMINISTRATIVE RULES

(1) Possess a doctoral degree in psychology from a program accredited by the American Psychological Association or the Canadian Psychological Association as of the date the degree was awarded; or

(2) Possess a doctoral degree in psychology from:

(a) A doctoral degree in psychology from a program at an institution of higher learning that was accredited by a regional accrediting agency as of the date the degree was awarded;

(b) For Canadian universities, an institution of higher education that is provincially or territorially chartered; or

(c) A foreign degree from a program evaluated to be equivalent to American Psychological Association accreditation as of the date the degree was awarded. Evaluation must be completed by a credentialing body recognized by the Board. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant; and

(3) An applicant who possesses a degree under section (2) must show that his or her doctoral program in psychology meets all of the following requirements:

(a) A minimum of three academic years of full-time graduate study.

(b) A minimum of one continuous year in residence at the institution from which the degree is granted.

(A) One continuous year means two consecutive semesters or three consecutive quarters.

(B) In residence means physical presence, in person, at an educational institution or training facility in a manner that facilitates acculturation into the profession, the full participation and integration of the individual in the educational and training experience, and includes faculty and student interaction.

(C) The doctoral program may include distance education, but a minimum of one continuous year of the program shall be in-residence. Programs that use physical presence, including face-to-face contact for durations of less than one continuous year, (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution in order to meet the residency requirement are deemed not to be acceptable for licensure.

(D) Training models that rely exclusively on physical presence for periods of less than one continuous year (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution do not meet the in residence requirement.

(e) The program, wherever it may be administratively housed, must be clearly identified and labeled as a program in psychology. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(f) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(g) There must be a clear authority and primary responsibility for the core and specialty areas, whether or not the program cuts across administrative lines.

(h) The program must be an integrated, organized sequence of study.

(i) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities and a psychologist responsible for the program.

(j) The program must have an identifiable body of students who are matriculated in that program for a degree.

(k) The program must include a coordinated, sequential and supervised practicum appropriate to the practice of psychology as described in OAR 858-010-0012.

(l) The program must include a coordinated, sequential and supervised internship, field or laboratory training appropriate to the practice of psychology as described in OAR 858-010-0013.

(m) The curriculum of the program must:

(A) Encompass a minimum of three academic years of full time graduate study, including a minimum of one continuous year in residence at the educational institution granting the doctoral degree; and

(B) Require an original dissertation or equivalent that was psychological in nature that meets the requirement for an approved doctoral program.

(3) The core program shall require every student to demonstrate competence in each of the following substantive areas. This typically will be met through substantial instruction in each of these foundational areas, as demonstrated by a minimum of three graduate semester hours, five or more graduate quarter hours (when an academic term is other than a semester, credit hours will be evaluated on the basis of 15 hours of classroom instruction per semester hour).

(A) Scientific and professional ethics and standards;

(B) Research design and methodology;

(C) Statistics;

(D) Psychometric theory;

(E) Biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

(F) Cognitive-affective bases of behavior such as learning, thinking, motivation, and emotion; and

(G) Social bases of behavior such as social psychology, group processes, organizational and systems theory.

(m) All professional education programs in psychology must include course requirements in developed practice areas/specialties.

(n) The program must demonstrate that it provides training relevant to the development of competence to practice in a diverse and multicultural society.

(o) Demonstration of competence in applied psychology shall be met by including a minimum of at least 18 semester hours or 30 quarter hours in a concentrated program of study in an identified area of psychology, e.g., developmental, social, cognitive, motivation, applied behavioral analysis, industrial/organizational, human factors, personnel selection and evaluation.

(4) Provide syllabi or other documentation regarding course content upon the Board's request.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.030 & 675.110

Hist.: BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

858-010-0012

Practicum

(1) The degree program required in OAR 858-010-0010(2), 858-010-0011(2), or 858-010-0015 must include an organized practicum of at least two semesters (or three quarters) and at least 300 hours of direct experience, 100 hours of which must be in supervision.

(2) Supervision must include the following:

(a) Discussion of services provided by the student;

(b) Selection of service plan for and review of each case or work unit of the student;

(c) Discussion of and instruction in theoretical concepts underlying the work;

(d) Discussion of the management of professional practice and other administrative or business issues;

(e) Evaluation of the supervisory process by the student and the supervisor;

(f) Discussion of coordination of services among the professionals involved in the particular cases or work units;

(g) Discussion of relevant state laws and rules;

(h) Discussion of ethical principles including principles applicable to the work;

(i) Review of standards for providers of psychological services; and

(j) Discussion of reading materials relevant to cases, ethical issues and the supervisory process.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.030 & 675.110

Hist.: BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

858-010-0013

Internship

(1) Applicants must successfully complete an organized internship as part of the degree program required in OAR 858-010-0010(2), 858-010-0011(2), or 858-010-0015.

(2) The internship must include at least 1,500 hours of supervised experience and be completed within twenty-four months.

(3) The internship program must meet the following requirements:

(a) The internship must have a written statement or brochure describing the goals and content of the internship, stating clear expectations and quality of student work, and made available to prospective interns.

(b) A psychologist licensed by the appropriate state or provincial licensing authority must be clearly designated as responsible for the integrity and quality of the internship program.

(c) Interns must use titles indicating their training status.

(d) The internship must be designed to provide a planned sequence of training experiences focusing on breadth and quality of training. Supervision and training related to ethics must be ongoing.

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(e) At least twenty-five percent of the internship experience must be in direct client contact providing assessment and intervention services.

(f) For every 40 hours of internship experience, the student must receive:

(A) At least 2 hours of regularly scheduled, formal, face-to-face individual supervision that addresses the direct psychological services provided by the intern; and

(B) At least 2 hours of other learning activities such as case conferences, seminars on applied issues, conducting co-therapy with a staff person including discussion of the case, and group supervision.

(4) Supervision of the internship experience.

(a) The internship setting must have two or more psychologists available as supervisors, at least one of whom is licensed as a psychologist.

(b) The internship experience must be supervised by the person(s) responsible for the assigned casework.

(c) At least seventy-five percent of the supervision must be by a licensed psychologist with two years post-licensure experience.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.030 & 675.110

Hist.: BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

858-010-0016

Standard Application Procedure

(1) Filing of Applications. Upon receipt of an application for licensure, the Board shall process the application and determine if the application is ready for review. An application is considered ready for review when the following items have been received:

(a) Final graduate level transcript(s) imprinted with date degree was awarded;

(b) Reference forms;

(c) Social Security Number Authorization Form;

(d) For non-APA accredited schools only:

(A) University Accreditation Form;

(B) Educational Record in Psychology Form; and

(C) Verification of pre-degree supervised work.

(e) Verification of post-degree supervised work experience (if completed);

(f) National written examination (EPPP) score (if taken);

(g) Verification of licensure in good standing in other states (if any);

(h) Application fee;

(i) Fingerprinting fee and results of the criminal background check; and

(j) Other clarifying information requested by the Board.

(2) The Board may issue a license if the candidate for licensure:

(a) Meets the education requirements of OAR 858-010-0010, 858-010-0011, or 858-010-0015;

(b) Completes the supervised work experience requirements of OAR 858-010-0036 or 858-010-0037.

(c) Passes the national written examination (EPPP); and

(d) Passes the Oregon jurisprudence examination.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030(1)(a), (b), (c), (d), (e) & (2)

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

858-010-0017

Licensure by Endorsement

If an applicant possesses a current license to practice psychology based on a doctoral degree in psychology that is issued by a board with licensing standards substantially equivalent to Oregon, the applicant may be licensed by endorsement.

(1) Applicants who have maintained an active psychologist license for less than 10 years:

(a) Filing of Applications. Upon receipt of a complete Licensure by Endorsement Application, the Board shall process the application and determine if the applicant's file is ready for review. An application is considered ready for review when the following items have been received:

(A) Final graduate level transcript(s) imprinted with date degree was awarded;

(B) Social Security Number Authorization Form;

(C) An official verification of licensure in good standing from each health care professional license or registration, current or expired;

(D) A copy of the applicant's:

(i) Licensure file from the state(s) in which the applicant is licensed;

(ii) CPQ file from ASPPB;

(iii) Certification file from ABPP; or

(iv) HSPP file from the National Register.

(E) Endorsement Reference Forms from three mental health professionals who each have at least ten years of experience in the mental health field and have known the applicant for at least five continuous years;

(F) National written examination (EPPP) score;

(G) Application fee; and

(H) Fingerprinting fee and results of criminal background check.

(b) The Board may issue a license if the candidate for licensure:

(A) Has met the educational requirements for licensure of OAR 858-010-0010 or 858-010-0011;

(B) Has complied with the post-doctoral supervised work experience requirements of OAR 858-010-0036;

(C) Passes the Oregon jurisprudence examination; and

(D) Has received a passing score on the National Written Examination (EPPP).

(2) Applicants who have maintained an active psychologist license for 10 years or more:

(a) Filing of Applications. Upon receipt of a complete Licensure by Endorsement Application, the Board shall process the application and determine if the applicant's file is ready for review. An application is considered ready for review when the following items have been received:

(A) Social Security Number Authorization Form;

(B) An official verification of licensure in good standing from each health care professional license or registration, current or expired;

(C) A copy of the applicant's:

(i) Licensure file from the state(s) in which the applicant is licensed;

(ii) CPQ file from ASPPB;

(iii) Certification file from ABPP; or

(iv) HSPP file from the National Register.

(D) Endorsement Reference Forms from three mental health professionals who each have at least ten years of experience in the mental health field and have known the applicant for at least five continuous years;

(E) National written examination (EPPP) score;

(F) Application fee; and

(G) Fingerprinting fee and results of criminal background check.

(b) The Board may issue a license if the candidate for licensure:

(A) Passes the Oregon jurisprudence examination; and

(B) Has received a passing score on the National Written Examination (EPPP).

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12

Board of Tax Practitioners Chapter 800

Rule Caption: 2011 Overhaul of OAR's based on recommendations made by the Rules Advisory Committee and voted on by the Board.

Adm. Order No.: BTP 1-2012

Filed with Sec. of State: 1-30-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 12-1-2011

Rules Amended: 800-010-0015, 800-010-0040, 800-015-0005, 800-015-0010, 800-015-0015, 800-015-0020, 800-015-0030, 800-020-0015, 800-020-0022, 800-020-0025, 800-025-0020, 800-025-0027

Subject: Amends 800-015-0010 to require that licensees maintain a record of attendance for all continuing education courses for a total of 4 years instead of 2 as previously required. This change would mirror federal requirements for continuing education retention.

Amends 800-015-0010 to clarify credentialing associations acceptable for sponsors of correspondence and/or self-study continuing education courses not specifically approved by the Board. Eliminates NATP from the list and includes NASBA, Registry and QAS as one entity listed as NASBA.

Amends 800-015-0020 to include "tax representation: exam, collections and appeals" as acceptable subject matter for continuing education. Clarifies that licensees taking repeat courses by the same instructor within the same continuing education reporting period will not be acceptable.

Amends 800-015-0030 to clarify that licensees taking education from a sponsor that is an accredited college or university must sub-

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mit at a minimum a photocopy of an official transcript as acceptable verification.

Amends 800-020-0015 to clarify that applicants taking education from an accredited college or university in lieu of the “80-hour Basic Income Tax Course” must submit at a minimum a photocopy of an official transcript as acceptable verification.

Amends 800-020-0022 outlines requirements of applicants seeking examination approval if previously disqualified from an exam.

Amends 800-020-0025 to modify the fee for a combination tax preparer initial license/tax preparation business registration.

Amends 800-025-0020 to require all tax preparation businesses located within a residence have identifying house numbers visible from the street as mandated by the State Fire Marshall Address Identification requirements.

Rules Coordinator: Jane Billings—(503) 378-4034

800-010-0015

Definitions

As used in these rules, unless the context requires otherwise:

- (1) “Board” means the State Board of Tax Practitioners.
- (2) “Branch Office” means an office or other place of business where clients would normally or usually contact a licensee.
- (3) “Client” means a person for whom a licensee performs or agrees to perform professional services for valuable consideration and the services are related directly or indirectly to the client’s personal income taxes.
- (4) “Confidential Information” means information furnished to a licensee for, or in connection with, the preparation of an income tax return.
- (5) “Designated Consultant” means a Licensed Tax Consultant who is the responsible individual for the preparation of all personal income tax returns prepared for the public for each registered tax preparation business.
- (6) “Licensee” means a Licensed Tax Consultant, Licensed Tax Preparer, or any person, corporation, firm or partnership falling within the purview of ORS 673.605 to 673.735.
- (7) “Resident Consultant” means the Licensed Tax Consultant who is physically present to conduct and carryout his/her duties in the principal or branch office.
- (8) “Tax Consultant or Tax Preparer Practice” and a licensee’s “professional practice” means any service performed or supervised by the licensee for a client, including any advice or recommendation made by the licensee to the client, when it is related directly or indirectly to the client’s personal income tax return, if the licensee also prepares the client’s personal income tax returns.
- (9) “Tax Preparation Business” means a sole proprietorship, partnership, corporation or other entity that offers personal income tax preparation services to the public, for valuable consideration, whether operated under an individual’s own name or under an assumed business or corporate name, and including tax preparation businesses operated on a full- or part-time basis.
- (10) “Valuable Consideration”, as used in ORS 673.615 and OAR Chapter 800, means a benefit that accrues to a person as a result of preparing, advising or assisting in the preparation of personal tax returns for others, or offering to perform such services. Valuable consideration need not be translatable into dollars and cents.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 6-1986, f. & ef. 12-31-86; TSE 3-1987, f. & ef. 10-2-87; TSE 1-1990, f. & cert. ef. 1-25-90; TSE 4-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-010-0040

Identification

- (1) A licensee shall include the name of the tax preparation business, permanent address, and signature on the original and all copies of federal and state personal income tax returns or electronic filing documents prepared by the licensee, together with all other data required by the Internal Revenue Service, Department of Revenue, and State Board of Tax Practitioners. Office copies are exempt from this requirement.
- (2) The state personal income tax return shall include the signature and the board issued license number of the licensee who substantially prepared the return.
- (3) In addition to the original returns filed on behalf of a client, at least one (1) copy of the complete set of the tax returns, including all accompanying forms and schedules, shall be supplied to the client. A licensee is not

required to provide a free copy of the tax returns to a client more than once. However, in the case of a joint tax return, each spouse is entitled, upon request, to a free copy of the tax return.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 12, f. & ef. 9-20-77; TSE 1-1978, f. & ef. 2-3-78; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1995, f. & cert. ef. 5-5-95; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-015-0005

Basic Education

(1) An accredited college/university, educational service district (ESD), or a private firm that has met or is exempt from the registration requirements of the Oregon Department of Education or a private firm offering classes only to its own employees and is exempt from the Oregon Department of Education requirements may act as a sponsor for the basic income tax course.

(2) Sponsors shall apply for course certification on a form provided by the Board.

(3) A basic course shall include:

(a) At least 80 classroom hours of basic tax preparation instruction. If the course is offered through correspondence or online, it must be the equivalent of 80 classroom hours of instruction;

(b) Instruction in each of the subject areas specified in the Preparer Examination Index maintained by the Board;

(c) Sufficient working problems to instruct in the use of appropriate forms and schedules; and

(d) A midterm and final examination.

(4) The Board shall require a sponsor applicant to submit evidence that course materials and lesson plans comply with section (3) of this rule.

(5) Basic course sponsors shall employ only instructors to teach basic courses who are actively licensed or who fall within the exemptions of ORS 673.610(2)(4) and who prepared taxes for at least two (2) tax seasons immediately prior to teaching the course.

(a) The Board may grant a specific waiver to instructor qualifications when unusual or extenuating circumstances exist.

(b) Sponsors shall submit to the Board the names and qualifications of instructors teaching each basic course.

(c) Repeated low passage rates of an instructor’s students on the tax preparers’ examination could be evidence that the instructor may not be qualified to teach a basic tax preparation course.

(d) The instructor’s approval to teach Basic Tax Preparation courses may be revoked by the Board.

(6) Evidence of successful course completion shall be furnished to students by course instructors on a Board-approved session attendance certification form. Forms may be reproduced by course sponsors. If a student misses a portion of the class sessions, the instructor may provide makeup work.

(7) Applications for course certification shall be submitted annually at least 60 calendar days prior to the course starting. Certification shall be for the subsequent 12 months.

(8) The Board may refuse to issue or withdraw a course certification for failure to meet any of the course or instructor requirements contained in this rule.

Stat. Auth.: ORS 673.625(1)

Stats. Implemented:

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; Renumbered from OAR 800-020-0040 by TSE 2-1980, f. & ef. 5-30-80; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1990, f. & cert. ef. 1-25-90; TSE 7-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-015-0010

Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall attest on the renewal to have completed at least 30 hours of acceptable continuing education since the last renewal date.

(2) Each licensee shall report compliance with the continuing education requirements on the license renewal document. Licensees shall be subject to the provisions of OAR 800-015-0015 pertaining to the periodic audit of continuing education.

(3) Proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required

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continuing education is available for audit or investigation by the Board, licensees shall maintain a record of attendance for at least four (4) years following each continuing education cycle and renewal of the tax practitioner license.

(4) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

(5) The Board may verify continuing education information submitted by licensees.

(6) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next, except extra hours earned during the month of renewal not claimed on that renewal may be submitted with the following year's renewal.

(7) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor or instructor.

(8) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and ten (10) hours for each quarter hour credit. For all other courses and seminars, one (1) hour of continuing education credit will be allowed for each hour of classroom attendance.

(9) Continuing education credit may be accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two (2) hours for each hour of teaching, which includes preparation time. No more than 1/2 of total required continuing education credit can be in teaching.

(10) Correspondence and online study courses may be accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) A course outline with accompanying workbooks or exams is submitted to the Board, prior to offering the material, for approval of course content and hours of credit claimed, if not already approved by California Tax Education Council (CTEC), Internal Revenue Service (IRS), National Association of State Boards of Accountancy (NASBA), or courses by such other sponsors as may be approved by the Board.

(11) "In-Company" instruction may be accepted if the course or seminar is presented to ten (10) or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(12) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 calendar days, to make up the rejected hours.

(13) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing education by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-015-0015

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Board will audit a select percentage of licensee records determined by the Board to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education shall submit to the Board, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 800-015-0010.

(3) Documentation of a certificate of completion of attendance at a program, seminar or course provided by a sponsor must include:

(a) Name of student;

(b) Name, address and telephone number of sponsoring institution/association or organization;

(c) Location of program;

(d) Title of program and description of content;

(e) Name of instructor or presenter;

(f) Date(s) of attendance;

(g) Number of instruction hours;

(4) For documentation of completion of a college/university course, a licensee must submit a photocopy of an official transcript, diploma, certificate, statement or affidavit.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 673.605 - 673.740

Stats. Implemented: ORS 673.605 - 673.740

Hist.: BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-015-0020

Continuing Education Program Requirements

(1) Acceptable continuing education is that which contributes directly to the expertise of the individual in the preparation of income tax returns, and is presented by a sponsor who meets the requirements of all Rules. It is the obligation of each licensee to select a course of study which will contribute to his or her competence in the preparation of income tax returns.

(2) The following general subject matters are acceptable to the extent they contribute directly to the expertise of advising, assisting or preparing income tax returns:

(a) Taxation.

(b) Practitioner Ethics.

(c) Accounting and payroll theory.

(d) Estate, tax or investment planning.

(e) Computer technology.

(f) Tax representation: exam, collections or appeals.

(g) Others, if the licensee can demonstrate a direct relationship to the preparation of a client's income tax returns.

(3) Programs primarily directed towards the licensee's personal benefit, rather than that of his or her clients, and programs relating primarily to general business management, are unacceptable. Some examples of unacceptable subjects are:

(a) Memory improvement.

(b) Buying or selling a tax practice.

(c) Setting fee schedules.

(d) Character development.

(e) Behavior modification.

(f) Business management

(g) Labor law.

(h) Economic forecasts.

(i) Learning to operate office equipment.

(4) Programs must be at least one (1) 50-minute education hour with credit given in whole hours only.

(5) Programs must be conducted by a qualified instructor whose background, training, education or experience make it appropriate for the person to lead a discussion on the subject matter of the particular program.

(6) Licensees may not receive credit for repeat of courses taken from the same instructor within the same continuing education reporting period.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1989, f. & cert. ef. 10-27-89; TSE 8-1992, f. & cert. ef. 12-22-92; TSE 2-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-015-0030

Continuing Education and Basic Sponsor Requirements

(1) Sponsors shall:

(a) Maintain for at least four (4) years an outline of each program presented;

(b) Maintain for at least four (4) years a record of attendance for each program presented;

(c) Maintain for at least four (4) years a record of instructor names, addresses and qualification; and

(d) Provide the student a certificate or other verification of completion at the conclusion of the program. If the sponsor is an accredited college or university, a photocopy of an official transcript or certificate of completion

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showing the credit earned will be acceptable verification. For all other sponsors, the certification shall include:

- (A) Name of student;
 - (B) Name, address and telephone number of sponsoring institution/association or organization;
 - (C) Location of program;
 - (D) Title of program and description of content;
 - (E) Name of instructor or presenter;
 - (F) Date(s) of attendance;
 - (G) Number of instruction hours.
- (2) Sponsors must conduct their programs in an honest and ethical manner.

Stat. Auth.: ORS 673.655

Stats. Implemented:

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1995, f. & cert. ef. 5-5-95; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board. The application must include the examination fee and the proctor site fee, if applicable. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one (1) month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) or a photocopy of an official transcript issued by an accredited college or university shall be submitted to the Board by the student with the initial application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. If the Board determines the course(s) completed is/are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(5) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(i) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(ii) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA or AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 212 hours credited. To qualify for the one (1) to five (5) hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor knowledgeable in tax preparation.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(6) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 1100 hours of work experience earned during at least two (2) of the last five (5) years.

(7) A tax practitioner applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax practitioner for no less than two (2) of the last five (5) years; and

(b) Furnish documented proof of self-employment as a tax practitioner.

(8) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in a tax preparation business within two (2) years prior to the date of application;

(b) The applicant has at least three (3) years experience in a tax preparation business;

(c) The applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(9) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 365 hours of work experience at the rate of one (1) classroom hour of education for five (5) hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one (1) year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(10) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-020-0022

Examination Conduct; Disqualification

(1) Examination Conduct: Examinations shall be conducted in a designated area with restricted access. Approval notification of an applicant's eligibility to take the examination must be issued by the board office prior to scheduling an appointment for examination. Authorization must be provided by the board office or proctoring site before bringing any materials, electronic equipment or devices into the examination area. Applicants shall be required to provide a government issued photographic identification such as a driver's license before being allowed to take the examination.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Taking or attempting to take any unauthorized items, notes, materials or devices into the examination area;

(b) Giving or attempting to give assistance to others in answering questions during the examination;

(c) Receiving or attempting to receive assistance during the examination, including assistance from other individuals, notes, books or devices to answer questions;

(d) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(e) Failing to follow directions relative to the conduct of the examination;

(f) Exhibiting behavior which impedes the normal progress of the examination; and

(g) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. Any candidate who has been disqualified during an exam will need to request in writing approval from the Board to retake the exam. The candidate will be required to reapply by submitting a new exam application, additional examination fees, and a letter requesting approval to retake the exam including an explanation of their actions which resulted in disqualification from the exam. If approved the examination will be scheduled at a date, time and place determined by the Board.

Stat. Auth.: ORS 673.605 - 673.740, 673.990

Stats. Implemented: ORS 673.605 - 673.740, 673.990

Hist.: BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

ADMINISTRATIVE RULES

800-020-0025

Fees

The fees for licenses and registrations issued, renewed, reactivated or otherwise, shall be prescribed by the State Board of Tax Practitioners by rule but shall not exceed the following:

- (1) The fee for application for examination for a tax preparer's license is \$50.
- (2) The fee for application for examination for a tax consultant's license is \$85.
- (3) The fee for issuance of a tax preparer's initial license is \$50.
- (4) The fee for a combination tax preparer's initial license/tax preparation business registration is \$110.
- (5) The fee for renewal for a tax preparer's active license is \$80.
- (6) The fee for issuance or renewal of a tax consultant's active license is \$95.
- (7) The fee for an initial consultant license, if an applicant holds an active preparer's license is \$65.
- (8) The fee for an initial combination consultant license/tax preparation business registration, if an applicant holds an active preparer's license is \$125.
- (9) The fee to place a tax preparer's license in inactive status is \$35.
- (10) The fee to place a tax consultant's license in inactive status is \$50.
- (11) The fee for reactivation of a tax preparer license in inactive status is \$80.
- (12) The fee for reactivation of a tax consultant license in inactive status is \$95.
- (13) The fee to reactivate a tax preparer or tax consultant license in lapsed status is \$35, plus payment of all unpaid renewal fees.
- (14) The fee for a duplicate practitioners license is \$10.
- (15) The fee for a duplicate business registration is \$10.
- (16) The fee for a replacement tax consultant's certificate is \$15.
- (17) The fee for issuance or renewal of a tax preparation business registration is \$110.

(18) As provided by subsection (a) and (b) of this section, the fee for issuance or renewal of a combination tax consultant's or tax preparer's license and tax preparation business registration is \$155:

(a) For Consultants — If postmarked on or before June 15th.

(b) For Preparers — If postmarked on or before October 15th.

- (19) The fee for issuance or renewal of a branch office registration is \$20.
- (20) The nonrefundable processing fee retained for all refunds issued is \$10.

(21) Dishonored Check or Electronic Payment. Pursuant to ORS 30.701, whenever a bank check, credit or debit transaction in payment of an obligation due for fees, penalties, copies of records or materials, or other services to the agency, is dishonored by the bank upon which the check is drawn, the applicant or authorization holder will be assessed and must pay an administrative processing fee in the amount of \$25. The Board may take any other disciplinary action against an authorization holder or payer and may seek other legal remedies in pursuing to effect collection of the returned items. If a check is returned for Non-Sufficient Fund (NSF) or uncollected funds the Board will attempt to collect payment by other means.

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.685

Hist.: TSE 4(Temp), f. & ef. 11-20-75 through 3-19-76; TSE 8, f. & ef. 5-19-76; TSE 14, f. 10-25-77, ef. 11-1-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 1-1987(Temp), f. 6-30-87, ef. 7-1-87; TSE 5-1987, f. & ef. 10-2-87; TSE 7-1987(Temp), f. & ef. 11-17-87; TSE 1-1988, f. & cert. ef. 2-19-88; TSE 4-1990, f. & cert. ef. 5-3-90; TSE 3-1991(Temp), f. 8-14-91, cert. ef. 9-29-91; TSE 5-1991, f. & cert. ef. 10-28-91; TSE 12-1991(Temp), f. & cert. ef. 11-25-91; TSE 3-1992, f. 5-15-92, cert. ef. 6-1-92; TSE 3-1997, f. & cert. ef. 9-4-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administration correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 3-2007, f. 7-30-07, cert. ef. 8-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 2-2011, f. 2-7-11, cert. ef. 7-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-025-0020

Tax Preparation Business Registration

(1) A tax preparation business shall not offer services to the public until the business has:

(a) Complied with applicable laws and rules of the Oregon Corporation Division;

(b) Registered with the Board, on a Board-approved application form, the tax preparation business name, address, telephone number, and e-mail address; the name(s) of the owner(s) of the business; and the name of the

individual(s) responsible under OAR 800-025-0040 for the tax activities of the business; and

(c) Paid the tax preparation business registration fee required under OAR 800-025-0025.

(2) Within 15 business days of a change of name or ownership, a tax preparation business must file a new business registration with the Board and pay a new business registration fee.

(3) A person who offers tax preparation services under more than one tax preparation business name must register each such name as a separate business.

(4) All tax preparation businesses shall comply with State Fire Marshall Address Identification requirements.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 13-1991(Temp), f. & cert. ef. 11-25-91; TSE 14-1991, f. 11-25-91, cert. ef. 1-1-92; TSE 4-1992, f. & cert. ef. 5-15-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

800-025-0027

Eligibility for Combined Business Registration and Tax Consultant/Preparer License

(1) A tax preparation business is not eligible for a combined license and registration under OAR 800-020-0025(15) unless at least one (1) of the owners of the tax preparation business is a Licensed Tax Consultant or Licensed Tax Preparer. As used in this section, "owner" means an individual who owns at least ten (10) percent of the tax preparation business.

(2) A tax preparation business, including a tax preparation business that must file a new registration due to a change of name or ownership, is not eligible for a combined license and registration under OAR 800-020-0025(15) unless the registration submitted is:

(a) A new registration, at the time of application for the owner's tax consultant's or tax preparer's license;

(b) A renewal registration, before the expiration date of the current registration.

(3) A licensee who owns more than one (1) tax preparation business is eligible for only one combined license and business registration under OAR 800-020-0025(17). A licensee must pay the full business registration fee for each additional tax preparation business under OAR 800-020-0025(17).

Stat. Auth.:

Stats. Implemented:

Hist.: TSE 9-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12

Bureau of Labor and Industries Chapter 839

Rule Caption: New and amended rule language to conform to and implement statutes relating to veterans' employment.

Adm. Order No.: BLI 2-2012

Filed with Sec. of State: 2-8-2012

Certified to be Effective: 2-8-12

Notice Publication Date: 10-1-2011

Rules Amended: 839-006-0440, 839-006-0450, 839-006-0455, 839-006-0470, 839-006-0480

Subject: The new rules would implement HB 2241, which expands the definition of "uniformed service" for purpose of employment protections to match federal definitions.

The new rules would implement HB 3207, which requires public employers to interview each veteran who applies for a civil service position or eligibility list and who has obtained through military education or experience skills that substantially relate to the civil service position.

The new rules would implement SB 72, which clarifies the definition of "disabled veteran" for purposes of statutes relating to veterans' preference in public employment.

The new rules would implement SB 277, which clarifies that a veteran or disabled veteran who applies for a vacant civil position or who seeks promotion to a civil service position with a higher maximum salary rate is entitled to veterans' preference.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

ADMINISTRATIVE RULES

839-006-0440

Definitions

(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:

- (a) The Army Reserve;
- (b) The Navy Reserve;
- (c) The Marine Corps Reserve;
- (d) The Air Force Reserve;
- (e) The Coast Guard Reserve;
- (f) The Army National Guard of the United States; and
- (g) The Air National Guard of the United States.

(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowledge, experience and other skills.

(a) A "civil service" position need not be labeled a "civil service position."

(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(5) "Disabled veteran" means a person who has a disability rating from the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(6) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order. Rankings of eligible candidates identified as tiers, bands or other names function as eligibility lists for purposes of these rules.

(7) "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(8) "Promotion" means any position with a higher maximum salary rate.

(9) "Public employer" includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. "Public employer" includes but is not limited to:

- (a) Employers in local governments;
- (b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and
- (c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.

(10) "Transferable skill" means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying.

(11) "Veteran" means a person who:

(A) Served on active duty with the Armed Forces of the United States;

(B) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(C) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(D) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(E) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(F) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(b) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions; or

(c) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs.

(d) For questions regarding military discharge, consult the Oregon Department of Veterans' Affairs website at <http://www.oregon.gov/ODVA/docs/PDFs/Criminal_Justice_Portal/Military_discharge.pdf?ga=1>.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484, OL 2011, Ch 29
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12

839-006-0450

Applying the Employment Preference

A public employer will grant a preference to a person seeking promotion in the manner described at OAR 839-006-0450.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, OL 2011, Ch 484
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12

839-006-0455

Employment Preference for Promotions

A public employer will grant a preference to a person seeking promotion in the manner described at OAR 839-006-0450.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12

839-006-0470

Enforcement

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of ORS 408.230 may file a verified written complaint with the Civil Rights Division in accordance with ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, 659A.820, OL 2011, Ch 484
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12

839-006-0480

Discrimination Based on Uniformed Service

(1) For purposes of this rule:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and

(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in a time of war or national emergency.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) Denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.

(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

- (A) Initial employment;
- (B) Reemployment following a leave from employment taken by reason of service in a uniformed service;
- (C) Retention in employment;
- (D) Promotion; or
- (E) Any other term, condition or privilege of employment, including but not limited to compensation.

(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uni-

ADMINISTRATIVE RULES

formed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.

(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.

(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon Family Military Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370 - 839-009-0460.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.082, OL 2011, Ch 18

Hist.: BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 2-2012, f. & cert. ef. 2-8-12

Rule Caption: Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Adm. Order No.: BLI 3-2012

Filed with Sec. of State: 2-8-2012

Certified to be Effective: 2-8-12

Notice Publication Date: 11-1-2011

Rules Adopted: 839-005-0075, 839-005-0130, 839-005-0135

Rules Amended: 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

Rules Ren. & Amend: 839-005-0033 to 839-005-0125

Subject: The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-005-0075

Exceptions

OL 2010, Ch. 102 does not apply to:

(1) Employers that are federally insured banks or credit unions;

(2) Employers that are required by state or federal law to use individual credit history for employment purposes;

(3) Employees in or applicants for positions responsible for enforcing the criminal laws of this state, including:

(a) A public safety officer who is a member of a law enforcement unit;

(b) A peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, or the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor; or

(c) Employees in positions responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(4)(a) The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(b) The burden of proving the employer's disclosure to the employee rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0125

Discrimination in Retaliation for Opposing Unlawful Practices

(1) This rule interprets ORS 659A.030(1)(f).

(2) An employer will be found to have unlawfully retaliated against an employee if:

(a) The employee has engaged in protected activity by:

(A) Explicitly or implicitly opposing an unlawful practice or what the employee reasonably believed to be an unlawful practice, or

(B) Filing a charge, testifying, or assisting in an investigation, proceeding, or lawsuit under ORS 659A, or attempting to do so;

(b) The employer has subjected the employee to any adverse treatment, in or out of the workplace, that is reasonably likely to deter protected activity, regardless of whether it materially affects the terms, conditions, or privileges of employment; and

(c) There is a causal connection between the protected activity and the adverse treatment.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.030(1)(f)

Hist.: BLI 27-2008, f. 8-5-08, cert. ef. 8-6-08; Renumbered from 839-005-0033, BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0130

Discrimination Against Employees Serving as Jurors

(1) An employer commits an unlawful employment practice under ORS chapter 659A if the employer discharges, threatens to discharge, intimidates or coerces any employee by reason of the employee's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) An employee who alleges a violation of subsection (1) of this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 10.090, OL 2011 c. 118

Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0135

Insurance Coverage for Employees Serving as Jurors

(1) An employer who employs 10 or more persons commits an unlawful employment practice under ORS chapter 659A if:

(a) The employer ceases to provide health, disability, life or other insurance coverage for an employee during times when the employee serves or is scheduled to serve as a juror; and

(b) The employee elected to have coverage continued while the employee served or was scheduled to serve as a juror, and the employee provided notice of that election to the employer in compliance with the employer's policy for notification.

(2) Notwithstanding ORS 652.610(3), if, following an election described in subsection (1) of this section, an employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for the employee that should have been paid by the employer, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. The total amount deducted for insurance under this subsection may not exceed 10 percent of the employee's gross pay each pay period.

(3) Notwithstanding ORS 652.610(3), if the employer pays any part of the costs of providing health, disability, life or other insurance coverage for an employee under subsection (2) of this section, and the employee ceases to work for the employer before the total amount the employer advanced toward the payments is paid, the employer may deduct the remaining amounts from any amounts owed by the employer to the employee or may seek to recover those amounts by any other legal means.

(4) An employee who alleges a violation of this section may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 10.090, OL 2011 c. 118

Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0160

Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, harassment, sexual assault or stalking, to:

(a) Refuse to hire an otherwise qualified individual; or

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(b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion, compensation or any other terms, conditions or privileges of employment.

(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, harassment, sexual assault or stalking.

(3) The Civil Rights Division (“division”) of the Bureau of Labor and Industries enforces ORS 659A.290.

(4) Leave from employment is available for victims of domestic violence, harassment, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, harassment, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.

(5) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.

(6) Definitions for OAR 839-005-0160 to 839-005-0170:

(a) “Victim of domestic violence” means:

(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim’s immediate family.

(b) “Victim of harassment” means an individual against whom harassment has been committed as described in Oregon’s criminal code at ORS 166.065.

(c) “Victim of sexual assault” means:

(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim’s immediate family.

(d) “Victim of Stalking” means:

(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim’s immediate family; or

(C) An individual who has obtained a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.

(e) In no event will an alleged perpetrator of domestic violence, harassment, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.

Stat. Auth.: ORS 659A.805, 659A.270

Stats. Implemented: ORS 659A.290, OL 2011 c. 687

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0170

Reasonable Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, harassment, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(2) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, harassment, sexual assault or stalking.

(3) Undue hardship means a significant difficulty and expense to an employer’s business and includes consideration of the size of the employer’s business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer’s business include, but are not limited to:

(a) The safety accommodation requested and the relative cost to an employer’s business;

(b) The overall financial resources of the employer’s facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer’s facilities;

(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer’s workforce.

(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, harassment, sexual assault, or stalking.

(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer’s request for certification.

(b) Any of the following constitutes sufficient certification:

(A) A copy of a police report indicating that the individual was or is a victim of domestic violence, harassment, sexual assault or stalking.

(B) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking.

(C) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking.

(D) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.290, OL 2011 c. 687

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0325

Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries (“division”) enforces ORS 659A.270 to 659A.285 which require leave for victims of domestic violence, harassment, sexual assault or stalking. These rules implement and interpret ORS 659A.270 to 659A.285.

(2) The division enforces ORS 659A.290, requiring employers to provide safety accommodation for, and prohibiting discrimination or retaliation against, victims of domestic violence, harassment, sexual assault or stalking. The rules implementing and interpreting ORS 659A.290 are found at OAR 839-005-0160 and 839-005-0170.

(3) ORS 659A.190 to 659A.198 provide for leave for crime victims to attend criminal proceedings. The division does not enforce ORS 659A.190 to 659A.198.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0330

Prohibited Discrimination

It is an unlawful employment practice for a covered employer to deny leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee inquires about, applies for, or takes leave as provided under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0340

Definitions

(1) “Covered employer” means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the calendar year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the calendar

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year immediately preceding the year in which an eligible employee takes the leave.

(2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking begins; and

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 calendar days immediately preceding the date the employee takes the leave.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining more than 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the regulations under the Fair Labor Standards Act (See 29 CFR Part 785).

(C) For the purpose of qualifying as an eligible employee, the employee need not perform work solely in the state of Oregon.

(D) Eligibility of employees reemployed following a period of uniformed service:

(i) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under these statutes.

(ii) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking prior to the date uniformed service began, the leave eligibility requirements are considered met.

(b) Is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.

(3) "Dependent" means an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.

(4) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(5) "Health care professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(6) "Immediate family" means spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.

(7) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(8) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(9) "Law enforcement officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

(10) "Minor child," means a biological, adopted, foster or stepchild, or a child with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee's registered domestic partner. The minor child must be under the age of 18.

(11) "Parent or guardian" means a custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent with whom the employee is or was in a relationship of in loco parentis.

(12) "Protective order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Reasonable leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(14) "Victim of domestic violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(15) "Victim of harassment" means an individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065.

(16) "Victims services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

(17) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(18) "Victim of stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(c) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0345

Purposes for Taking Leave

A covered employer must allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or harassment or sexual assault or stalking of the eligible employee or the eligible employee's minor child or dependent.

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(3) To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent. Relocate includes:

(a) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, harassment, sexual assault or stalking;

(b) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, harassment, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0355

Undue Hardship

Undue Hardship means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the eligible employee. Other factors to consider in determining whether granting leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will cause an undue hardship on a covered employer's business include, but are not limited to:

(1) The length of leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking requested and the relative cost to a covered employer's business;

(2) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking were granted;

(3) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;

(4) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0360

Intermittent Leave and Alternate Duty

(1) An eligible employee may take leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking in multiple blocks of time and/or requiring an altered or reduced work schedule.

(2) A covered employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The eligible employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the eligible employee to use intermittent leave or reduced work schedule; and

(d) The transfer is not used to discourage the eligible employee from taking intermittent or reduced work schedule leave, or to create a hardship for the eligible employee.

(3) An eligible employee transferred to an alternate position for the purpose of a reduced work schedule under section (2)(a) through (d) of this rule must be returned to the eligible employee's former position when the eligible employee notifies the employer that the eligible employee is ready to return to the former position.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-009-0362

Notice by Employee

(1) An eligible employee seeking leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will give the covered employer reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible.

(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;

(4) The covered employer may require the eligible employee to provide certification that:

(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); and

(b) The leave taken is for one of the purposes identified in OAR 839-009-0345.

(5) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17).

(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to OAR 839-009-0345(1)(b) and (c) not covered by insurance or other benefit plan.

(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.

(8) The covered employer may provisionally designate an absence as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking until sufficient certification is received, if requested, to make a determination.

(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.

(10) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking, including the fact that the eligible employee has requested or obtained such leave, are confidential and may not be released without the express permission of the eligible employee, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

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839-009-0365

Enforcement and Denial of leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) A covered employer's duties and obligations under ORS 659A.270 to 659A.285 extend to a successor employer as defined in 29 CFR 825.107.

(2) It is an unlawful employment practice for a covered employer to count leave under ORS 659A.270 to 659A.285 against an employee in determining the employee's compliance with attendance policies or to count such leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from leave under ORS 659A.270 to 659A.285 and may not be disqualified from the bonus as a result of taking leave.

(3) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of ORS 659A.270 to 659A.285 or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, OL 2011 c. 687

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

Construction Contractors Board Chapter 812

Rule Caption: Clarify that only CCB approved residential continuing education providers may offer or provide CE courses.

Adm. Order No.: CCB 2-2012(Temp)

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 2-9-12 thru 8-7-12

Notice Publication Date:

Rules Amended: 812-021-0025, 812-021-0030, 812-021-0031

Subject: OAR 812-021-0025, 812-021-0030, and 812-021-0031, are amended to clarify that only CCB approved providers may offer or provide CE courses. Those providers may not use intermediaries, nor may they make payment conditional upon passing or failing the courses.

Rules Coordinator: Catherine Dixon—(503) 934-2185

812-021-0025

Provider Approval, Standards, Fees, Renewal and Withdrawal for Core — Continuing Education for Residential Contractors

(1) The agency will review and approve providers offering core continuing education.

(2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.

(3) Providers seeking approval to offer training in BEST or building codes must submit the following to the agency:

- Name, address and contact information of the provider;
- Business entity type of the provider and, if applicable, the Corporation Division business registry number;
- Description of provider business plan;
- Description of the core subject area(s) provider intends to offer;

and
(e) Such other information or documentation as the agency may request.

(4) Notwithstanding sections (1) through (3) of this rule, a provider offering education on "green" or sustainable building practices that obtained provider approval before January 1, 2011, may continue to offer courses qualifying for mandatory core continuing education until September 30, 2011.

(5) Providers must remit to the agency together with their application:

- A non-refundable fee of \$2,000 if applying to offer BEST;
- A non-refundable fee of \$500 if applying to offer building codes;

or

(c) A non-refundable fee of \$2,500 if applying to offer both BEST and building codes.

(6) To qualify for approval, providers must:

(a) Certify the programs offered meet the minimum standards and content objectives established by the Board;

(b) Employ or contract with educators who have at least two years work experience or two years of education, or any combination of both, in the subject that they instruct;

(c) Be capable of entering and transmitting electronic data to the agency;

(d) Describe a process for prompt resolution of complaints by registrants;

(e) Describe a process for cancellations and refunding registrant payments; and

(f) If applying to offer BEST, provide a surety bond in an amount of \$20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay. The bond must be in the form adopted by the board as the "Continuing Education Provider Surety Bond" dated December 1, 2009.

(7) Only an approved provider may offer or provide training to a contractor or a contractor's employees.

(8) An approved provider may not allow any person not approved by the agency as a provider to offer or provide training or courses of the approved provider.

(9) For purposes of this rule, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of an approved provider in advertising or soliciting the courses.

(10) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(11) Providers must re-submit application and fees required under sections (3) and (5) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

(12) The agency may withdraw approval issued to any provider that violates ORS 701.126 or any rule of the agency.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 8-2009, f. 12-28-09, cert. ef. 1-1-10; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 13-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 2-2012(Temp), f. & cert. ef. 2-9-12 thru 8-7-12

812-021-0030

Core Hours: BEST — Continuing Education for Residential Contractors

(1) Only the agency and providers approved by the agency as BEST providers may offer or provide BEST. For purposes of this section, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of the approved provider in advertising or soliciting the courses.

(2) Only the agency or approved providers may charge contractors for BEST. Approved providers may charge contractors an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 2-2012(Temp), f. & cert. ef. 2-9-12 thru 8-7-12

812-021-0031

Core Hours: Building Codes — Continuing Education for Residential Contractors

(1) Only providers approved by the agency in building codes may offer or provide training in their approved subject area. For purposes of this section, "offer or provide" includes, but is not limited to, assisting the contractor or the contractor's employees in obtaining or completing the courses or acting on behalf of the approved provider in advertising or soliciting the courses.

(2) Only approved providers may charge contractors for building code training. Approved providers may charge contractors an amount determined by the provider.

(3) Notwithstanding sections (1) and (2) of this rule, a provider approved by the agency before January 1, 2011 as qualified to offer training in "green" or sustainable building practices for mandatory core education may:

(a) Offer such training, so long as the course is completed on or before September 30, 2011; and

(b) Charge contractors for such training in an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 13-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 2-2012(Temp), f. & cert. ef. 2-9-12 thru 8-7-12

ADMINISTRATIVE RULES

Department of Administrative Services, Budget and Management Division Chapter 122

Rule Caption: Adopt and Repeal State of Oregon Financing Agreements and State Borrowing Administered by DAS.

Adm. Order No.: BMD 1-2012

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 1-1-2012

Rules Adopted: 122-070-0100, 122-070-0110, 122-070-0120, 122-070-0130, 122-070-0140, 122-070-0150, 122-070-0160, 122-075-0100, 122-075-0110, 122-075-0120, 122-075-0150, 122-075-0160

Rules Repealed: 122-070-0000, 122-070-0010, 122-070-0020, 122-070-0030, 122-070-0040, 122-070-0050, 122-070-0060, 122-070-0065, 122-070-0070, 122-070-0080

Subject: The new rules better organize the administrative rules over financing agreements and state borrowings administered by the Capital Investment Section. The prior administrative rule on State of Oregon financing agreements was repealed.

Adopts rules 122-070-0100 through 122-070-0160 defining a financing agreement under ORS 283.085 - 283.092 and defining the fees that the Capital Investment Section may charge for initiating certain agreements. Financing agreements under this rule include such items as Certificates of Participation; promissory notes; capital leases; or any other agreements for the acquisition of software, and real or personal property through installment payments over multiple biennia.

Adopts rules 122-075-0100 through 122-075-0160 defining certain state borrowing programs under ORS 286A.045; ORS 286A.560 to 286A.585; ORS 286A.710 to 286A.792; and ORS 353.550 to 353.563 for the benefit of State Agencies administered by the Department. Defines the fees that the Capital Investment Section may charge for initiating and administering state borrowing programs. State borrowing programs under this rule include such items as Lottery bonds; credit agreements, notes, warrants, short-term promissory notes, commercial paper or other obligations in anticipation of taxes, grants or other revenues; general obligation bonds for the Oregon Opportunity Program; Oregon Appropriation Bonds; and general obligation bonds for water power, pension liabilities, and seismic rehabilitation projects.

Rules Coordinator: Janet Chambers—(503) 378-5522

122-070-0100

Authority

Only the Director of the Department of Administrative Services is authorized by ORS 283.085 to 283.092 to enter into Financing Agreements to acquire real property or personal property for State Agencies. ORS 184.340 authorizes the Department of Administrative Services, with the approval of the Governor, to make reasonable rules and regulations that are necessary or proper for the administration of the law that the Department is charged with administering.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-070-0110

Definitions

Unless the context indicates otherwise, capitalized terms used in this Chapter 122, Division 70 of the Oregon Administrative Rules shall have the following meanings:

(1) Benefiting Agency refers to a State Agency or a Division of Department of Administrative Services that has direct control of, or responsibility for, an asset that is paid for through a Financing Agreement.

(2) Capital Lease means a lease that:

(a) Meets the criteria for recording as a capital lease as set forth in generally accepted accounting principles or the State Accounting Manual; or

(b) Is for a real property asset being built on state owned land, unless the Director of the Department of Administrative Services exempts the transaction from such classification.

(3) Department means the Department of Administrative Services, Budget and Management Division.

(4) Director means the Director of the Department of Administrative Services.

(5) Finance Manager means the Capital Finance Manager of the Capital Investment Section of the Department of Administrative Services, Budget and Management Division.

(6) Financing Agreement means an agreement authorized under ORS 283.085 to 283.092 that includes:

(a) Certificates of Participation, (together with the related loan agreement), issued by the State Treasurer in a public or private sale;

(b) Promissory notes or other contract undertakings to pay moneys over time that are privately placed with a single or limited group of lenders; or

(c) Any other agreements for the acquisition of real or personal property through installment payments, including Capital Leases and Software Contracts but excluding Qualifying Service Agreements and Operating Leases.

(7) Operating Lease means a lease that meets the criteria for recording as an operating lease as set forth in generally accepted accounting principles or the State Accounting Manual.

(8) Qualifying Service Agreement means an agreement that in substance facilitates the provision of service by a vendor as its primary objective and may allow for use or licensing of proprietary software or hardware to achieve service objectives without transfer of such software or hardware at the end of the agreement.

(9) Software Contract means a lease of software and training and maintenance contracts related to the operation of computing equipment. A software contract does not include:

(a) A term license for the use of software that is terminable without any penalty or with a penalty amount that is de minimus compared to the value of the software at the time of termination; or

(b) "Software as a service" under a contract for vendor services which are provided through the use of a vendor's software.

(10) State Agency or Agency has the meaning given in ORS 291.002.

(11) Tax-advantaged refers to a benefit provided by a governmental authority to the issuer or holder of a bond or other evidence of indebtedness in the form of exemption from taxation, a tax-deferral or a tax credit to the holder of the indebtedness, an interest rate subsidy payment to the issuer, or any other type of financial benefit. Qualification for such treatment generally requires ongoing compliance with various laws and regulations by the issuer.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-070-0120

Budget Requests for Financing Agreements

(1) Any Benefiting Agency intending to acquire real property or personal property, including software, using a Financing Agreement that exceeds \$100,000 and that will create a payment obligation that covers multiple biennia must notify the Finance Manager as a part of the budget preparation process in accordance with the Department's Budget & Legislative Concepts Instructions.

(2) Benefiting Agencies that have identified the need for Financing Agreements during their budget preparation process may receive priority for the Director's approval in the event demand exceeds the available biennial authority or limitation for Financing Agreements.

(3) Benefiting Agencies requesting approval for Financing Agreements will make such request in the form prescribed by the Department.

(4) For State Agencies subject to ORS 276.429, when requesting approval of Financing Agreements to acquire office quarters, such Agencies will provide:

(a) Evidence that the action has received approval from the Legislative Assembly; or

(b) Such information as is requested by the Director so that the planned action can be reported to the legislative review agency established in ORS 291.371 prior to the Director's approval.

(5) For State Agencies not subject to ORS 276.429, requests for approval of Financing Agreements to acquire office quarters shall include evidence that such acquisitions are authorized under the Agency's governing laws, rules or policies.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

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122-070-0130

Approval and Execution of Financing Agreements

(1) The acquisition of any capital asset by a State Agency that is paid through a Financing Agreement must be done in accordance with the procedures established in ORS 283.087 to 283.092 if the principal portion of the agreement exceeds \$100,000.

(2) The acquisition of any software or capital asset may not be divided into parts with each part being less than \$100,000, to avoid the Financing Agreement approval process. The Department will combine each component of a "single project" to determine if the principal amount of the financing for the project exceeds \$100,000. If the principal amount exceeds \$100,000 the financing is subject to ORS 283.087 to 283.092.

(3) A "single project" will be determined to exist if:

(a) A State Agency is acquiring two or more items using separate Financing Agreements when the total principal sum of the Financing Agreements exceeds \$100,000;

(b) The items perform or contribute to the same general function at a particular location or as part of an interdependent system; and

(c) Are proposed to be acquired under a continuing appropriation or within the same biennium.

(4) If the principal amount of the Financing Agreement exceeds \$100,000, it must be executed by the Director. The form of the proposed agreement must be submitted to and approved by the Director at least 14 business days before the expected closing of the financing.

(5) The Director is the only state officer authorized to enter into Financing Agreements under ORS 283.087 to 283.092. The Deputy Director may execute a Financing Agreement in lieu of the Director under ORS 184.335.

(6) In cases of Financing Agreements approved in writing by the State Treasurer, or the Treasurer's designee, and the Director to acquire equipment through the Department of Administrative Services, State Services Division in accordance with the Public Contracting Code, the Director's approval of the terms of a proposed Financing Agreement, with such changes, if any, as are authorized by the Director, will serve as direction to the State Services Division Administrator to execute the Financing Agreement under the Director's authority.

(7) Requests for approval of Financing Agreements will be made in the manner, and on forms as directed by the Department.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-070-0140

Records Creation and Maintenance, and Ongoing Use of Financed Assets

(1) In conjunction with the execution of a Financing Agreement, the Benefiting Agency must enter into a written agreement with the Director outlining the Benefiting Agency's responsibilities related to asset maintenance, recordkeeping and debt repayment. The agreement must include, without limitation, the following terms:

(a) Identification of the source of funds the Benefiting Agency intends to use to repay the Financing Agreement;

(b) A commitment by the Benefiting Agency:

(A) To use its best efforts to seek funds and budget authority each biennium to repay the Financing Agreement so long as it is outstanding;

(B) To inform the Finance Manager in the event available funds expected to be used to repay any Financing Agreement are not appropriated;

(C) That the financed property will be used only by state government and only for authorized government purposes, unless the Benefiting Agency first obtains written consent from the Finance Manager; and

(D) To not to lease, sublease, sell or otherwise encumber any financed property without prior written consent from the Finance Manager.

(2) A Benefiting Agency may not permit the property to be used by anyone except state government for authorized government purposes, lease, sublease, sell or otherwise encumber any property, unless it first obtains written consent from the Finance Manager.

(3) Prior to software or property acquisition or development of capital assets, each Benefiting Agency will certify that all software, property or capital assets paid for through a Financing Agreement are essential to providing the governmental functions that the Benefiting Agency performs and that the property is free and clear of all liens and encumbrances.

(4) Benefiting Agencies must cooperate with the Department and the State Treasurer in their efforts to comply with provisions of the Internal Revenue Code and regulations related to Tax-advantaged Financing Agreements.

(5) Benefiting Agencies must:

(a) Record the appropriate accounting entries for all Financing Agreements related to their project(s) in accordance with generally accepted accounting principles and the State Accounting Manual;

(b) Maintain all records related to asset acquisition or development through a Financing Agreement, and ongoing use of the asset in compliance with state law and provisions of the Internal Revenue Code;

(c) Prepare and file Form 1099 and other tax documents required as a result of payment to vendors or contractors for asset acquisition or development; and

(d) File all forms and take any other required action related to tax matters, including those to ensure ongoing compliance with the Internal Revenue Code, as requested by the Finance Manager for Financing Agreements that are Tax-advantaged borrowings. Costs incurred by the Department related to tax compliance, including but not limited to the fees of bond counsel, financial advisors, Department of Justice counsel, or other experts, will be the responsibility of the Benefiting Agency.

(6) The Department and Benefiting Agency will retain records related to Financing Agreements and projects financed for three (3) years beyond the scheduled final maturity date. The Benefiting Agency must respond promptly to any requests for information from the Department related to a Financing Agreement.

(7) The Department will:

(a) Assist any Benefiting Agency in developing debt service budgets for its outstanding Financing Agreements;

(b) Bill and collect from all Benefiting Agencies their respective portion of debt service relative to each Benefiting Agency's outstanding Certificates of Participation and, if not paid directly by the Benefiting Agency, other Financing Agreements;

(c) Send moneys that are collected from Benefiting Agencies to a trustee for payments due under the Certificates of Participation, or any moneys so collected for other applicable Financing Agreements related to such Benefiting Agencies;

(d) At the direction of the State Treasurer, manage the investments of all Certificates of Participation sale proceeds or debt service funds that are held by a trustee. At the end of each debt service cycle, the earnings from any investment of moneys by a trustee may be credited to the appropriate Benefiting Agency or may be credited against the interest due on outstanding certificates at the next payment date, at the discretion of the Department. When allocating such interest earnings, the Department may take any actions necessary to achieve cost-effective administration, provided such actions do not have a materially adverse impact on any outstanding certificates or the funds or accounts used to pay them; and

(e) After the Certificates of Participation, or other Financing Agreements, for which moneys held by a trustee are completely paid and no longer outstanding, provide to the appropriate Benefiting Agency any remaining moneys, together with interest earnings to be recorded under generally accepted accounting principles.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-070-0150

Management of Proceeds

(1) All proceeds from Financing Agreements must be separately accounted for and held in separately designated accounts in the Oregon State Treasury or with an independent trustee. The Benefiting Agency and the Department shall exchange information to ensure that the proceeds are spent only on lawfully authorized expenditures and, if funded with a Tax-advantaged Financing Agreement, are in compliance with any provision of the Internal Revenue Code and applicable regulations. The Benefiting Agency shall consult with the Department and follow its directives with respect to appropriate accounting and record keeping for such expenditures.

(2) Any reserve account equal to the maximum allowable reserve authorized in the Internal Revenue Code at the time Certifications of Participation are issued will be held by an independent trustee. Interest earnings on the reserve will be used to pay debt service on the certificates, after the payment of any arbitrage earnings payable under the Internal Revenue Code, when due.

(3) The Department will not disburse to a local government or other public body the proceeds of any Financing Agreement(s) entered into for the purposes of infrastructure described in ORS 283.085(4)(a)(B) or (C) until the recipient of the proceeds has entered into an agreement with the State of Oregon that is in form and substance satisfactory to the Director regarding the deposit and expenditure of the proceeds, nature and use of the project(s) to be financed with the proceeds and, if applicable, compliance

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with provisions of the Internal Revenue Code and procedures necessary to maintain the Tax-advantaged status of the Financing Agreement from which the proceeds were derived.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 283.085 - 283.092
Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-070-0160

Charges for Administering Financing Agreements

(1) Administrative Costs:

(a) All costs incurred by the Department and the State Treasurer to administer outstanding Financing Agreements will be charged to the appropriate Benefiting Agency.

(b) Actual charges for fiscal agent services and trustee services for any Financing Agreements will be passed through to the Benefiting Agency.

(c) All other costs incurred by the Department, including bond counsel or other legal fees, to administer outstanding Financing Agreements will be charged to the appropriate Benefiting Agency.

(d) The Capital Investment Section shall charge fees in connection with the services, duties and activities related to issuance and approval of Financing Agreements to the appropriate Benefiting Agency on behalf of the Department.

(2) New issues of Financing Agreements, excluding Certificates of Participation:

(a) Vendor financing or third party financing of equipment acquisitions will be charged a fee of \$1,000.

(b) Owner Financing Agreements providing for the acquisition of real property will be charged a fee of \$2,500.

(c) Third party Financing Agreements provided by private parties to finance real property purchases will be charged a fee of \$5,000.

(d) Any other type of Financing Agreement not specifically addressed in this section will be charged based on a negotiated fee.

(3) Sale of Certificates of Participation:

(a) For a single series sale with a single project, Benefiting Agency will be charged \$26,000.

(b) For a single series sale with more than one project, Benefiting Agency will be charged \$35,000, plus \$2,500 for each project beyond three to a maximum amount of \$50,000. The charge will be prorated among the projects financed based upon the principal amount allocated to each project.

(c) For a multiple series sale with a single project, Benefiting Agency will be charged \$26,000 for the initial series and a fee of \$20,000 per additional series issued.

(d) For a multiple series sale with more than one project, Benefiting Agency will be charged \$35,000 plus \$2,500 for each project beyond three to a maximum amount of \$50,000 for each series. Furthermore, the Benefiting Agency will be charged a fee of \$20,000 per additional series issued. The charges will be prorated among the projects financed based upon the principal amount allocated to each project.

(4) Refunding Sales of Certificates of Participation:

(a) A fee of \$25,000 will be charged for advance refundings of outstanding series per series refunded.

(b) A current refunding will be charged as an additional project under a Sale of Certificates of Participation in section (3) above.

(5) Defeasance of Certificates of Participation: For the economic or legal defeasance of outstanding Certificates of Participation or other Financing Agreements, the Department will charge a fee of \$10,000.

(6) Arbitrage Calculations:

(a) The Benefiting Agency will be charged for the calculation of arbitrage liability for annual statewide financial reporting and for each five year required reporting period.

(b) Each series with a single Benefiting Agency that has unspent proceeds or a reserve funded with proceeds from a Financing Agreement will be charged \$1,000 annually when the Capital Investment Section performs and provides the calculation to the Benefiting Agency of the estimated arbitrage liability.

(c) Each series with multiple Benefiting Agencies that has unspent proceeds or a reserve funded with proceeds from a Financing Agreement will be charged \$500 annually per Benefiting Agency when the Capital Investment Section performs and provides the calculation to the Benefiting Agency of the estimated arbitrage liability.

(d) The Benefiting Agency will reimburse the Department for the actual costs of the services performed when the calculation and documentation is performed by a private contractor under a professional services contract with the Capital Investment Section.

(e) The Benefiting Agency will reimburse the Department for the direct cost of any work performed by bond counsel, Department of Justice counsel or other contractors hired by the Capital Investment Section to provide assistance related to Internal Revenue Code compliance requirements.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 283.085 - 283.092
Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-075-0100

Authority

The Department of Administrative Services is authorized to administer certain state borrowing programs for the benefit of State Agencies including but not limited to the programs described below:

(1) Lottery bond financings authorized by ORS 286A.560 to 286A.585 and 327.700 to 327.711, issued by the State Treasurer with the concurrence of the Director of the Department of Administrative Services.

(2) Credit agreements, notes, warrants, short-term promissory notes, commercial paper or other obligations in anticipation of taxes, grants or other revenues issued by the Oregon State Treasurer and authorized by ORS 286A.045 to 286A.050.

(3) General obligation bonds issued by the State Treasurer for the Oregon Opportunity Program under ORS 353.550 to 353.563 and chapter 921 of Oregon Laws 2001.

(4) Oregon Appropriation Bonds authorized under 2003 Oregon Laws Chapter 11 or subsequent legislation, issued by the State Treasurer with the concurrence of the Director of the Department of Administrative Services.

(5) General obligation bonds for water power, pension liabilities, and seismic rehabilitation projects authorized by ORS 286A.710 to 286A.792.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 286A.045 - 286A.050, 286A.560 - 286A.585, 286A.710 - 286A.792, 353.550 - 353.563; 2001 OL ch. 921, 2003 OL ch. 11
Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-075-0110

Definitions

Unless the context indicates otherwise, capitalized terms used in this Chapter 122, Division 75 of the Oregon Administrative Rules shall have the following meanings:

(1) Benefiting Agency refers to a State Agency or Division of the Department of Administrative Services whose borrowing program is administered by the Department of Administrative Services.

(2) Bonds mean any contractual undertaking or instrument of the State of Oregon to repay borrowed moneys that are administered for another State Agency by the Department of Administrative Services or for which the Department of Administrative Services provides administrative assistance, including but not limited to the borrowings described in OAR 122-075-0100. A Bond does not include financing agreements entered into under ORS 283.085 to 283.092 and division 70 of this chapter.

(3) Department means the Department of Administrative Services, Budget and Management Division.

(4) Director means the Director of the Department of Administrative Services.

(5) Finance Manager means the Capital Finance Manager of the Capital Investment Section of the Department of Administrative Services, Budget and Management Division.

(6) State Agency or Agency means any statewide elected officer, board, commission, department, division, authority or other entity that is within state government as defined in ORS 174.111.

(7) Tax-advantaged refers to a benefit provided by a governmental authority to the issuer or a holder of a bond or other evidence of indebtedness in the form of exemption from taxation, a tax-deferral or a tax credit to the holder of the indebtedness, an interest rate subsidy payment to the issuer, or any other type of financial benefit. Qualification for such treatment generally requires ongoing compliance with various laws and regulations by the issuer.

Stat. Auth.: ORS 184.340
Stats. Implemented: ORS 286A.045 - 286A.050, 286A.560 - 286A.585, 286A.710 - 286A.792, 353.550 - 353.563; 2001 OL ch. 921, 2003 OL ch. 11
Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-075-0120

Budgeting for Department of Administrative Services Administered Bonds

(1) Any Benefiting Agency intending to issue Bonds in the upcoming biennium must notify the Finance Manager as a part of the State Agency budget preparation process in accordance with the Department's Budget & Legislative Concepts Instructions.

(2) The Department will:

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(a) Assist any Benefiting Agency in developing debt service budgets for its outstanding Bonds;

(b) As applicable, bill and collect from all Benefiting Agencies their respective portion of debt service relative to each agency's outstanding Bonds;

(c) Send moneys that are collected from Benefiting Agencies to the trustee or the appropriate paying agent for all payments due under the Bonds related to such Benefiting Agency;

(d) At the direction of the State Treasurer, manage the investments of Bond sale proceeds or debt service funds, if any, that are held by a trustee. The interest earnings from any investment of moneys by a trustee may be credited to the appropriate Benefiting Agency, or against the next installment of principal and interest due on outstanding Bonds of the Benefiting Agency at the next payment date, at the discretion of the Department. When allocating such interest earnings, the department may take any actions necessary to achieve cost-effective administration, provided such actions do not have a materially adverse impact any Bonds or the funds or accounts used to pay them; and

(e) After any Bonds are completely paid and no longer outstanding, provide to the appropriate Benefiting Agency any remaining moneys, together with interest earnings to be recorded under generally accepted accounting principles.

Stat. Auth.: ORS 184.340.

Stats. Implemented: ORS 286A.045 - 286A.050, 286A.560 - 286A.585, 286A.710 -

286A.792, 353.550 - 353.563; 2001 OL ch. 921, 2003 OL ch. 11

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-075-0150

Management of Bond Proceeds

(1) All Bond sale proceeds intended for program purposes will be held in the appropriate funds or accounts designated by ORS chapter 286A at the Oregon State Treasury, or as may be otherwise designated by a trust indenture or other law. The Benefiting Agency and the Department shall exchange information to ensure that Bond sale proceeds are spent only for lawfully authorized purposes and, if derived from Tax-advantaged Bonds, are used in compliance with any provision of the Internal Revenue Code and applicable regulations. The Benefiting Agency shall consult with the Department and follow its directives with respect to appropriate accounting and record keeping for such expenditures.

(2) Any reserve account equal to the maximum allowable reserve authorized in the Internal Revenue Code at the time the Bonds are issued shall be held by an independent trustee or in the appropriate fund or account designated by ORS chapter 286A or other statutes in the Oregon State Treasury. Interest earnings on the reserve shall be used to pay debt service on the related Bonds after the payment of any arbitrage earnings payable under Internal Revenue Code, when due.

Stat. Auth.: ORS 184.340.

Stats. Implemented: ORS 286A.045 - 286A.050, 286A.560 - 286A.585, 286A.710 -

286A.792, 353.550 - 353.563; 2001 OL ch. 921, 2003 OL ch. 11

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

122-075-0160

Charges for Bond Administration

(1) Administrative Costs:

(a) All costs incurred by the Department and the State Treasurer to administer outstanding Bonds will be charged to the appropriate Benefiting Agency.

(b) Actual charges for fiscal agent services and trustee services for any Bonds will be passed through to the Benefiting Agency.

(c) All other costs incurred by the Department, including bond counsel or other legal fees, to administer outstanding Bonds will be charged to the appropriate Benefiting Agency.

(d) The Capital Investment Section shall charge fees in connection with the services, duties and activities related to issuance and approval of Bonds to the appropriate Benefiting Agency on behalf of the Department.

(2) Tax anticipation notes will be charged a fee of \$45,000 to the appropriate Benefiting Agency.

(3) Sale of Bonds:

(a) For a single series sale with a single project, Benefiting Agency will be charged \$26,000.

(b) For a single series sale with more than one project, Benefiting Agency will be charged \$35,000, plus \$2,500 for each project beyond three to a maximum amount of \$50,000. The charge will be prorated among the projects financed based upon the principal amount allocated to each project.

(c) For a multiple series sale with a single project, Benefiting Agency will be charged \$26,000 for the initial series and a fee of \$20,000 per additional series issued.

(d) For a multiple series sale with more than one project, Benefiting Agency will be charged \$35,000 plus \$2,500 for each project beyond three to a maximum amount of \$50,000 for each series. Furthermore, the Benefiting Agency will be charged a fee of \$20,000 per additional series issued. The charges will be prorated among the projects financed based upon the principal amount allocated to each project.

(4) Refunding Sales of Bonds:

(a) A fee of \$25,000 will be charged for advance refundings of outstanding series per series refunded.

(b) A current refunding will be charged as an additional project under a Sale of Bonds in section (3) above.

(5) Defeasance of Bonds: For the economic or legal defeasance of outstanding Bonds, the Department will charge a fee of \$10,000.

(6) Arbitrage Calculations:

(a) The Benefiting Agency will be charged for the calculation of arbitrage liability for annual statewide financial reporting and for each five year required reporting period.

(b) Each series with a single Benefiting Agency that has unspent proceeds or a Bond funded reserve will be charged \$1,000 annually when the Capital Investment Section performs and provides the calculation to the Benefiting Agency of the estimated arbitrage liability.

(c) Each series with multiple Benefiting Agencies that has unspent proceeds or a Bond funded reserve will be charged \$500 annually per Benefiting Agency when the Capital Investment Section performs and provides the calculation to the Benefiting Agency of the estimated arbitrage liability.

(d) The Benefiting Agency will reimburse the Department for the actual costs of the services performed when the calculation and documentation is performed by a private contractor under a professional services contract with the Capital Investment Section.

(e) The Benefiting Agency will reimburse the Department for the direct cost of any work performed by bond counsel, Department of Justice counsel, or other contractors hired by the Capital Investment Section to provide assistance related to Internal Revenue Code compliance requirements.

Stat. Auth.: ORS 184.340.

Stats. Implemented: ORS 286A.045 - 286A.050, 286A.560 - 286A.585, 286A.710 -

286A.792, 353.550 - 353.563; 2001 OL ch. 921, 2003 OL ch. 11

Hist.: BMD 1-2012, f. 1-26-12, cert. ef. 2-1-12

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Department of Agriculture
Chapter 603

Rule Caption: Standard of Identity for Olive Oil.

Adm. Order No.: DOA 3-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 12-1-2011

Rules Adopted: 603-051-0775, 603-051-0777, 603-051-0779, 603-051-0780, 603-051-0785

Subject: Establishes a standard of identity for olive oil and adopts United States Department of Agriculture designations for grades by reference. Implements labeling requirements and prohibits imitation olive oil in Oregon.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-051-0775

Definitions

(1) "Federal Act" means the United States Standards for Grades of Olive Oil and Olive Pomace-Oil adopted by the Agricultural Marketing Service, United States Department of Agriculture effective October 25, 2010.

(2) "Imitation olive oil" means the mixture of any edible oil artificial-ly colored or flavored that resembles olive oil.

(3) "Olive oil" used in this section includes the description of the food item and a type of the food item. When referring to the type of olive oil, a capital letter "T" in parentheses will follow the term "olive oil"; eg: olive oil (T).

(4) "Olive pomace" means the product remaining after the initial mechanical extraction of olive oil from olive tree fruits.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stat. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

ADMINISTRATIVE RULES

603-051-0777

Standards of Identity

(1) The standard of identity for olive oil products are:

(a) "Olive oil" is the oil obtained solely from the fruit of the olive tree (*Olea europaea* L.), to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds and will meet the minimum requirements of Table I in the federal Act.

(A) Types of olive oil are:

- (i) Olive oil (T);
- (ii) Refined Olive Oil.

(b) "Virgin olive oils" are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, including thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation, and filtration and will meet the minimum requirements of Table I in the federal Act. No additives of any kind are permitted.

(A) Types of virgin olive oil are:

- (i) Extra virgin olive oil;
- (ii) Virgin olive oil;

(iii) Lampante virgin olive oil. Lampante virgin olive oil may also be called "Virgin olive oil not fit for human consumption without further processing".

(c) "Olive-pomace oil" is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by synthetic processes and mixture with oils of other kinds and will meet the minimum requirements of Table I in the federal Act. Alpha-tocopherol is permitted to restore natural tocopherol lost in the refining process for refined olive pomace and olive-pomace oil. Maximum level: 200 mg/kg of total alpha-tocopherol is permitted in the final product.

(A) Types of olive-pomace oil are:

- (i) Olive-pomace oil;
- (ii) Refined olive-pomace oil;
- (iii) Crude olive-pomace oil.

(2) For purposes of this section, "ordinary virgin oil" in ORS 616.761 has the same meaning as "lampante virgin olive oil" as defined in the federal Act.

(3) A person may not prepare, mix, blend, or express olive pomace or meats with any bland fixed oil other than olive oil.

(4) A person may not use artificial coloring or flavoring in the manufacture or blending of olive oil or olive-pomace oil.

(5) "Flavored olive oil" is olive oil meeting the standard of identity in section (1) and grade defined in the federal Act that has been mixed with a flavoring or olives that are processed into oil with any fruit, vegetable, nut, seed, or spice and the product resulting from either process contains not less than 90 percent olive oil meeting the standard of identity in section (1) and grade defined in the federal Act.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stat. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0779

Grades of Olive Oil; Adoption of Federal Regulations

The United States Standards for Grades of Olive Oil and Olive Pomace-Oil adopted by the Agricultural Marketing Service, United States Department of Agriculture effective October 25, 2010 are hereby adopted as the standards for the State of Oregon for olive oil and olive pomace-oil grades. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stat. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0780

Labeling Requirements

(1) Only olive oil meeting the standards of identity in OAR 603-051-0777(1)(a)-(b) and grade in the federal Act will be labeled as "olive oil".

(2) Olive oil meeting the standard of identity in OAR 603-051-0777(1) and grade in the federal Act will be labeled with the corresponding U.S. grade and the label will comply with the requirements of ORS 616.205 to 616.385.

(3) The following types of olive oil and olive pomace-oil will be labeled "not for human consumption":

- (a) Lampante virgin olive oil;
- (b) Crude olive-pomace oil

(4) Mixtures or blends of olive oil and other oils may not be labeled as "olive oil".

(5) Olive-pomace oils may not be labeled as "olive oil".

(6) Flavored olive oil will not be labeled as "extra virgin olive oil", will be distinguished from "olive oil" on the principal display panel, and will be labeled for sale as an olive oil that has been flavored in accordance with the provisions of the 2010 version of Title 21, Chapter 1, Part 101 of the Code of Federal Regulations.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stat. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0785

Prohibition of Imitation Olive Oil

A person may not manufacture, produce, process, pack, expose, sell, offer for sale, possess, dispense, supply, or give away imitation olive oil.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stat. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

Rule Caption: Standard of identity for honey.

Adm. Order No.: DOA 4-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 2-9-12

Notice Publication Date: 12-1-2011

Rules Adopted: 603-051-0366

Rules Amended: 603-051-0365, 603-051-0370, 603-051-0375, 603-051-0390, 603-051-0395

Rules Repealed: 603-051-0380, 603-051-0385

Subject: Establishes a standard of identity for honey and adopts United State Department of Agriculture designations for grade and color. Repeals Oregon "Determination of Density" and "Application of Tolerance" standards because these are inconsistent with federal standards. Amends honey requirement to follow modern industry labeling conventions.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-051-0365

Definitions

As used in OAR 603-051-0366 through 603-051-0395, unless otherwise required by the context, the following terms will be construed, respectively, to mean:

(1) "Air bubble" means the small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style.

(2) "Bees" means honey-producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof.

(3) "Comb" means the wax like cellular structure that bees use for retaining their brood or as storage for pollen and honey.

(4) "Crystallize" means the spontaneous solidification of the natural glucose content from solution as the monohydrate.

(5) "Floral source" means the flower from which the bees gather nectar to make honey.

(6) "Food" has the definition provided in ORS 616.205(8).

(7) "Food additive" has the definition provided in ORS 616.205(9).

(8) "Granulate" means the initial formation of crystals in honey.

(9) "Honey" means the natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature.

(10) "Pollen grain" means the granular, dust-like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled

Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled

Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0366

Standard of identity for honey

Honey will meet the following standards:

(1) Honey may not be heated or processed to such an extent that its essential composition is changed or its quality is impaired.

(2) Chemical or biochemical treatments may not be used to influence honey crystallizations.

(3) Honey may not contain more than 21 percent moisture content.

(a) Water may not be added to honey in the course of extraction or packing for sale or resale as honey.

(b) Heather honey may contain up to 23 percent moisture content.

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(4) Honey may not be less than 60g/100g fructose and glucose, combined; the ratio of fructose to glucose will be greater than 0.9.

(5) Honey will not exceed five (5) percent sucrose except for honey from the nectar of the plants:

(a) alfalfa (*Medicago sativa*); citrus spp; false acacia (*Robinia pseudoacacia*); french honeysuckle (*Hedysarum*); menzies banksias (*Banksia menziesii*); red gum (*Eucalyptus camaldulensis*); leatherwood (*Eucalyptus lucida*); and eucyphia milligani which may contain up to 10 percent sucrose; or

(b) lavender (*Lavandula* spp) and borage (*Borago officinalis*) which may contain up to 15 percent sucrose.

(6) Honey may not contain food additives.

(7) Extracted honey may not contain more than .05g/1000g water insoluble solids.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
Hist.: DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0370

Types and styles of honey

(1) “Extracted honey” is honey that has been separated from the comb by centrifugal force, gravity, straining, or other means, and is identified in the following types:

(a) “Liquid honey” is honey free from visible crystals;

(b) “Crystallized honey” is honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey;

(c) “Partially crystallized honey” is honey that is a mixture of liquid honey and crystallized honey.

(2) Extracted honey styles are:

(a)(A) “Filtered” honey is honey of any type defined in these standards having been filtered to the extent that most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed;

(B) Honey will not be filtered to the extent that the filtration removes unnatural chemicals or elemental contaminants.

(b) “Strained” honey is honey of any type defined in these standards having been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles would not normally be removed.

(3) “Comb honey” is the type of honey stored by bees in the cells of freshly built broodless combs and is sold in sealed whole combs or sections of such combs.

(4) “Chunk honey” is the type of honey whereby comb honey is surrounded by extracted honey.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0375

Grades

The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted as the standards for the State of Oregon for extracted honey grades. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0390

Color

The United States Standards for Grades of Extracted Honey adopted by the United States Department of Agriculture effective May 23, 1985 are hereby adopted as the standards for the State of Oregon for extracted honey color. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0395

Labeling Requirements

(1) The name of the food meeting the standard of identity in OAR 603-051-0366 is “honey”.

(2) Honey in a liquid or crystalline state or a mixture of the two will be labeled as “honey”.

(3) Comb honey will be labeled as “comb honey” or “cut comb honey”.

(4) Chunk honey may be labeled as “cut comb in honey”, “honey with comb” or “chunk honey”.

(5) Food containing honey and any flavoring, spice or other ingredient or if honey is processed in such a way that a modification to honey occurs that materially changes the flavor, color, viscosity or other material characteristic of honey, then such foods will be distinguished in the food name from honey by declaration of the food additive modification.

(6) Honey may be designated according to floral source if the honey comes predominantly from that particular source and has the organoleptic, physiochemical and microscopic properties corresponding with that origin. Honey designated according to the honey’s floral source in section (6) will have the common name or the botanical name of the floral source in close proximity or conjoined to the word “honey”.

(7) All labels, containers and food associated with the containers will meet the requirements of ORS 616.205 to 616.385.

Stat. Auth.: ORS 616 & HB 2947 enrolled
Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

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

Rule Caption: Updates adult foster home requirements in the 2010 Oregon Structural Specialty Code.

Adm. Order No.: BCD 1-2012

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 1-1-2012

Rules Amended: 918-460-0015

Subject: This rule amends the construction standards for single-family residences that are used for adult foster care. This amendment aligns the 2010 Oregon Structural Specialty Code with the Department of Human Services statute by deleting the requirement in the code that certain adult foster care residences meet the construction standards for a SR occupancy.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-460-0015

Amendments to the Oregon Structural Specialty Code

The 2010 Oregon Structural Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the 2010 Oregon Structural Specialty Code are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(1) Effective January 1, 2011 the 2010 Oregon Structural Specialty Code is amended by adding Section 1811 Radon Control Methods for Public Buildings and Section 1812 Radon Control Methods for R-2 and R-3 Occupancies.

(a) Radon mitigation provisions in Section 1811 applicable to new public buildings are adopted January 1, 2011 but do not become enforceable until April 1, 2013 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(b) Radon mitigation provisions in Section 1812 applicable to residential buildings identified as Group R-2 or R-3 are adopted January 1, 2011 but do not become enforceable until April 1, 2011 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(2) Effective April 1, 2011 the 2010 Oregon Structural Specialty Code Section 908 “Emergency Alarm Systems” is amended by adding new subsection 908.7 requirements for Carbon Monoxide Alarms.

(3) Effective May 13, 2011, Section 2308.9.3.2 alternate braced wall panel adjacent to a door or window opening is amended for tie-down devices.

(4) On November 1, 2011, the 2010 Oregon Structural Specialty Code is amended to include revisions to the federal regulations for Title II and Title III of the Americans with Disabilities Act, and Oregon-specific amendments. These amendments are not enforceable until March 1, 2012. The amendments include:

(a) Replace Chapter 11 with Chapter 11 from the 2009 edition of the International Building Code (IBC), as amended to include Oregon-specific amendments;

(b) Amend Chapter 9 by adding 2009 IBC Table 907.5.2.3.3, Visible Alarms;

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(c) Amend Chapter 10 by adding 2009 IBC Section 1007, Accessible Means of Egress;

(d) Amend Chapter 34 by adding 2009 IBC Section 3411, Accessibility for Existing Buildings;

(e) Amend Chapter 11 by adding Section 1111, accessibility standards for clustered mailboxes;

(f) Add as referenced standards American National Standards Institute (ANSI) Standard 117.1, 2003 Edition, Sections 101-106, 201-203, 301-309, 401-406.11, 406.13, 406.14, 501-506, 601-611, 701-708, 801-807, 901-904, and 1001-1005.

(5) Effective January 1, 2012, the 2010 Oregon Structural Specialty Code is amended as follows:

(a) Fire Sprinklers. The reference in Chapter 35 to NFPA 13-07, Installation of Sprinkler Systems, is deleted and replaced with NFPA 13-10, Installation of Sprinkler Systems.

(b) Fire Sprinklers. The reference in Chapter 35 to NFPA 13D-07, Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, is deleted and replaced with 13D-10, Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(c) Fire Sprinklers. The reference in Chapter 35 to NFPA 13R-07 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height is deleted and replaced with 13R-10 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(d) Fire Alarms. The reference in Chapter 35 to NFPA 72-07, National Fire Alarm Code, is deleted and replaced with 72-10, National Fire Alarm and Signaling Code.

(6) Effective February 1, 2012 the 2010 Oregon Structural Specialty Code is amended for adult foster homes. The requirement in Section 310.1 that adult foster care homes for five or less persons whose occupants may require assisted self-preservation are classified as a Group SR-3 occupancy is deleted.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110, 455.112 & 2011 OL Ch. 488, Sec. 5
Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 9-2008(Temp), f. & cert. ef. 6-25-08 thru 12-22-08; BCD 20-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 19-2010, f. 12-30-10, cert. ef. 1-1-11; BCD 1-2011, f. & cert. ef. 2-15-11; BCD 14-2011(Temp), f. & cert. ef. 5-13-11 thru 11-9-11; BCD 28-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 30-2011, f. & cert. ef. 11-1-11; BCD 32-2011, f. 12-30-11, cert. ef. 1-1-12; BCD 1-2012, f. 1-31-12, cert. ef. 2-1-12

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2011.

Adm. Order No.: ID 2-2012

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12

Notice Publication Date: 12-1-2011

Rules Amended: 836-011-0000

Subject: This rulemaking proscribes, for reporting year 2011, the required forms for the annual and supplemental financial statements required of insurers, multiple employer welfare arrangements and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

The proposed amendments to the rule also add information about how to inspect the instructions and forms necessary to complete the annual financial statements.

Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0000

Annual Statement Blank and Instructions

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor and multiple employer welfare arrangement, shall file its financial statement required by ORS 731.574 for the 2011 reporting year on the annual statement blank approved for the 2011 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule for the 2011 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement for the 2011 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) The applicable instructions published by the National Association of Insurance Commissioners referred to in this rule are available for inspection at the Insurance Division of the Department of Consumer and Business Services. Any person interested in inspecting those instructions should contact the Insurance Division using the contact information provided on the Insurance Division website at: <http://www.cbs.state.or.us/ins/Contactus.html>.

(5) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210

Stats. Implemented: ORS 731.574 & 733.210

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16-1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06; ID 9-2007, f. & cert. ef. 11-8-07; ID 1-2009, f. & cert. ef. 1-29-09; ID 11-2009, f. & cert. ef. 12-9-09; ID 22-2010, f. 12-30-10, cert. ef. 1-1-11; ID 2-2012, f. & cert. ef. 2-7-12

Rule Caption: Prompt Pay Requirements and Internal and External Review Procedures for Long Term Care Insurance.

Adm. Order No.: ID 3-2012

Filed with Sec. of State: 2-14-2012

Certified to be Effective: 2-14-12

Notice Publication Date: 11-1-2011

Rules Adopted: 836-052-0768, 836-052-0770

Rules Amended: 836-052-0508

Subject: These rules implement chapter 69, Oregon Laws 2011 (Enrolled Senate Bill 88), which took effect May 19, 2011. The rules establish an internal and external appeals process for determinations related to benefit triggers and implement prompt pay requirements. The rules are modeled after the National Association of Insurance Commissioners' Model Regulation #641, Long Term Care Insurance Model Regulations. The rules apply to long term care policies issued or renewed after July 1, 2012.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-0508

Definitions

For the purpose of OAR 836-052-0500 to 836-052-0790:

(1) The following have the meanings given those terms in ORS 743.652:

- (a) "Applicant;"
- (b) "Benefit trigger;"
- (c) "Certificate;"
- (d) "Group long term care insurance;"
- (e) "Long term care insurance;"
- (f) "Policy;" and
- (g) "Qualified long term care insurance."

(2) The following definitions apply:

(a) "Independent review organization" means an organization qualified under OAR 836-052-0768(5) that conducts independent reviews of long term care benefit trigger decisions.

(b) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.

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(c) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(d) "Similar policy forms" means all of the long term care insurance policies and certificates issued by an insurer in the same long term care benefit classification as the policy form being considered. Certificates of groups that meet the definition of ORS 743.652(3)(a) are not considered similar to certificates or policies otherwise issued as long term care insurance, but are similar to other comparable certificates with the same long term care benefit classifications.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.685 & 746.240, OL 2007 Ch. 9, 9a

Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656

Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08; ID 3-2012, f. & cert. ef. 2-14-12

836-052-0768

Appealing An Insurer's Determination That The Benefit Trigger Is Not Met

(1) For purposes of this rule, "authorized representative" means a person who is authorized to act as the covered person's personal representative within the meaning of 45 CFR 164.502(g) promulgated by the Secretary of the Department of Health and Human Services under the administrative simplification provisions of the Health Insurance Portability and Accountability Act. "Authorized representative" includes the following:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

(2) If an insurer determines that the benefit trigger of a long term care insurance policy has not been met, the insurer shall provide a clear, written notice to the insured and the insured's authorized representative, if applicable, of all of the following:

(a) The reason that the insurer determined that the insured's benefit trigger has not been met;

(b) The insured's right to internal appeal in accordance with section (3) of this rule, and the right to submit new or additional information relating to the benefit trigger denial with the appeal request; and

(c) The insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination reviewed under the independent review process in accordance with section (4) of this rule.

(3) The insured or the insured's authorized representative may appeal the insurer's adverse benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within 120 calendar days after the insured and the insured's authorized representative, if applicable, receives the insurer's benefit determination notice. The internal appeal shall be considered by an individual or group of individuals designated by the insurer, but the individual or individuals making the internal appeal decision may not be the same individual or group of individuals who made the initial benefit determination. The internal appeal shall be completed and written notice of the internal appeal decision shall be sent to the insured and the insured's authorized representative, if applicable, within 30 calendar days after the insurer receives all necessary information upon which a final determination can be made.

(a) If the insurer's original determination is upheld upon internal appeal, the notice of the internal appeal decision shall describe any additional internal appeal rights offered by the insurer. Nothing in this rule shall require the insurer to offer any internal appeal rights other than those described in this subsection.

(b) If the insurer's original determination is upheld after the internal appeal process has been exhausted, and new or additional information has not been provided to the insurer, the insurer shall provide a written description of the insured's right to request an independent review of the benefit determination as described in section (4) of this rule to the insured and the insured's authorized representative, if applicable.

(c) As part of the written description of the insured's right to request an independent review, an insurer shall include the following, or substantially equivalent, language: "We have determined that the benefit eligibility criteria ("benefit trigger") of your [policy] [certificate] has not been met. You may have the right to an independent review of our decision conducted by long term care professionals who are not associated with us. Please send a written request for independent review to us at [address]. You must inform us, in writing, of your election to have this decision reviewed within 120 days after you receive this letter. Listed below are the names and contact information of the independent review organizations approved or

certified by the Department of Consumer and Business Services to conduct long term care insurance benefit eligibility reviews. If you wish to request an independent review, please choose one of the listed organizations and include its name with your request for independent review. If you elect independent review, but do not choose an independent review organization with your request, we will choose one of the independent review organizations for you and refer the request for independent review to it."

(d) If the insurer does not believe the benefit trigger decision is eligible for independent review, the insurer shall inform the insured and the insured's authorized representative, if applicable, and the director of the Department of Consumer and Business Services in writing and include in the notice the reasons for its determination of independent review ineligibility.

(e) The appeal process described in section (3) of this rule is not deemed to be a 'new service or provider' as referenced in OAR 836-052-0738, and therefore does not trigger the notice requirements of that rule.

(4)(a) The insured or the insured's authorized representative may request an independent review of the insurer's benefit trigger determination after the internal appeal process outlined in section (3) of this rule is exhausted. A written request for independent review may be made by the insured or the insured's authorized representative to the insurer within 120 calendar days after the insurer's written notice of the final internal appeal decision is received by the insured and the insured's authorized representative, if applicable.

(b) The cost of the independent review shall be borne by the insurer.

(c) An independent review process shall comply with all of these procedures:

(A) Within five business days after receiving a written request for independent review, the insurer shall refer the request to the independent review organization that the insured or the insured's authorized representative has chosen from the list of certified or approved organizations the insurer has provided to the insured. If the insured or the insured's authorized representative does not choose an approved independent review organization to perform the review, the insurer shall choose an independent review organization approved or certified by the state. The insurer shall vary its selection of authorized independent review organizations on a rotating basis.

(B) The insurer shall refer the request for independent review of a benefit trigger determination to an independent review organization, subject to the following:

(i) The independent review organization shall be on a list of certified or approved independent review organizations that satisfy the requirements of a qualified long term care insurance independent review organization contained in this section;

(ii) The independent review organization may not have any conflicts of interest with the insured, the insured's authorized representative, if applicable, or the insurer; and

(iii) The independent review shall be limited to the information or documentation provided to and considered by the insurer in making its determination, including any information or documentation considered as part of the internal appeal process.

(C) If the insured or the insured's authorized representative has new or additional information not previously provided to the insurer, whether submitted to the insurer or the independent review organization, the information shall first be considered in the internal review process, as set forth in section (3) of this rule.

(i) While the insurer is reviewing the new or additional information, the independent review organization shall suspend its review and the time period for review is suspended until the insurer completes its review.

(ii) The insurer must complete its review of the information and provide written notice of the results of the review to the insured and the insured's authorized representative, if applicable, and the independent review organization within five business days of the insurer's receipt of such new or additional information.

(iii) If the insurer maintains its denial after the review of the new or additional information not previously provided to the insurer, the independent review organization shall continue its review, and render its decision within the time period specified in paragraph (I) of this subsection. If the insurer overturns its decision following its review, the independent review request shall be considered withdrawn.

(D) The insurer shall acknowledge in writing to the insured and the insured's authorized representative, if applicable, and the director that the request for independent review has been received, accepted and forwarded to an independent review organization for review. The notice must include the name and address of the independent review organization.

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(E) Within five business days after receipt of the request for independent review, the independent review organization assigned under this subsection shall notify the insured and the insured's authorized representative, if applicable, the insurer and the director that it has accepted the independent review request and identify the type of licensed health care professional assigned to the review. The assigned independent review organization shall include in the notice a statement that the insured or the insured's authorized representative may submit in writing to the independent review organization within seven days following the date of receipt of the notice additional information and supporting documentation that the independent review organization should consider when conducting its review.

(F) The independent review organization shall review all of the information and documents received pursuant to paragraph (E) of this subsection that has been provided to the independent review organization. The independent review organization shall provide copies of any documentation or information provided by the insured or the insured's authorized representative to the insurer for its review, if it is not part of the information or documentation submitted by the insurer to the independent review organization. The insurer shall review the information and provide its analysis of the new information in accordance with subparagraph (H) of this paragraph.

(G) The insured or the insured's authorized representative may submit, at any time, new or additional information not previously provided to the insurer but pertinent to the benefit trigger denial. The insurer shall consider such information and affirm or overturn its benefit trigger determination. If the insurer affirms its benefit trigger determination, the insurer shall promptly provide such new or additional information to the independent review organization for its review, along with the insurer's analysis of such information.

(H) If the insurer overturns its benefit trigger determination:

(i) The insurer shall provide notice to the independent review organization and the insured and the insured's authorized representative, if applicable, and the director of its decision; and

(ii) The independent review process shall immediately cease.

(I) The independent review organization shall provide the insured and the insured's authorized representative, if applicable, the insurer and the director a written notice of its decision, within 30 calendar days after the independent review organization receives the referral referenced in subsection (C)(B) of this section. If the independent review organization overturns the insurer's decision, it shall:

(i) Establish the precise date within the specific period of time under review that the benefit trigger was deemed to have been met;

(ii) Specify the specific period of time under review for which the insurer declined eligibility, but during which the independent review organization deemed the benefit trigger to have been met; and

(iii) For tax-qualified long term care insurance contracts, provide a certification (made only by a licensed health care practitioner as defined in section 7702B(c)(4) of the Internal Revenue Code) that the insured is a chronically ill individual.

(J) The decision of the independent review organization with respect to whether the insured met the benefit trigger will be final and binding on the insurer.

(K) The independent review organization's determination shall be used solely to establish liability for benefit trigger decisions, and is intended to be admissible in any proceeding only to the extent it establishes the eligibility of benefits payable.

(L) Nothing in this section shall restrict the insured's right to submit a new request for benefit trigger determination after the independent review decision, should the independent review organization uphold the insurer's decision.

(M) The independent review organization must satisfy the criteria set forth in Exhibit 1, Guidelines for Long term Care Independent Review Entities, in order to be certified or approved by the department to review long term care insurance benefit trigger decisions.

(N) The director shall maintain and periodically update a list of approved independent review organizations.

(5) Certification of Long term Care Insurance Independent Review Organizations. The director may certify or approve a qualified long term care insurance independent review organization, if the independent review organization demonstrates to the satisfaction of the director that it is unbiased and meets the following qualifications:

(a) Have on staff, or contract with, a qualified and licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment (e.g. physical therapy, occupational therapy, neurology, physical medicine and rehabilitation) to conduct the review.

(b) Neither the organization nor any of its licensed health care professionals may, in any manner, be related to or affiliated with an entity that previously provided medical care to the insured.

(c) Utilize a licensed health care professional who is not an employee of the insurer or related in any manner to the insured.

(d) Neither it nor its licensed health care professional who conducts the reviews may receive compensation of any type that is dependent on the outcome of the review.

(e) Be state approved or certified to conduct such reviews if the state requires such approvals or certifications.

(f) Provide a description of the fees to be charged by it for independent reviews of a long term care insurance benefit trigger decision. Such fees shall be reasonable and customary for the type of long term care insurance benefit trigger decision under review.

(g) Provide the name of the medical director or health care professional responsible for the supervision and oversight of the independent review procedure.

(h) Have on staff or contract with a licensed health care practitioner, as defined by section 7702B(c)(4) of the Internal Revenue Code of 1986, as amended, who is qualified to certify that an individual is chronically ill for purposes of a qualified long term care insurance contract.

(6) Each certified independent review organization shall comply with the following:

(a) Maintain written documentation establishing the date it receives a request for independent review, the date each review is conducted, the resolution, the date such resolution was communicated to the insurer and the insured, the name and professional status of the reviewer conducting such review in an easily accessible and retrievable format for the year in which it received the information, plus two calendar years.

(b) Be able to document measures taken to appropriately safeguard the confidentiality of such records and prevent unauthorized use and disclosures in accordance with applicable federal and state law.

(c) Report annually to the director, by June 1, in the aggregate and for each long term care insurer all of the following:

(A) The total number of requests received for independent review of long term care benefit trigger decisions;

(B) The total number of reviews conducted and the resolution of such reviews (i.e., the number of reviews which upheld or overturned the long term care insurer's determination that the benefit trigger was not met);

(C) The number of reviews withdrawn prior to review;

(D) The percentage of reviews conducted within the prescribed timeframe set forth in subsection (4)(c)(I) of this rule; and

(E) Such other information the director may require.

(d) Report immediately to the director any change in its status which would cause it to cease meeting any of the qualifications required of an independent review organization performing independent reviews of long term care benefit trigger decisions.

(7) Nothing contained in this rule shall limit the ability of an insurer to assert any rights an insurer may have under the policy related to:

(a) An insured's misrepresentation;

(b) Changes in the insured's benefit eligibility; and

(c) Terms, conditions, and exclusions of the policy, other than failure to meet the benefit trigger.

(8) The requirements of this rule apply to a benefit trigger request made on or after July 1, 2012 under a long term care insurance policy issued or renewed after July 1, 2012.

(9) The provisions of this rule supersede any other external review requirements found in ORS 743.857, 743.858, 743.859, 743.861, 743.862, 743.863 and 743.864.

Stat. Auth.: ORS 731.244, 743.655 & 2011 OL Ch. 69, Sec. 5 (Enrolled SB 88)

Stats. Implemented: ORS 743.655 & 2011 OL Ch. 69, Sec. 5 (Enrolled SB 88)

Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08; ID 3-2012, f. & cert. ef. 2-14-12

836-052-0770

Prompt Payment of Clean Claims

(1) For purposes of this rule:

(a) "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(b) "Clean claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim.

(2) Within 30 business days after receipt of a claim for benefits under a long term care insurance policy or certificate, an insurer shall pay the

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claim if it is a clean claim, or send a written notice acknowledging the date of receipt of the claim and one of the following:

(a) The insurer is declining to pay all or part of the claim and the specific reason for denial; or

(b) That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.

(3) Within 30 business days after receipt of all the requested additional information, an insurer shall pay a claim for benefits under a long term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason for denial.

(4) If an insurer fails to comply with section (2) or (3) of this rule, such insurer shall pay interest at the rate of 1% per month on the amount of the claim that should have been paid but that remains unpaid 45 business days after the receipt of the claim with respect to section (2) of this rule or all requested additional information with respect to section (3) of this rule. The interest payable under this section shall be included in any late reimbursement without requiring the person who filed the original claim to make any additional claim for the interest.

(5) The provisions of this rule shall not apply where the insurer has a reasonable basis supported by specific information that a claim was fraudulently submitted.

(6) Any violation of this rule by an insurer if committed flagrantly and in conscious disregard of the provisions of this rule or with such frequency as to constitute a general business practice shall be considered a violation of the ORS 746.230.

(7) The requirements of this rule apply to a long term care insurance policy issued or renewed after July 1, 2012.

(8) The provisions of this rule supersede any other claim payment requirement found in ORS 746.230.

Stat. Auth.: ORS 731.244, 743.655 & 2011 OL Ch. 69, Sec. 2 (Enrolled SB 88)
Stats. Implemented: ORS 743.655 & 2011 OL Ch. 69, Sec. 2 (Enrolled SB 88)
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08; ID 3-2012, f. & cert. ef. 2-14-12

Department of Corrections Chapter 291

Rule Caption: Community Corrections Programs (Financial Reports).

Adm. Order No.: DOC 2-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 9-1-2011

Rules Amended: 291-031-0025

Subject: This modification is a housekeeping item and necessary to update the rule since counties provide financial reports electronically rather than hard copy.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-031-0025

Supervision Fees and Financial Records

(1) Supervision fees collected pursuant to ORS 423.570 must be used for community corrections purposes as outlined in the approved local community corrections plan.

(2) Department of Corrections Funds:

(a) The department shall prepare and distribute to the counties written instructions regarding budget, allotment, and fiscal reporting requirements. Each county shall adhere to the department's budget, allocation, and fiscal reporting requirements.

(b) Reallocation of funds in a county approved plan and budget, within or between budget categories, requires a budget update and the prior notification of the Director or designee.

(c) Proposed fund transfers shall be submitted and processed on forms required by the Department of Corrections.

(d) Each county shall make available to the Department of Corrections the county's annual financial statement and that portion of the county's annual audit that addresses the community corrections program.

(e) Within 120 days following the end of the state's biennial budget period, each county shall submit a closing financial report for the biennium. Any state general funds not expended within the biennial period will be identified. A budget update will be submitted to the Department of Corrections showing how those funds will be expended for community corrections purposed in the next biennium.

(f) If a county ceases to participate, the department may recover title to any transferred property that remains in use at such time. The department shall assume title to any equipment, furnishings, vehicles or property purchased with state funds for the purpose of providing parole and probation services in the county.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075, 423.478, 423.483, 423.525 & 423.530
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 423.478, 423.483, 423.500 - 423.560

Hist.: CD 48(Temp), f. 12-28-77, ef. 12-29-77; CD 7-1978, f. 2-24-78, ef. 2-27-78; Renumbered from 291-010-0670, CD 27-1980, f. & ef. 7-28-80; CD 4-1982(Temp), f. & ef. 1-29-82; CD 23-1982, f. & ef. 7-28-82; CD 42-1985, f. & ef. 8-16-85; CD 46-1986(Temp), f. 10-21-86, ef. 11-30-86; CD 3-1987, f. & ef. 1-5-87; CD 12-1990, f. & cert. ef. 6-28-90; CD 17-1992, f. 8-12-92, cert. ef. 8-20-92; CD 7-1995, f. 4-24-95, cert. ef. 5-1-95; DOC 5-1998, f. 3-26-98, cert. ef. 4-1-98; DOC 7-2001, f. 2-28-01, cert. ef. 3-1-01; DOC 1-2002, f. & cert. ef. 1-10-02; DOC 2-2012, f. & cert. ef. 1-27-12

Rule Caption: Reimbursement to Counties for Costs of Incarcerating Persons Sentenced for DUII.

Adm. Order No.: DOC 3-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 11-1-2011

Rules Adopted: 291-208-0010, 291-208-0020, 291-208-0030, 291-208-0040, 291-208-0050

Subject: These rules are necessary to establish the manner in which a county may submit a claim to the Department of Corrections for reimbursement for incarceration costs of persons who committed the crime of Felony Driving Under the Influence of Intoxicants. These rules implement 2011 legislation, SB 598.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-208-0010

Authority, Purpose, Policy, and Applicability

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with 2011 Or Laws, ch 598, ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to prescribe the manner in which a county may submit a claim to the Department of Corrections for reimbursement for the costs of incarcerating persons sentenced under section 3, chapter 1, Oregon Laws 2011, as authorized in 2011 Or Laws, ch 598, including the costs of pretrial incarceration.

(3) Policy:

(a) It is the policy of the Department of Corrections to reimburse counties for the costs of incarcerating persons sentenced under section 3, chapter 1, Oregon Laws 2011, as authorized in 2011 Or Laws, ch 598 including the costs of pretrial incarceration, in accordance with these rules from moneys appropriated to the Department of Corrections for this purpose.

(b) Applicability: Reimbursement to counties for the costs of incarcerating offenders under these rules is limited to incarceration costs for offenders who committed the crime of Felony Driving Under the Influence of Intoxicants on or after December 2, 2010.

Stat Auth.: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Hist.: DOC 17-2011(Temp), f. & cert. ef. 9-9-11 thru 3-7-12; DOC 3-2012, f. & cert. ef. 1-27-12

291-208-0020

Definitions

(1) Incarceration: For the purposes of these rules, incarceration means confinement in a local correctional facility. This does not include confinement in an alternative form of incarceration, including but not limited to work release, work crew, home detention, or day reporting.

(2) Local Correctional Facility: For the purposes of these rules, a local correctional facility means a local or regional jail for the reception and confinement of prisoners that is provided, maintained, and operated by a county or city and holds persons for more than 36 hours.

(3) Qualifying sentence: For purposes of these rules a qualifying sentence means any sentence imposed for a conviction for Felony Driving Under the Influence of Intoxicants committed on or after December 2, 2010.

(4) Offender: For purposes of this rule, an offender means a person who is sentenced to serve a qualifying sentence.

Stat Auth.: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Hist.: DOC 17-2011(Temp), f. & cert. ef. 9-9-11 thru 3-7-12; DOC 3-2012, f. & cert. ef. 1-27-12

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Hist.: DOC 17-2011(Temp), f. & cert. ef. 9-9-11 thru 3-7-12; DOC 3-2012, f. & cert. ef. 1-27-12

291-208-0030

Reimbursement Process

(1) A county or group of counties requesting reimbursement from the Department of Corrections under these rules must submit an invoice to the Director of the Department of Corrections or designee on a quarterly basis. The invoice shall be on a form developed by the Department of Corrections and made available to counties by the department for this purpose on the department's website. In order to receive reimbursement invoices must be received by the Director or designee not later than 45 days after the end of the billing period for which the county or group of counties is requesting reimbursement, unless the Director or designee has granted an extension of time for submission/receipt of the invoice.

(2) In order for a county to receive reimbursement for the costs of incarcerating an offender under these rules, the offender must have:

(a) Completed their qualifying sentence during the quarter for which the invoice is submitted; or,

(b) Been transferred to a state correctional facility to serve the balance of their qualifying sentence during the quarter for which the invoice is submitted; or,

(c) Been transferred to another county's local correctional facility to continue or complete the term of incarceration; or

(d) Been released from incarceration due to a federal court order.

(3) Incarceration for probation or post-prison supervision sanctions or revocations is not subject to reimbursement under this rule.

(4) Reimbursement will be made for each day or portion of each day served in a local correctional facility for a qualifying sentence.

(5) If an offender serves a qualifying sentence in multiple counties, each county may submit an invoice for reimbursement for the numbers of days actually incarcerated in a local correctional facility in their county.

(6) Invoices may be submitted by a county or a group of counties.

(7) The invoice and supporting documents will include at a minimum the following information and documentation:

(a) Offender's name;

(b) Offender's State Identification Number (SID), if assigned;

(c) A certified copy of the Statement of Imprisonment, which certifies the dates the offender was actually incarcerated in a local correctional facility, including pre-trial incarceration, for the qualifying sentence;

(d) A copy of the court's judgment order imposing the qualifying sentence; and

(e) The sentence completion date.

(8) Upon receipt of an invoice and the supporting documents described in subsection (7) of this section, the Director or designee will review and approve the invoice and determine the correct amount of reimbursement. Once the invoice is approved and the correct amount of the reimbursement is determined, the Director or designee will forward the invoice to the department's Accounting unit for payment.

Stat Auth.: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Hist.: DOC 17-2011(Temp), f. & cert. ef. 9-9-11 thru 3-7-12; DOC 3-2012, f. & cert. ef. 1-27-12

291-208-0040

Rate of Reimbursement

(1) Reimbursement to counties from the Department of Corrections for the costs of incarcerating an offender under these rules will be calculated using the rate at which the department provides funds to counties under ORS 423.530 for persons sentenced to 12 months or less of incarceration.

(2) The rate of reimbursement shall be established by the Department of Corrections each biennium.

Stat Auth.: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Hist.: DOC 17-2011(Temp), f. & cert. ef. 9-9-11 thru 3-7-12; DOC 3-2012, f. & cert. ef. 1-27-12

291-208-0050

Limits of Reimbursement

(1) In no case shall reimbursement to a county for the costs of incarcerating an offender exceed the number of days of incarceration ordered by the court.

(2) The total amount of funds paid by the Department of Corrections as reimbursement to counties for incarceration costs under these rules in a biennium will not exceed the amount of funds appropriated to the Department of Corrections for this purpose.

(3) Reimbursements made to counties under these rules are subject to audit by the Department of Corrections.

Stat Auth.: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075, 813.012 & 2011 OL Ch. 598

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Department of Energy
Chapter 330

Rule Caption: Implements new incentive program created by HB 3672 for alternative fuel vehicle infrastructure projects.

Adm. Order No.: DOE 2-2012(Temp)

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12 thru 8-3-12

Notice Publication Date:

Rules Adopted: 330-220-0000, 330-220-0010, 330-220-0020, 330-220-0030, 330-220-0040, 330-220-0050, 330-220-0070, 330-220-0080, 330-220-0090, 330-220-0100, 330-220-0150

Subject: House Bill 3672 (2011) created a new alternative fuel vehicle infrastructure incentive program within the Department of Energy. These rules provide the operating framework for the program, including application process, prioritization of applicants within funding limits, issuance of tax credits, pass-through and compliance activities.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-220-0000

Applicability of Rules in OAR 330, division 220

These rules implement the incentive program for alternative fuel vehicle infrastructure projects established in ORS 315.336 and ORS 469B.320 to 469B.347. The rules also provide procedures for submission, agency review and selection of alternative fuel vehicle infrastructure projects for preliminary and final certification of tax credits.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) "Acquisition" means installation or construction of an alternative fuel vehicle infrastructure project.

(2) "Alternative Fuel" means 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, compressed natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel, butanol 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 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.

(3) "Alternative fuel vehicle infrastructure project" has the meaning given in ORS 469B.320.

(4) "Applicant" means a person who has applied for or who has received a preliminary certificate for a transportation energy incentive program tax credit.

(5) "Certified cost" means the cost certified in the final certification.

(6) "Cost" means the capital expenditures to acquire, erect, design, build, convert, or install an alternative fuel vehicle infrastructure project.

(7) "Department" means the Oregon Department of Energy.

(8) "Director" means the director of the department.

(9) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for alternative fuel vehicle infrastructure projects.

(10) "Qualifying project cost" means the amount of the alternative fuel vehicle infrastructure project's cost that may be eligible for tax credits.

(11) "Substantial Energy Savings" means the amount of petroleum gasoline or diesel fuel displaced by use of an alternative fuel.

(12) "Total project cost" means all costs directly associated with an alternative fuel vehicle infrastructure project, including ineligible costs.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

ADMINISTRATIVE RULES

330-220-0020

Opportunity Announcement

(1) The department will announce the availability of tax credits for alternative fuel vehicle infrastructure projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit cap specified in ORS 315.336.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to a future Opportunity Announcement.

(4) The Opportunity Announcement will include the following information:

- (a) Objectives for the opportunity period;
- (b) The amount of tax credits available;
- (c) Application requirements;
- (d) Dates of the application opportunity period;
- (e) Instructions and directions to the required application forms and materials;
- (f) Minimum technical standards;
- (g) The process the department will use to allocate tax credits; and
- (h) Other information the department considers necessary.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0030

Preliminary Certification Application

(1) Any person may apply for a preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application. The department will not process applications received outside of an opportunity period.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association.

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation or LLC and its parent corporations, members and any close affiliates or subsidiaries.

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the alternative fuel vehicle infrastructure project at the time of acquisition of the project.

(e) A description of the personnel and teams that will be working on project development, implementation and operation.

(f) If the applicant has previously received tax credits or grants issued by the department, the application must contain a statement about the operational status of the projects awarded such grants or tax credits.

(g) The location of the alternative fuel vehicle infrastructure project.

(h) A statement explaining the amount by which use of the alternative fuel vehicle infrastructure project will displace petroleum fuel.

(i) A detailed description of the alternative fuel vehicle infrastructure project including:

(A) Information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as repre-

sented in the application. This may require documentation in addition to the application form.

(B) 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.

(C) The expected operational life of the alternative fuel vehicle infrastructure project.

(j) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(k) The anticipated total project cost of the alternative fuel vehicle infrastructure project.

(l) The amount of anticipated or received incentives directly related to the alternative fuel vehicle infrastructure project.

(m) A project schedule and project management plan.

(n) A description of the applicant's financing plan for the alternative fuel vehicle infrastructure project including:

(A) Construction financing;

(B) Startup costs; and

(C) Pro forma financial statement showing the anticipated operating revenues and expenses of the alternative fuel vehicle infrastructure project during the first three years of operation.

(o) The dollar amount of tax credit requested by the applicant.

(p) If the applicant has already started acquisition of the alternative fuel vehicle infrastructure project, a written description of the special circumstances that rendered filing of an application prior to the start of acquisition unreasonable.

(q) Other information the department considers necessary.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0040

Application Fees

The department adopts the following schedule of fees as provided by ORS 469B.326. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants must submit a fee of \$200 with their preliminary certification application.

(2) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying project cost multiplied by 0.55 percent.

(3) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(4) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying project cost multiplied by 0.5 percent. All applicants seeking final certification for a project are required to apply for final review and pay the final review fee.

(5) If the department is unable to complete a scheduled inspection due to actions by the applicant, the department will require the applicant to pay a re-inspection fee of \$400 before rescheduling the inspection.

(6) Applicants that choose to transfer their tax credit to a pass-through partner, pursuant to OAR 330-230-0110 to 330-230-0140, must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner, or partners, the fee for that assistance is 1 percent of the tax credit amount, up to \$25,000.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax certificate issued.

(7) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0050

Completeness Review

(1) The department will determine that sufficient potential tax credits are available prior to beginning review of an application. The department may return applications, or offer a lower tax credit amount, if there is not sufficient potential tax credits available to award the amount of tax credit requested.

(2) The department will review all preliminary certification applications to determine whether:

(a) All sections of the application are complete.

(b) The applicant has submitted the required fee.

ADMINISTRATIVE RULES

(c) The project meets the definition of an alternative fuel vehicle infrastructure project.

(d) The applicant is applying prior to the acquisition of the project.

(A) If the applicant applies after acquisition of the project has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or not being selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(e) The alternative fuel vehicle infrastructure project is located in Oregon.

(f) Other requirements described in the Opportunity Announcement have been met.

(3) If the department finds that the application is complete, the application will move into the technical review process and the department will notify the applicant in writing.

(4) The department will deny all incomplete applications and notify applicants in writing of the reason for denial of the application.

(5) The department considers the completeness review as a test; the decision to deny an incomplete application is not an action subject to review under ORS 183.

(6) If an applicant has not started acquisition of the alternative fuel vehicle infrastructure project, an applicant may apply again for the same project in the same or a future Opportunity Announcement by submitting a new application and fee. The department will not apply fees submitted with a previous application to future applications.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0070

Technical Review

(1) Once the applicant has paid the technical review fee, the department will conduct a technical review of alternative fuel vehicle infrastructure projects advanced from the completeness review. If the applicant does not submit the required payment to the department within 14 calendar days of notification for technical review, the department may deny the application.

(2) The department will review the information provided in the application against industry standards to determine whether the project is financially and technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible, the alternative fuel vehicle infrastructure project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or project lessee at the time of the project's acquisition.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, tribe or public entity that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet the requirements of the state building codes and contain 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.

(e) If the project is a Level 1, 120 volt AC or similar, charging station for electric vehicles, the charger must provide an average of at least 12 hours of connection time per use. Applicants must provide anticipated connection and charging patterns as part of the project description section of the application.

(4) The department will review the alternative fuel vehicle infrastructure project cost for eligibility. The application must document total project cost by providing a list of itemized costs.

(a) Qualifying project costs include:

(A) The cost of components of the alternative fuel vehicle infrastructure project, including all materials and supplies needed for the erection, construction, installation or acquisition of the proposed alternative fuel vehicle infrastructure project;

(B) The costs to extend or increase the capacity of utility connections are only eligible if located within the property lines of the project location.

Qualifying costs for utility connections for electric vehicle charging stations are also limited by location to:

(i) \$5,000 for a Level 1, 120 volt AC or similar, electric vehicle charging station.

(ii) \$15,000 for a Level 2, 240 volt AC or similar, electric vehicle charging station.

(iii) \$30,000 for a DC Fast Charger, or similar, electric vehicle charging station.

(C) Fees to design or engineer the alternative fuel vehicle infrastructure project;

(D) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;

(E) Cost of work performed by the applicant's employees or independent contractors if the following conditions are met:

(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 alternative fuel vehicle infrastructure project;

(iii) Project management and other similar costs may only account for up to 15 percent of the qualifying project costs; and

(iv) Costs for employees' or contractors' work on the alternative fuel vehicle infrastructure project must be detailed and documented as to specific tasks, hours worked and compensation costs.

(F) Costs for legal counsel that are directly related to the development of an alternative fuel vehicle infrastructure project;

(G) Costs of training associated with the alternative fuel vehicle infrastructure project that is approved by the department; and

(H) Other costs the department determines should be included.

(b) Qualifying project cost does not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Intellectual property search, application and filing payments;

(D) Donated, in-kind or volunteer labor and materials;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an alternative fuel vehicle infrastructure project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant attestation letter and costs associated with securing a pass-through partner for the project;

(F) Routine operational, routine maintenance and repair costs associated with the alternative fuel vehicle infrastructure project;

(G) The purchase of alternative fuel vehicles or the conversion of vehicles to use alternative fuels;

(H) Expenses that are deemed not to have a benefit to the alternative fuel vehicle infrastructure project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying; and

(I) Other costs the department determines should be excluded.

(c) The department may do inspections to verify qualified project costs.

(d) An applicant may incur qualifying project costs prior to the submission of an application, but may not begin acquisition.

(5) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(6) The department will notify the applicant in writing if the department denies the application during the technical review.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0080

Preliminary Certification

(1) The department may issue a preliminary certificate if it determines that the alternative fuel vehicle infrastructure project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the alternative fuel vehicle infrastructure project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits, other public funds and the alternative fuel vehicle infrastructure incentive may not exceed total project costs.

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(4) The preliminary certificate will state the qualifying project cost, the potential amount of allowable tax credit and any conditions for claiming the credit.

(5) The applicant must report on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certification. Failure to submit reports may result in revocation of the preliminary certification or denial of the final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the preliminary certification or until the sunset of the program, whichever comes first.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0090

Amendments to Preliminary Certifications

(1) The applicant must notify the department of any changes to the project proposal as described in the application for preliminary certification.

(2) An applicant must declare all changes to the alternative fuel vehicle infrastructure project by the time the department receives the final certification application. Undeclared changes found in the application for final certification or through later inspection may result in denial of final tax credit certification.

(3) Applicants must submit an amendment request to the director to amend an alternative fuel vehicle infrastructure preliminary certification.

(4) Applicants must submit amendments on the form specified in the Opportunity Announcement.

(5) The applicant must demonstrate that the alternative fuel vehicle infrastructure project, with the proposed change, would continue to be technically feasible, would operate as represented and would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation that will support a case for the proposed amendment. The department may deny amendments submitted without such justification.

(6) An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

(7) If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the applicant does not provide the requested information to the department within 30 calendar days of the date of the notice, the department may deny the request.

(8) Requests for amendments must include payment of the appropriate fee. The department may accept non-substantive changes, such as change of contact information, without payment of the fee.

(9) Within 60 calendar days after the date the department receives the amendment request, the department will decide whether to approve the request. If the department does not approve the amendment request within 60 calendar days, it is considered denied.

(a) If approved, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

(b) If denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0100

Final Certification

(1) An alternative fuel vehicle infrastructure project must be completed and operational prior to applying for a final certification. An applicant must submit amendments to preliminary certifications before or with the final certification application.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or without the final review fee.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection, to verify:

(a) That the alternative fuel vehicle infrastructure project is complete and operating.

(b) Compliance with statute, rules, the relevant Opportunity Announcement and the preliminary certification.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the infrastructure is leased or rented.

(e) That applicable fuel taxes and property taxes for the project location are current.

(f) That the alternative fuel vehicle infrastructure will be maintained and operated for at least five years.

(g) The total project costs for acquisition of the project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner, nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that contract and loan agreements directly related to the project are not in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(h) Other information the director considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application for final certification.

(6) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification.

(7) The department will issue a final certification upon verification that the alternative fuel vehicle infrastructure project is complete and that the project complies with statute, rules, the relevant Opportunity Announcement, the preliminary certification and any other applicable requirements.

(a) The department may issue a credit up to 35 percent of the certified project cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits or other public funds and the tax credit may not exceed total project costs.

(8) The department will send a written notification to applicants of its decision whether to issue a final certification within 60 days from the department receives a complete application for final certification. If more than 60 days pass from the date the department receives a complete application and the applicant has not received a written decision from the department, then the application is rejected and no further action will be taken.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

330-220-0150

Compliance and Pass-through

All participants in this program are subject to OAR 330-230-0000 through 330-230-0140.

Stat. Auth.: ORS 315.336 & 469B.320 - 469B.347
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12

Department of Fish and Wildlife Chapter 635

Rule Caption: Columbia River Commercial Sturgeon Seasons Below Bonneville Dam Set for January and February 2012.

Adm. Order No.: DFW 4-2012(Temp)

Filed with Sec. of State: 1-30-2012

Certified to be Effective: 1-30-12 thru 2-29-12

Notice Publication Date:

Rules Amended: 635-042-0135

Subject: This amended rule implements winter commercial white sturgeon seasons in the Columbia River below Bonneville using gill nets. The fishing periods authorized are: 6:00 p.m. Monday, January

ADMINISTRATIVE RULES

30 thru 6:00 p.m. Tuesday, January 31, 2012 (24 hours); 6:00 p.m. Wednesday, February 1 thru 6:00 p.m. Thursday, February 2, 2012 (24 hours); and 6:00 p.m. Monday, February 6 thru 6:00 p.m. Tuesday, February 7, 2012 (24 hours).

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Retention of green sturgeon in all mainstem Columbia River and Select Area commercial fisheries is prohibited.

(3) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

(a) 6:00 p.m. Monday January 30 to 6:00 p.m. Tuesday January 31, 2012 (24 hours);

(b) 6:00 p.m. Wednesday February 1 to 6:00 p.m. Thursday February 2, 2012 (24 hours); and

(c) 6:00 p.m. Monday February 6 to 6:00 p.m. Tuesday February 7, 2012 (24 hours).

(4) A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

(5) White sturgeon and salmon must be delivered to wholesale fish dealers, cannery, or fish buyers undressed (in the round).

(6) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 43 inches or larger than 54 inches in fork length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(7) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (3) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; 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 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; 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 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 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 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 6-

2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 14-2008(Temp), f. & cert. ef. 2-21-08 thru 8-18-08; Administrative correction 9-29-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; Administrative correction 8-21-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; Administrative correction 4-21-10; DFW 166-2010(Temp), f. 12-28-10, cert. ef. 1-15-11 thru 7-13-11; Administrative correction 7-22-11; DFW 4-2012(Temp), f. & cert. ef. 1-30-12 thru 2-29-12

Rule Caption: Treaty Indian Winter Commercial Fisheries In the Columbia River.

Adm. Order No.: DFW 5-2012(Temp)

Filed with Sec. of State: 1-30-2012

Certified to be Effective: 2-1-12 thru 3-31-12

Notice Publication Date:

Rules Amended: 635-041-0045, 635-041-0065

Subject: These amended rules clarify allowable sales of fish caught in Treaty winter commercial fisheries in the Columbia River above Bonneville Dam and for Treaty fisheries downstream of Bonneville Dam allowed under state agreements. Allowable sales include: salmon, steelhead, shad, carp, catfish, walleye, bass and yellow perch. Only white sturgeon caught above Bonneville Dam may be retained. White sturgeon between 38 and 54 inches in fork length caught in the Bonneville Pool and white sturgeon between 43 and 54 inches in fork length caught in The Dalles and John Day pools may also be sold.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0045

Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

(1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs, Nez Perce and Umatilla tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open until further notice.

(A) Allowable sales include Chinook, steelhead, sockeye, coho, wall-eye, shad, yellow perch, bass and carp. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. Fish may not be sold on USACE property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(B) Gear is restricted to subsistence fishing gear which includes hoop-nets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line.

(C) Salmon, steelhead, walleye, shad, carp, bass, catfish and yellow perch landed during an open treaty commercial fishing period may be sold at any time.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

ADMINISTRATIVE RULES

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25-September 20 inclusive the closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1 1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1 1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 4-1984, f. & ef. 1-31-84; FWC 55-1985(Temp), f. & ef. 9-6-85; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 25-1986(Temp), f. & ef. 6-25-86; FWC 42-1986, f. & ef. 8-15-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989 (Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 60-2011(Temp), f. & cert. ef. 6-6-11 thru 10-31-11; DFW 63-2011(Temp), f. & cert. ef. 6-9-11 thru 10-31-11; DFW 66-2011(Temp), f. & cert. ef. 6-16-11 thru 10-31-11; DFW 88-2011(Temp), f. & cert. ef. 7-10-11 thru 10-31-11; DFW 119-2011(Temp), f. & cert. ef. 8-26-11, cert. ef. 8-29-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 5-2012(Temp), f. & cert. ef. 2-1-12 thru 3-31-12

635-041-0065 Winter Season

(1) Salmon, steelhead, shad, white sturgeon, walleye, catfish, bass, yellow perch and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 21, 2012.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 43-54 inches fork length in The Dalles and John Day pools and white sturgeon between 38-54 inches fork length in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 133-1979(Temp), f. & ef. 3-30-1979. Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. & ef. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. & cert. ef. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. & cert. ef. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. & cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. & cert. ef. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. & cert. ef. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. & cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. & cert. ef. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. & cert. ef. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. & cert. ef. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. & cert. ef. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. & cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. & cert. ef. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. & cert. ef. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. & cert. ef. 1-12-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. & cert. ef. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. & cert. ef. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. & cert. ef. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. & cert. ef. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. & cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. & cert. ef. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. & cert. ef. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. & cert. ef. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. & cert. ef. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. & cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. & cert. ef. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. & cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. & cert. ef. 2-1-12 thru 3-31-12

Rule Caption: Add Habitat Conservation Stamp to list of documents that include a free annual parking permit.

Adm. Order No.: DFW 6-2012(Temp)

Filed with Sec. of State: 2-6-2012

Certified to be Effective: 2-6-12 thru 8-1-12

Notice Publication Date:

Rules Amended: 635-008-0151

Subject: Adopted by the 2011 Oregon State Legislature (HB 2127), the Habitat Conservation Stamp allows Oregonians to purchase an annual stamp to benefit conservation of Oregon's native species and habitats. Stamps sell for \$40 a year and include a free ODFW Wildlife Area Parking Pass (a \$22 value). This will amend the rule to add the Habitat Conservation Stamp to the list of documents that include a free annual parking permit.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-008-0151

Procedures for Issuance and Enforcement of Parking Permits for Department Wildlife Areas

The Oregon Department of Fish and Wildlife hereby adopts the following procedures relating to issuance and enforcement of parking permits for certain vehicles in Department Wildlife Area parking areas

(1) Parking is permitted only in designated parking areas. A parking permit is required at all times for all fee parking areas.

(2) Fee parking areas are designated by the following signs:

(a) "Entering ODFW Wildlife Area — Parking Permit Required Beyond This Point";

(b) "Parking allowed only in designated areas — ODFW Wildlife Area Parking Permit Required".

(3) There are two separate permits: an annual permit and a daily permit.

(4) The fee for parking permits is \$5.00 (plus \$2.00 agent fee) for permits issued on a daily basis or \$20.00 (plus \$2.00 agent fee) for permits issued on an annual basis beginning each January 1. Beginning with 2012 licenses, any annual hunting license (including Combination and Sports Pac), and/or purchase of the Habitat Conservation Stamp will include a free annual parking permit.

ADMINISTRATIVE RULES

(5) Permits are issued by selected local agents, Department offices that sell licenses and the Department's Online License Sales website to a party upon payment and may be transferred from vehicle to vehicle.

(6) The permits must be visible from outside the vehicle and be displayed in the front or rear window of the vehicle.

(7) No parking permits will be required for those vehicles which are owned or operated by government agencies. Notwithstanding paragraph (5), the Department reserves the right to issue free administrative parking permits for private vehicles used by volunteers while participating in official Department-related activities. Parking permits will not be required for individuals arriving in private vehicles to address fire, health or safety emergencies.

(8)(a) A person who operates or parks a motor-propelled vehicle in violation of restrictions established and posted under OAR 635-008-0146 through 635-008-0151 commits an offense punishable as provided in ORS 496.992;

(b) The procedure for a peace officer (or other person authorized to enforce the wildlife laws) to follow upon finding a non government vehicle parked in a designated fee parking area without a permit shall consist of the issuance of a citation which shall be either delivered to the defendant or placed in a conspicuous place upon the vehicle in the violation.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 497.071

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.071

Hist.: FWC 12-1990, f. & cert. ef. 2-2-90; FWC 8-1993, f. & cert. ef. 2-8-93; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 74-2003(Temp), f. 8-1-03, cert. ef. 8-3-03 thru 8-7-03; Administrative correction 1-12-04; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 3-2011, f. & cert. ef. 1-14-11; DFW 54-2011, f. & cert. ef. 5-24-11; DFW 6-2012(Temp), f. & cert. ef. 2-6-12 thru 8-1-12

Rule Caption: Add Habitat Conservation Stamp and ODFW Wildlife Area Parking Permits to be purchased via mail order, fax, and internet.

Adm. Order No.: DFW 7-2012(Temp)

Filed with Sec. of State: 2-6-2012

Certified to be Effective: 2-6-12 thru 8-1-12

Notice Publication Date:

Rules Amended: 635-010-0170

Subject: House Bill 2127, adopted by the 2011 Oregon State Legislature, allows the State Fish and Wildlife Commission to issue an annual Habitat Conservation Stamp for a fee. This allows Oregonians to purchase an annual stamp via mail order, fax or internet to benefit conservation of Oregon's native species or habitats. This will amend the rule to add the Habitat Conservation Stamp as a postal delivery document, These documents will also allow daily and annual ODFW Wildlife Area Parking Permits to be purchased via mail order, fax or internet.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-010-0170

Licenses, Tags or Documents Available by Mail Order, Fax or Internet

(1) All licenses, tags, permits or validations sold by the Department over the Internet fall into one of three categories concerning how the sale is made: Instant; Temporary; or Postal. Postal transactions are also available by mail order or fax.

(a) Instant: means that the internet purchase results in an immediate sale and printing of the item, allowing the purchaser to make immediate use of item purchased. No other action is required to complete the transaction. The items in this category are:

(A) Daily Angling Licenses: one-, two-, three-, four- and seven-day licenses;

(B) Three-day Nonresident Shellfish licenses;

(C) Three-day Nonresident Bird Hunting Licenses;

(D) Big Game controlled hunt applications;

(E) Game Bird controlled hunt applications;

(F) Daily parking permits;

(G) Band-tailed Pigeon permits;

(H) Black Brant Permits;

(I) Sage Grouse Permits;

(J) Fern Ridge Reservation Permits;

(K) Klamath Reservation Permits; and

(L) Sauvie Island Reservation Permits.

(b) Temporary: means that the internet purchase results in an immediate sale and printing of the item, allowing the purchaser to make limited use (10 days) of the item purchased. The Department will send the final,

permanent item to the purchaser via postal mail. The items in this category are:

(A) HIP Migratory Bird Validations;

(B) HIP Upland Bird Validations;

(C) HIP Crow Validations;

(D) Nonresident Game Bird Validations;

(E) Upland Game Bird Validations;

(F) Waterfowl Bird Validations;

(G) Annual Parking Permits;

(H) Sea Duck Permits;

(I) Aquatic Invasive Species Prevention Permit;

(J) Two-Rod Angling License; and

(K) All annual hunting and angling licenses;

(c) Postal: means that the internet purchase results in an immediate sale and the printing of a transaction receipt, but that the Department mails the actual item to the purchaser via postal mail. The privilege(s) purchased is not valid until the purchaser receives the item. The items in this category are:

(A) Combined Hunting Tags;

(B) Combined Angling Tag;

(C) Hatchery Harvest Tag;

(D) All Big Game Tags (controlled hunt and general season);

(E) Pheasant Tags;

(F) NW Oregon Goose Permit;

(G) Turkey Tags; and

(H) Habitat Conservation Stamp

(2) The Department will charge shipping and handling fee of \$2.00 per session whenever a person makes a purchase via Internet, fax, or mail order. This fee is in addition to all other document costs and covers the processing, printing, and postal mailing of the requested documents.

Stat. Auth.: ORS 496 & 497

Stats. Implemented: ORS 496 & 497

Hist.: DFW 130-2008, f. & cert. ef. 10-14-08; DFW 147-2008(Temp), f. & cert. ef. 12-6-08 thru 6-6-09; DFW 51-2009(Temp), f. & cert. ef. 5-14-09 thru 6-1-09; Administrative correction 6-22-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 7-2012(Temp), f. & cert. ef. 2-6-12 thru 8-1-12

Rule Caption: 2012 Recreational Spring Chinook Seasons in the Columbia River.

Adm. Order No.: DFW 8-2012(Temp)

Filed with Sec. of State: 2-6-2012

Certified to be Effective: 2-15-12 thru 6-15-12

Notice Publication Date:

Rules Amended: 635-023-0125

Subject: These rule modifications set the 2012 Columbia River recreational spring Chinook season regulations with descriptions of areas, dates, and bag limits for recreational harvest of adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead. Revisions are consistent with action taken January 26, 2012 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River 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 **2012 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1 through February 29 from the mouth at Buoy 10 upstream to Beacon Rock with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2012 Oregon Sport Fishing Regulations**.

(3) The Columbia River is open March 1 through April 6 except closed March 20; March 27; and April 3 (Tuesdays) in the area from Buoy 10 upstream to Beacon Rock (boat and bank angling); plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline. Legal boundary for Beacon Rock is defined as: "A deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam

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Powerhouse 1) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.”

(a) Catch limits of two adult adipose fin-clipped salmonids per day, of which only one may be a Chinook.

(b) Effective March 1 through June 15 the daily bag limit in Oregon’s Select Areas will be the same as the mainstem fishery on days when the mainstem Columbia River below Bonneville Dam is open to retention of Chinook. On days when the mainstem Columbia River fishery is closed to Chinook retention, the permanent salmonid bag limit regulations for Select Areas apply.

(4) From the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) angling for all species is closed from January 1 through April 30.

(5)(a) The Columbia River is open March 16 through May 2 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to the Oregon/Washington border; plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines.

(b) Catch limits of two adult adipose fin-clipped Chinook or steelhead per day; or one of each. Only adipose fin-clipped fish may be retained. All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(6) Effective March 1 through May 15, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead and shad only during days and seasons open for retention of adipose fin-clipped spring Chinook.

[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.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12

Rule Caption: Open Recreational Sturgeon Retention Fishery in the Willamette River Downstream of Willamette Falls.

Adm. Order No.: DFW 9-2012(Temp)

Filed with Sec. of State: 2-6-2012

Certified to be Effective: 2-17-12 thru 4-30-12

Notice Publication Date:

Rules Amended: 635-017-0095

Subject: Amended rule opens the recreational white sturgeon retention fishery in the lower Willamette River downstream of Willamette Falls, including Multnomah Channel and the Gilbert River, Fridays and Saturdays only from February 17 through February 25, 2012 (4 days) or until the harvest guideline is met. Revisions are consistent with action taken January 17, 2012 by the State of Oregon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Willamette 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 **2012 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) is open to the retention of white sturgeon two days per week, Friday and Saturday during the following periods:

(a) February 17 and 18;

(b) February 24 and 25; or

(c) Until the harvest guideline is met.

(3) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(4) Only white sturgeon with a fork length of 38–54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(5) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 9-2012(Temp), f. 2-6-12, cert. ef. 2-17-12 thru 4-30-12

Rule Caption: Columbia River Mainstem Recreational White Sturgeon Fisheries Regulations Modified.

Adm. Order No.: DFW 10-2012

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12

Notice Publication Date: 1-1-2012

Rules Amended: 635-023-0095

Rules Repealed: 635-023-0095(T)

Subject: This amended rule modifies recreational sturgeon seasons and regulations for the mainstem Columbia River in an area from the mouth at Buoy 10 upstream to The Dalles Dam effective upon filing of this rule. Additional modifications close a known sturgeon concentration area (below Bonneville Dam) to angling for all species in-order-to protect the resource and to provide regulations consistent with the State of Washington’s.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2012 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River 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 **2012 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38–54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

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(b) October 20 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 19.

(4) The mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 12 through July 8 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 11 and July 9 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing periods as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(9) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43–54 inches, seven days per week from February 1 through July 31.

(10) The retention of white sturgeon in the area identified in section

(9) of this rule is prohibited August 1 through January 31.

(11) Retention of green sturgeon is prohibited all year in all areas.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12

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Rule Caption: Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.

Adm. Order No.: DFW 11-2012

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12

Notice Publication Date: 1-1-2012

Rules Amended: 635-006-0232

Rules Repealed: 635-006-0232(T)

Subject: Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2011 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Anchovy, Northern \$0.14.

(B) Cabezon \$3.48.

(C) Carp \$0.50 (2006 price).

(D) Cod, Pacific \$0.56.

(E) Flounder, arrowtooth \$0.10.

(F) Flounder, starry \$0.38.

(G) Greenling \$4.40.

(H) Grenadier \$0.11.

(I) Hagfish \$0.67.

(J) Hake, Pacific (Whiting) \$0.11.

(K) Halibut, Pacific, dressed weight with head on \$5.20.

(L) Herring, Pacific \$0.20.

(M) Lingcod \$1.21.

(N) Mackerel, jack \$0.11; Pacific \$0.10.

(O) Opah \$2.98 (2008 price).

(P) Pacific ocean perch, \$0.52.

(Q) Pollock, Walleye \$0.67 (2001 price).

(R) Rockfish:

(i) Black, \$2.10.

(ii) Blue, \$1.37.

(iii) Canary, \$0.56.

(iv) Darkblotched, \$0.63.

(v) Black and yellow, \$5.08.

(vi) Brown, \$3.25.

(vii) China, \$5.76.

(viii) Copper, \$3.20.

(ix) Gopher, \$4.03.

(x) Grass, \$7.00 (2010 price).

(xi) Quillback, \$3.62.

(xii) Shelf, \$0.54.

(xiii) Shortbelly, using trawl gear \$0.29 (2003 price), using line and pot gear \$1.96 (2008 price).

(xiv) Slope, using trawl gear, \$0.46 using line and pot gear \$0.90.

(xv) Tiger, \$3.59.

(xvi) Vermilion, \$1.49.

(xvii) Widow \$0.44.

(xviii) Yelloweye, using trawl gear \$0.54, using line and pot gear \$0.98.

(xix) Yellowtail, \$0.51.

(S) Sablefish:

(i) Dressed weight, ungraded \$7.70, extra small \$4.93, small \$6.78, medium \$7.60 and large \$6.53.

(ii) Round weight, ungraded \$3.45, extra small \$1.76, small \$3.17, medium \$3.71 and large \$4.21.

(T) Salmon, Chinook, ocean dressed weight: ungraded \$6.00, large \$5.94, medium \$5.81, and small \$5.47.

(U) Salmon, coho, ocean dressed weight: mixed size \$1.65.

(V) Salmon, pink, ocean dressed weight: ungraded, \$0.84.

(W) Sanddab, Pacific \$0.54.

(X) Sardine, Pacific \$0.14.

(Y) Shad, American:

(i) Coast, ungraded, midwater trawl \$0.22.

(ii) Columbia, ungraded, gillnet, setnet, and dipnet \$0.32.

(Z) Shark, blue \$0.21, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50 (2009 price), sixgill \$0.05 (2007 price), soupfin \$0.20, spiny dogfish \$0.29 (2010 price), scalloped hammerhead \$0.12 (2001 price),

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silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.60, and other species \$0.02.

(AA) Skates and Rays \$0.35.

(BB) Smelt, Eulachon (Columbia River), \$2.86 and other species \$0.20 (2010 price).

(CC) Sole, butter \$0.32, curlfin (turbot) \$0.32, Dover \$0.42, English \$0.32, flathead \$0.31, petrale \$1.44, rex \$0.36, rock \$0.33 and sand \$0.94.

(DD) Steelhead \$0.93.

(EE) Sturgeon, green \$0.98 (2009 price) and white \$2.57.

(FF) Surfperch \$1.15 (2009 price).

(GG) Swordfish \$4.00 (2008 price).

(HH) Thornyhead (Sebastes), longspine \$0.42 and shortspine \$0.60.

(II) Tuna, albacore \$1.94, bluefin \$5.00, bigeye \$4.00 (2008 price), and yellowfin \$2.00.

(JJ) Walleye \$2.00.

(KK) Wolf-eel \$3.71.

(LL) Wrymouth \$0.30.

(b) CRUSTACEANS:

(A) Crab: box \$1.37, Dungeness bay \$3.26 and ocean \$2.74, rock \$1.55 and Tanner \$0.69 (2003 price).

(B) Crayfish \$1.65.

(C) Shrimp: brine \$0.82, coonstripe \$1.57 (2007 price), ghost (sand) \$24.38, mud \$1.24, pink \$0.51 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$9.45.

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$21.09 (2008 price).

(B) Clams: butter \$0.44, cockle \$0.52, gaper \$0.48, Manila littleneck \$2.00 (2008 price), Nat. littleneck \$2.00 (2008 price), razor \$2.77 and soft-shell \$0.50 (2010 price).

(C) Mussels, ocean \$0.52.

(D) Octopus \$1.17.

(E) Scallop, rock \$0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).

(G) Squid, market \$0.17.

(H) Squid, other species \$0.24.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00 (2004 price).

(B) Sea cucumber \$0.30 (2005 price).

(C) Sea urchin, red \$0.53 and purple \$0.30 (2004 price).

(D) Sea stars \$1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12; DFW 11-2012, f. & cert. ef. 2-7-12

Rule Caption: 2012 Commercial Winter-Summer Fisheries for Columbia River Select Areas.

Adm. Order No.: DFW 12-2012(Temp)

Filed with Sec. of State: 2-8-2012

Certified to be Effective: 2-12-12 thru 7-31-12

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0180

Subject: Amended rules to set seasons, area boundaries and catch restrictions for Chinook salmon and white sturgeon winter, spring and summer commercial fisheries for the Columbia River Select Areas. Modifications are consistent with the action taken January 26, 2012 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The 2012 open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sundays, Tuesdays and Thursdays from February 12 through March 9 (12 days) starting at 12:00 noon through 6:00 a.m. the following morning (18 hours). Also, 6:00 p.m. until midnight on Sunday March 11 (6 hours) and 10:00 p.m. Thursday March 15 until 4:00 a.m. Friday March 16 (6 hours).

(ii) Upstream of old Youngs Bay Bridge: 6:00 p.m. until midnight Sunday March 18 (6 hours) and 6:00 p.m. until midnight Sunday March 25 (6 hours).

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. to midnight Thursday, April 19 (6 hours); 6:00 p.m. Tuesday April 24 to 6:00 a.m. Wednesday April 25 (12 hours); 6:00 p.m. Thursday April 26 to 6:00 a.m. Friday April 27 (12 hours); Sundays, Tuesdays, and Thursdays from 6:00 p.m. until noon the following day (18 hours) beginning Sunday, April 29 through Friday, May 11; and Mondays at noon through Fridays at noon (4 days), beginning Monday, May 14 through Friday, June 15 (20 days total).

(C) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday June 20 through Friday July 27 (12 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 12 through March 16 and from April 19 through July 27, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(B) On March 18 and 25, the fishing area extends from the old Youngs Bay Bridge upstream to the upper boundary markers at the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in subsections (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 8-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. &

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cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-26-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 7-31-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; DFW 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; DFW 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; DFW 76-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-29-11; DFW 106-2011(Temp), f. 8-2-11, cert. ef. 8-3-11 thru 10-31-11; DFW 121-2011(Temp), f. 8-29-11, cert. ef. 9-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open 2012 fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B), respectively, of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in subsection (1)(a)(A), and the spring fishery in Blind Slough and Knappa Slough in subsection (1)(a)(B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only: Sunday and Thursday nights beginning Sunday, February 12 through Friday, March 16 (10 nights); and Sunday nights from March 18 through April 2 (3 nights).

(B) Blind and Knappa Sloughs: Thursday night April 19; Tuesday night April 24; and Monday and Thursday nights beginning Thursday, April 26 through Friday, June 15 (17 nights).

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to mark-

ers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from April 30 through June 15, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter and spring fisheries, outlined above in subsections (1)(a)(A) and (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weights or anchors directly to the lead line is permitted.

(B) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter fishery or greater than 9.75-inches during the spring fishery.

(2) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in subsections (1)(a)(A) and (1)(a)(B) the weekly aggregate sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06, cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. & cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 7-30-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12

ADMINISTRATIVE RULES

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The 2012 fishing seasons are open:

(a) Winter season: Sunday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning February 12 through March 16 (10 nights); and Sunday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) on March 18, March 25, and April 1 (3 nights).

(b) Spring season: Thursday, April 19; Tuesday, April 24; and Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning April 26 through June 15 (17 nights in all).

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is *unlawful* to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is *unlawful* in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(e) During the spring season, outlined above in subsection (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(4) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in subsections (2)(a) and (2)(b) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(5) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 for the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW

58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 53-2011(Temp), f. & cert. ef. 5-18-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12

Rule Caption: Adopt new rules for the Oregon Habitat Conservation Stamp.

Adm. Order No.: DFW 13-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 1-1-2012

Rules Adopted: 635-095-0100, 635-095-0105, 635-095-0111, 635-095-0125

Subject: Adopt new rules for the Habitat Conservation Stamp which was authorized by the 2011 Oregon State Legislature (HB 2127) and will benefit conservation of Oregon's native species and habitats. The purpose of these rules is to describe the procedures and necessary accompanying information for submitting art work for the Conservation Stamp.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-095-0100

Purpose

The purpose of these rules is to describe the procedures and necessary accompanying information for submitting artwork for habitat conservation stamps, the criteria for selection of the winning entry, the obligation of winning artists, and sales provisions pursuant to ORS Chapter 496.

Stat. Auth.: ORS 496.012, 496.138 & HB 2127 (2011) (2011 OL Ch. 50)ter 50)

Stats. Implemented: ORS 496 & HB 2127 (2011) (2011 OL Ch. 50)

Hist.: DFW 13-2012, f. & cert. ef. 2-10-12

635-095-0105

Submission of Artwork: Requirements

(1) Applicants shall submit artwork for the habitat conservation stamp to the Department headquarters office by 5:00 p.m. on the following deadline dates:

(a) 2012 habitat conservation stamp deadline is February 29, 2012;

(b) For 2013, the habitat conservation stamp deadline is Friday, August 31, 2012. All subsequent years the habitat conservation stamp deadline is the last Friday of the month of August of the preceding year;

(2) Habitat conservation stamp artwork shall feature at least one Strategy Species in a respective Strategy Habitat. Strategy Species and Strategy Habitats are identified in the 2006 Oregon Conservation Strategy.

(3) Each entry shall measure 13 inches by 18 inches (horizontal or vertical) and shall be in any full color medium except any photographic process.

(4) The artwork shall be original and unsigned by the artist, and shall not have been used in production or entered into any other state's habitat stamp competition. Any artwork signed by the artist will not be accepted and will be returned to the artist without being judged.

(5) The entry may be mounted and/or matted, but it shall not be framed or under glass.

(6) Artists may submit more than one entry meeting the requirements herein.

(7) Each artist shall submit with his or her entry or entries a brief biographical description that includes the artist's background, experience, and previous artistic accomplishments. The Department reserves the right to use this information for publicity should the work be selected.

(8) Department employees are not eligible to participate in the contest.

Stat. Auth.: ORS 496.012, 496.138 & HB 2127 (2011) (2011 OL Ch. 50)ter 50)

Stats. Implemented: ORS 496 & HB 2127 (2011) (2011 OL Ch. 50)

Hist.: DFW 13-2012, f. & cert. ef. 2-10-12

ADMINISTRATIVE RULES

635-095-0111

Selection Process and Criteria

(1) A five-member panel including one Fish and Wildlife Commission member and four citizens chosen by the Director shall select the winning entry. Panel members may include representatives from the art community, wildlife profession, news media and conservation organizations.

(2) The selection panel shall choose the winning artwork based on:

- (a) Artistic composition;
- (b) Anatomical accuracy;
- (c) Habitat accuracy;
- (d) General rendering;
- (e) Background; and
- (f) General appeal.

(3) All artwork submissions shall be made available for public viewing following selection of the winning entry.

Stat. Auth.: ORS 496.012, 496.138 & HB 2127 (2011) (2011 OL Ch. 50)ter 50)

Stats. Implemented: ORS 496 & HB 2127 (2011) (2011 OL Ch. 50)

Hist.: DFW 13-2012, f. & cert. ef. 2-10-12

635-095-0125

Other Provisions

(1) The fee for the habitat conservation stamp is \$38.00 (plus \$2.00 agent fee) and includes a free annual ODFW Wildlife Area Parking Permit.

(2) Sale of habitat conservation stamps by the Department shall end at the close of business on December 31, of the respective year. Excess stamps at that time shall be shredded after auditing of sales takes place.

(3) The Department shall award three thousand dollars (\$3,000) to the artist whose entry is selected for the habitat conservation stamp.

(4) The winning entry shall become the exclusive property of the Department.

(5) The Department shall retain all reproduction rights and may review proposals for limited edition prints, posters, or other related art products.

(6) The artist shall sign, at no charge, up to two hundred ten (210) habitat conservation stamps for sale by the Department.

Stat. Auth.: ORS 496.012, 496.138 & HB 2127 (2011) (2011 OL Ch. 50)ter 50)

Stats. Implemented: ORS 496 & HB 2127 (2011) (2011 OL Ch. 50)

Hist.: DFW 13-2012, f. & cert. ef. 2-10-12

Rule Caption: Amend Rule to Return Preference Points.

Adm. Order No.: DFW 14-2012(Temp)

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12 thru 8-7-12

Notice Publication Date:

Rules Amended: 635-060-0046

Subject: Based on specific criteria for reinstatement of preference points, this temporary rule will allow the return of preference points used to draw a tag plus award one additional point as if the person was unsuccessful in the drawing.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-060-0046

Lost Tags and Tag Exchanges

(1) A fee of \$15.00 (plus a \$2.00 license agent fee) is charged to replace a tag or permit. If the fee paid for the tag or permit that was lost, destroyed or stolen was less than \$15, the same fee shall be charged for the duplicate tag or permit. A fee of \$5.00 (plus a \$2.00 license agent fee) is charged to exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the Department, and designated district offices. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the Department if the Department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-045-0002. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be request-

ed by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or 635-0065-0015(5)(a), (b), (c), (d), (e), (f), or (g).

(7) The Commission shall accommodate Oregon residents who have lost preference points because of being called to active military service after June 1, 2002.

(a) The Commission shall accommodate the following individuals called to service at any location: Oregon National Guard.

(b) The Commission shall accommodate the following Oregon residents with military operational commitments: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, and Coast Guard), members of the United States military reserves, and members of the National Guard.

(c) The Commission authorizes the Director to make such accommodations by:

(A) Reinstating preference points existing for a series, plus an additional point for participating in the draw.

(B) Reinstating preference points lost after two consecutive years of not applying for a controlled hunt in that series.

(d) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Salem headquarters office. Each request must include a letter from a supervising officer on official unit letterhead verifying operational commitments.

(8)(a) The Director may reinstate the preference points of a person who the Director determines did not or will not participate in a controlled hunt because of:

(A) Circumstances beyond the person's control; or

(B) Tragic personal circumstances.

(b) "Tragic personal circumstances" means:

(A) Death or life-threatening injury or illness in the person's immediate family; or

(B) The person's own serious injury or illness, which results in the person's hospitalization. The person need not be hospitalized during the hunt; this rule also applies if preparation for surgery or recovery after hospitalization renders the person incapable of participating in the hunt.

(c) To apply for reinstatement, the person must provide a sworn affidavit providing adequate details and must return the unused tag if it was purchased or a signed affidavit stating the tag was not used. When relying upon tragic personal circumstances, the person must also provide a sworn affidavit by a physician. When relying upon circumstances beyond the person's control, the person must also provide documentation of the circumstances (such as an accident report or affidavit from an employer).

(d) "Circumstances beyond the person's control" excludes complaints about the quality of a hunt (including, but not limited to, road closures, inclement weather and work being conducted in the hunt area).

(e) If the Director decides that the person does not qualify for reinstatement, the person may appeal that decision to the Oregon Fish and Wildlife Commission (Commission). The Commission must review the Director's decision within 60 days after receipt of appeal. The Commission will not take verbal testimony from the person, and the Commission's decision is final.

(f) If the Director or Commission reinstates a person's preference point under this subsection, the person will be awarded a new point as when classified as "unsuccessful" in the draw and is not entitled to a refund of license or tag fees.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 118, f. & ef. 6-3-77; FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 47-1988, f. & ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 26-2005, f. & cert. ef. 4-20-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 93-2007(Temp), f. & cert. ef. 9-26-07 thru 3-23-08; Administrative correction 4-23-08; DFW 126-2008(Temp), f. & cert. ef. 10-6-08 thru 4-4-09; DFW 66-2009, f. &

ADMINISTRATIVE RULES

cert. ef. 6-10-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 14-2012(Temp), f. & cert. ef. 2-10-12 thru 8-7-12

Rule Caption: Establishes rules regarding Western Oregon Deer Regulations for 2012.

Adm. Order No.: DFW 15-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 3-1-12

Notice Publication Date: 9-1-2011

Rules Amended: 635-068-0000

Subject: Establish the 2012 hunting regulations for western Oregon deer including season dates, bag limits, areas, methods and other restrictions.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2011 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 68 by reference.

(3) OAR chapter 635, division 68 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled “2012 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2012 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. 12-1-05, cert. ef. 3-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 125-2006, f. 12-4-06, cert. ef. 3-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 116-2007, f. 10-31-07, cert. ef. 3-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 13-2009, f. 2-19-09, cert. ef. 3-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 14-2010, f. 2-16-10, cert. ef. 3-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 14-2011, f. 2-15-11, cert. ef. 3-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 15-2012, f. 2-10-12, cert. ef. 3-1-12

Rule Caption: Bonneville Pool Recreational Sturgeon Fishery Closes.

Adm. Order No.: DFW 16-2012(Temp)

Filed with Sec. of State: 2-14-2012

Certified to be Effective: 2-18-12 thru 7-31-12

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: This amended rule closes the recreational sturgeon season in the Bonneville Pool of the Columbia River effective 12:01 a.m. February 18, 2012. Modifications are consistent with action taken February 8, 2012 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The 2012 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River 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 2012 Oregon Sport Fishing Regulations.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38–54

inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 20 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 19.

(4) The mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 12 through July 8 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 11 and July 9 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing periods as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(9) Effective 12:01 a.m. Saturday February 18, 2012 the retention of sturgeon in Bonneville Reservoir and tributaries is prohibited.

(10) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43–54 inches, seven days per week from February 1 through July 31.

(11) The retention of white sturgeon in the area identified in section

(10) of this rule is prohibited August 1 through January 31.

(12) Retention of green sturgeon is prohibited all year in all areas.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12

ADMINISTRATIVE RULES

Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Amendments to Information Assets Access Control Rules.

Adm. Order No.: DHSD 1-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 1-1-2012

Rules Amended: 407-014-0300, 407-014-0305, 407-014-0310, 407-014-0315, 407-014-0320

Rules Repealed: 407-014-0300(T), 407-014-0305(T), 407-014-0310(T), 407-014-0315(T), 407-014-0320(T)

Subject: These rules apply to anyone who seeks to access the Department of Human Services' (Department) information assets, systems and networks. They establish access controls for all organizations and users and require organizations to establish a risk management plan addressing common safeguards and HIPAA compliance. These rules allow for audits of organizations handling Department information assets, address privilege changes and establish requirements for reporting incidents and resolutions. These rules are amended for clarity and defining "user" and "organization." These rules are filed in conjunction with similar rules for the Oregon Health Authority, OAR 943-014-0300 to 943-014-0320. Adoption of these rules will repeal the temporary rules currently in effect since August 9, 2011.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-014-0300

Scope

These rules (OAR 407-014-0300 to 407-014-0320) apply to an organization or individual seeking or receiving access to Department information assets or network and information systems for the purpose of carrying out a business transaction between the Department and the user.

(1) These rules are intended to complement, and not supersede, access control or security requirements in the Department's Electronic Data Transmission rules, OAR 407-120-0100 to 407-120-0200, and whichever rule is more specific shall control.

(2) The confidentiality of specific information and the conditions for use and disclosure of specific information are governed by other laws and rules, including but not limited to the Department's rules for the privacy of protected information, OAR 407-014-0000 to 407-014-0070.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; DHSD 1-2012, f. & cert. ef. 2-1-12

407-014-0305

Definitions

For purpose of these rules, the following terms have definitions set forth below. All other terms not defined in this section shall have the meaning used in the Health Insurance Portability and Accountability Act (HIPAA) security rules found at 45 CFR § 164.304:

(1) "Access" means the ability or the means necessary to read, communicate, or otherwise use any Department information asset.

(2) "Access control process" means Department forms and processes used to authorize a user, identify their job assignment, and determine the required access.

(3) "Client records" means any client, applicant, or participant information regardless of the media or source, provided by the Department to the user, or exchanged between the Department and the user.

(4) "Department" means the Department of Human Services.

(5) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any network and information system or Department information asset including but not limited to unauthorized disclosure of information, failure to protect user's identification (ID) provided by the Department, or theft of computer equipment that uses or stores any Department information asset.

(6) "Information asset" means any information, also known as data, provided through the Department, regardless of the source or media, which requires measures for security and privacy of the information.

(7) "Network and information system" means the State of Oregon's computer infrastructure which provides personal communications, client

records and other sensitive information assets, regional, wide area and local area networks, and the internetworking of various types of networks on behalf of the Department.

(8) "Organization" means any entity authorized by the Department to access a network and information system or information asset.

(9) "User" means any individual authorized by the Department to access a network and information system or information asset.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; DHSD 1-2012, f. & cert. ef. 2-1-12

407-014-0310

Information Access

The organization or user shall utilize the Department access control process for all requested and approved access. The Department shall notify the user of each approval or denial. When approved, the Department shall provide the user with a unique login identifier to access the network and information system or information asset. The Department may authorize the use of a generic login identifier.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; DHSD 1-2012, f. & cert. ef. 2-1-12

407-014-0315

Security Information Assets

(1) No organization or user shall access an information asset for any purpose other than that specifically authorized by the Department access control process.

(2) Except as specified or approved by the Department, no organization or user shall alter, delete, or destroy any information asset.

(3) The organization shall prohibit unauthorized access by their staff, contractors, agents, or others to the network and information systems or Department information assets, and shall implement safeguards to prevent unauthorized access in accordance with section (4) of this rule.

(4) The organization shall develop a security risk management plan. The organization shall ensure that the plan includes but is not limited to the following:

(a) Administrative, technical, and physical safeguards commonly found in the International Standards Organization 27002: 2005 security standard or National Institute of Standards and Technology (NIST) 800 Series.

(b) Standards established in accordance with HIPAA security rules, 45 CFR Parts 160 and 164, applicable to an organization or user regarding the security and privacy of a client record, any information asset, or network and information system.

(c) The organization's privacy and security policies.

(d) Controls and safeguards that address the security of equipment and storage of any information asset accessed to prevent inadvertent destruction, disclosure, or loss.

(e) Controls and safeguards that ensure the security of an information asset, regardless of the media, as identified below:

(A) The user keeps Department-assigned access control requirements such as identification of authorized users and access control information (passwords and personal identification numbers (PINs)), in a secure location until access is terminated;

(B) Upon request of the Department, the organization makes available all information about the user's use or application of the access controlled network and information system or information asset; and

(C) The organization or user ensures the proper handling, storage, and disposal of any information asset obtained or reproduced and, when the authorized use of that information ends, is consistent with any applicable record retention requirements.

(f) Existing security plans developed to address other regulatory requirements, such as Sarbanes-Oxley Act of 2002 (PL 107-204), Title V of Gramm Leach Bliley Act of 1999, and Statement on Auditing Standards (SAS) number 70, will be deemed acceptable as long as they address the above requirements.

(5) The Department may request additional information related to the organization's security measures.

(6) The organization or user must immediately notify the Department when access is no longer required and immediately cease access to or use of all information assets or network and information systems.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; DHSD 1-2012, f. & cert. ef. 2-1-12

ADMINISTRATIVE RULES

407-014-0320

User Responsibility

The organization or user shall not make any root level changes to any Department or State of Oregon network and information system. The Department recognizes that some application users have root level access to certain functions to allow the user to diagnose problems (such as startup or shutdown operations, disk layouts, user additions, deletions or modifications, or other operation) that require root privileges. This access does not give the user the right to make any changes normally restricted to root without explicit, written permission from the Department.

(1) Use and disclosure of any Department information asset is strictly limited to the minimum information necessary to perform the requested and authorized service.

(2) The organization shall have established privacy and security measures that meet or exceed the standards set forth in the Department's privacy and information security policies, available from the Department, regarding the disclosure of an information asset.

(3) The organization or user shall comply with all security and privacy federal and state laws, rules, and regulations applicable to the access granted.

(4) The organization shall make the security risk plan available to the Department for review upon request.

(5) The organization or user shall report to the Department all privacy or security incidents by the user that compromise, damage, or cause a loss of protection to Department information assets or network and information systems. The incident report shall be made no later than five business days from the date on which the user becomes aware of such incident. The user shall provide the Department a written report which must include the results of the incident assessment findings and resolution strategies.

(6) Wrongful use of a network and information system or wrongful use or disclosure of a Department information asset by the organization or user may cause the immediate suspension or revocation of any access granted at the sole discretion of the Department without advance notice.

(7) The organization or user shall comply with the Department's request for corrective action concerning a privacy or security incident and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2011(Temp), f. & cert. ef. 8-9-11 thru 2-2-12; DHSD 1-2012, f. & cert. ef. 2-1-12

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Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 2-2012

Filed with Sec. of State: 1-25-2012

Certified to be Effective: 1-25-12

Notice Publication Date: 11-1-2011

Rules Amended: 461-155-0180, 461-155-0235

Subject: OAR 461-155-0180 is about the poverty related income standards in the Department's public assistance, medical and SNAP programs. This rule is being amended to update the rule's title and reflect the annual increase in the federal poverty guidelines. The Department converts the annual poverty guidelines published in the Federal Register to a monthly, rounded amount and uses the result to determine the new income limits.

OAR 461-155-0235 is about the premium standards for the Oregon Health Plan Standard (OHP-OPU). This rule is being amended to reflect the annual increase in the federal poverty guidelines. The Department and the Oregon Health Authority (OHA) convert the annual poverty guidelines published in the Federal Register to a monthly, rounded amount and uses the result to determine the amount of premium billed for each OHP Standard client who is required to pay a monthly premium. Some OHP Standard clients are exempt from the premium requirement.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 163 percent of the 2012 federal poverty level is set at the following amounts:

(6) A monthly income standard set at 185 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 200 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at 201 percent of the 2012 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 2-2012, f. & cert. ef. 1-25-12

461-155-0235

OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group (see OAR 461-110-0400):

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The countable income of the financial group (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non exempt OHP-OPU client in the benefit group (see OAR 461-110-0750) is determined from the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.598, 411.600

Stats. Implemented: ORS 411.060, 411.070, 411.598, 411.600

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 2-2011, f. & cert. ef. 1-20-11; SSP 2-2012, f. & cert. ef. 1-25-12

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Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 3-2012(Temp)

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 1-26-12 thru 3-31-12

Notice Publication Date:

Rules Amended: 461-155-0030

Subject: OAR 461-155-0030 about income and payment standards is being amended to change how the rule describes income limits for benefits in the JOBS and TANF programs. This amendment cross-references another rule that displays income limits representing 185 percent of the federal poverty level instead of duplicating the tables.

Rules Coordinator: Annette Tesch—(503) 945-6067

ADMINISTRATIVE RULES

461-155-0030

Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the JOBS, MAA, MAF, REF, SAC, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF, and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the TANF program, a caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group is subject to the “no-adult countable income limit standard” for the need group under subsection (c) of this section. The “non-needy countable income limit standard” for the filing group (see OAR 461-110-0330) is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(c) In the REF and TANF programs, when the need group contains no adults, the “no adult countable income limit standard” is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the household group (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(d) In the JOBS program, for the filing group of a non-custodial parent who resides in Oregon and whose dependent child (see OAR 461-001-0000) is receiving TANF program benefits in Oregon to participate in an activity (see OAR 461-001-0025) of the JOBS program, the countable (see OAR 461-001-0000) income limit is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF, and SAC programs, except as provided otherwise in subsection (b) of this section, the following table is used: [Table not included. See ED. NOTE.]

(b) Effective October 1, 2010, to calculate cash benefits for a need group with an adult in the REF and TANF programs, the following table is used: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 412.006, 412.049, 412.124

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 3-2012(Temp), f. & cert. ef. 1-26-12 thru 3-31-12

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Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 4-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 1-31-12 thru 7-29-12

Notice Publication Date:

Rules Amended: 461-025-0300, 461-025-0310

Subject: OAR 461-025-0300 about contested case hearings is being amended to continue certain current contested case procedures by opting out as permitted from new statewide rules on the topics of requests for admission, interrogatories, and disclosure of witness addresses and telephone numbers. Under this amendment, witness addresses and phone numbers will not be disclosed to clients not represented by an attorney. Additionally, requests for admission and interrogatories would only be permitted when the Department of Justice is representing the Department of Human Services.

OAR 461-025-0310 about hearing requests is being amended to indicate that a client has a right to a hearing when there is a decision notice or contested case notice from the Department that denies in part a claim that the Department previously underissued public assistance or SNAP program benefits as well as when the Department modifies a grant of aid or public assistance. This rule is also being amended to continue current contested case procedures under which the timeliness of a hearing request is based on the date the Department receives it, not the date of the postmark. This rule is also being amended to implement ORS 411.103 by setting out the Department’s policy when a hearing request is late because a notice was not received and there was no actual knowledge of it.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-025-0300

Contested Case Hearings

(1) The rules in Division 025 of this chapter of rules apply to contested case hearings of the Department authorized by OAR 461-025-0310(1). The hearings are conducted in accordance with the Attorney General’s model rules at OAR 137-003-0501 and following, except to the extent that Department rules are permitted to and provide for different procedures.

(a) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in this division of rules.

(b) In any contested case to which this division of rules applies, when a party or claimant is not represented by an attorney, the Department and any party or claimant in the contested case are not required to provide the telephone numbers and addresses of witnesses prior to the hearing.

(2) Department employees are authorized to appear on behalf of the Department in the following types of hearings:

(a) Public assistance.

(b) Employment-Related Day Care.

(c) Supplemental Nutrition Assistance Program.

(3) When a Department employee represents the Department in a contested case to which this division of rules applies, requests for admission and written interrogatories are not permitted.

(4) The Department’s contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the party’s consent.

(5) The Department has adopted the exceptions to the Attorney General’s model rules set out in subsection (1)(b) and section (3) of this rule due to its caseload volume and because these discovery procedures would unduly complicate or interfere with the hearing process.

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.816 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12

461-025-0310

Hearing Requests

(1) A claimant (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:
(A) An application for SNAP program benefits — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

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(c) The Department acts to deny, reduce, close, or suspend SNAP program benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of SNAP program benefits was an overissuance.

(e) The Department modifies a grant of public assistance or a grant of aid; or the claimant claims that the Department previously underissued public assistance or SNAP program benefits and the Department denies, or denies in part, that claim.

(f) The household disputes its current level of SNAP program benefits.

(g) The filing group (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of nursing facility services or Waivered Services (defined at OAR 461-001-0030).

(m) The claimant's benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance and SNAP programs, when the Department's Administrative Hearing Request form (form DHS 443) is:

(A) Completed;

(B) Signed by the claimant, the claimant's attorney, or the claimant's authorized representative (see OAR 461-115-0090); and

(C) Received by the Department. OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the post-mark) does not apply to hearing requests contesting a decision notice (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General's model rules set out in this paragraph due to operational conflicts.

(b) In the SNAP program, when the Department receives an oral or written statement from the claimant, the claimant's attorney, or the claimant's authorized representative that the claimant wishes to appeal a decision affecting the claimant's SNAP program benefits to a higher authority.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative

Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of aid in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the SNAP program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(8) When the Department receives a completed hearing request that is not filed within the timeframe required by section (6) of this rule but is filed no later than 60 days after a decision notice became a final order:

(a) If the Department finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice, the Department refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice.

(b) The Department may refer the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant or claimant's representative received the decision notice or had actual knowledge of the decision notice. At the hearing, the Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the claimant or claimant's representative.

(9) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

(10) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.

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

Stat. Auth.: ORS 411.060, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.095, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 5-2012(Temp)

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12 thru 7-30-12

Notice Publication Date:

Rules Amended: 461-155-0250

Subject: OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to clarify current policy regarding income standards for clients in nonstandard living arrangements. These are clients

ADMINISTRATIVE RULES

applying for or receiving services in a nursing facility in which the client receives long-term care services paid with Medicaid funding (except a Medicare client in a skilled-stay nursing facility); an intermediate care facility for the mentally retarded (ICF/MR); a psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65; or a community based care (see section (16) of this rule) setting (except a State Plan Personal Care setting). This amendment clarifies that that 300 percent of the full SSI standard only applies to clients who also meet the requirements of OAR 461-135-0750 for certain individuals in long-term care or waived services. This amendment also clarifies that a qualifying trust exemption applies to that standard.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0250

Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) A client in a *nonstandard living arrangement* (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in OAR 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM program, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

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

Stat. Auth.: ORS 411.060, 411.070, 411.706, 2009 OL Ch. 849

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706, 2009 OL Ch. 849

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef. 2-1-12 thru 7-30-12

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Department of Justice Chapter 137

Rule Caption: Mortgage Loan Servicing.

Adm. Order No.: DOJ 2-2012(Temp)

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12 thru 7-24-12

Notice Publication Date:

Rules Adopted: 137-020-0800

Subject: OAR 137-020-0800 declares certain practices relating to mortgage loan servicing to be unlawful trade practices. Under the rule, it is unfair and deceptive for a mortgage loan servicer to, among other things, assess late fees for on-time payments; assess or collect unauthorized default fees; fail to follow guidelines issued by the Federal Home Financing Agency for loans made or held by government sponsored enterprises for borrowers pursuing an alternative to foreclosure; misrepresent any material information regarding a loan modification; fail to comply with certain provisions of the Real Estate Settlement Procedures Act; and, fail to deal with a borrower in good faith.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0800

Mortgage Loan Servicing

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain practices relating to the servicing of a residential mortgage loan.

(2) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by ORS 646.608(1)(u) and (4) and Oregon Laws 2010, chapter 94, section 6(3) (Special Session).

(3) Effective Date: January 27, 2012.

(4) Definitions: As used in this rule:

(a) "Borrower" means an individual who is obligated to repay a loan under a residential mortgage loan agreement, and includes the individual's spouse, domestic partner, and heirs;

(b) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(c) "Mortgage loan servicer" means a person engaging in the servicing of residential mortgage loans in this state and includes a person who makes or holds a mortgage loan if the person is the holder of the mortgage servicing rights or has been delegated servicing functions for the mortgage loan;

(d) "Residential mortgage loan" means a loan to a natural person made primarily for personal, family or household use, secured by a mortgage or other consensual security interest on residential real property located in this state;

(e) "Servicing of residential mortgage loans" includes, but is not limited to:

(A) Collecting or remitting, or having the right or obligation to collect or remit, for a lender, note owner, note holder or other holder of an interest in a note, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a residential mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

(B) Bringing and maintaining a suit or action to collect amounts owed on a residential mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership; and,

(C) Taking action for the purpose of protecting the lender's, note owner's, note holder's or other owner of an interest in the note's interest in the property and rights under the security instrument. "Servicing of residential mortgage loans" does not include the activities of any person licensed or authorized to act as an attorney, escrow agent, title company, or title insurer under Oregon law, or any person qualified to serve as a trustee under ORS 86.790.

(f) "Person" has the meaning provided in ORS 646.605(4); and,

(g) "Residential real property" means real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the primary residence of the borrower, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

(5) Prohibited Conduct: A mortgage loan servicer engages in unfair or deceptive conduct in trade or commerce if the mortgage loan servicer:

(a) Assesses a late fee or delinquency charge for a payment received from a borrower by the payment's due date or within any applicable grace period;

(b) Assesses or collects any default-related fee or charge that the servicer is not legally authorized to assess or collect under the terms of the residential mortgage loan, deed of trust, or mortgage;

ADMINISTRATIVE RULES

(c) Fails to follow the guidelines issued by the Federal Home Financing Agency for loans made or held by government sponsored enterprises for borrowers pursuing an alternative to foreclosure;

(d) Misrepresents to a borrower any material information regarding a loan modification;

(e) Misrepresents any information set forth in an affidavit, declaration, or other sworn statement detailing a borrower's default and the servicer's right to foreclose;

(f) Fails to provide a borrower with notice that the borrower's request for loan modification has been denied or rejected within 10 days of the denial or rejection, but in no event, less than 20 days before a scheduled trustee sale;

(g) Fails to comply with the requirements of 12 USC 2605(b), 12 USC 2605(c), 12 USC 2605(d), or 12 USC 2605(e); and,

(h) Fails to deal with a borrower in good faith.

Stat. Auth.: ORS 183, 646

Stats. Implemented: ORS 646.608(1)(u)

Hist.: DOJ 2-2012(Temp), f. & cert. ef. 1-27-12 thru 7-24-12

Rule Caption: Amends Notice of Garnishment Model Forms to Respond to Changes in Oregon Law.

Adm. Order No.: DOJ 3-2012

Filed with Sec. of State: 2-2-2012

Certified to be Effective: 2-2-12

Notice Publication Date: 12-1-2011

Rules Amended: 137-060-0130, 137-060-0150, 137-060-0160, 137-060-0230, 137-060-0250, 137-060-0330, 137-060-0350, 137-060-0360, 137-060-0430, 137-060-0450

Subject: Amends existing model garnishment forms for notices of garnishment issued by state agencies and county tax collectors.

Rules Coordinator: Carol Riches—(503) 947-4700

137-060-0130

County Tax — Instructions to Garnishee Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857

Hist.: DOJ 6-2002, f. & cert. ef. 9-24-02; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0150

County Tax — Notice of Exempt Property Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.85 & 18.857

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0160

County Tax — Wage Exemption Calculation Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0230

State Tax — Instructions to Garnishee Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0250

State Tax — Notice of Exempt Property Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0330

Debts other than State Tax — Instructions to Garnishee Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0350

Debts other than State Tax — Notice of Exempt of Property Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0360

Debts other than State Tax — Wage Exemption Calculation Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600-18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0430

Special Notice of Garnishment — Instructions to Garnishee Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

137-060-0450

Special Notice of Garnishment — Notice of Exempt Property Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10; DOJ 3-2012, f. & cert. ef. 2-2-12

Rule Caption: Mortgage Loan Servicing.

Adm. Order No.: DOJ 4-2012(Temp)

Filed with Sec. of State: 2-15-2012

Certified to be Effective: 2-15-12 thru 7-24-12

Notice Publication Date:

Rules Adopted: 137-020-0805

Rules Suspended: 137-020-0800(T)

Subject: OAR 137-020-0800 declared certain practices relating to mortgage loan servicing to be unlawful trade practices. Under the rule, it is unfair and deceptive for a mortgage loan servicer to, among other things, assess late fees for on-time payments; assess or collect unauthorized default fees; misrepresent any material information regarding a loan modification; fail to comply with certain provisions of the Real Estate Settlement Procedures Act; and, fail to deal with a borrower in good faith.

Since issuing OAR 137-020-0800, some members of the mortgage servicing industry have expressed concern about the rule's applicability to open-end credit loans such as home equity lines of credit, and have expressed concern that some of the guidelines referenced in the rule are not readily available. DOJ is suspending OAR 137-020-0800 and reissues the rule as OAR 137-020-0805, making several changes. First, the new rule exempts open-end credit such as home equity lines of credit from the definition of "residential mortgage loan." The new rule also deletes the requirement that a mortgage loan servicer follow FHFA guidelines for borrowers pursuing an alternative to foreclosure. Finally, OAR 137-020-0805 clarifies the effective date of the provisions of the Real Estate Settlement Procedures Act with which mortgage loan servicers must comply.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0800

Mortgage Loan Servicing

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain practices relating to the servicing of a residential mortgage loan.

(2) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by ORS 646.608(1)(u) and (4) and Oregon Laws 2010, chapter 94, section 6(3) (Special Session).

(3) Effective Date: January 27, 2012.

(4) Definitions: As used in this rule:

(a) "Borrower" means an individual who is obligated to repay a loan under a residential mortgage loan agreement, and includes the individual's spouse, domestic partner, and heirs;

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(b) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(c) "Mortgage loan servicer" means a person engaging in the servicing of residential mortgage loans in this state and includes a person who makes or holds a mortgage loan if the person is the holder of the mortgage servicing rights or has been delegated servicing functions for the mortgage loan;

(d) "Residential mortgage loan" means a loan to a natural person made primarily for personal, family or household use, secured by a mortgage or other consensual security interest on residential real property located in this state;

(e) "Servicing of residential mortgage loans" includes, but is not limited to:

(A) Collecting or remitting, or having the right or obligation to collect or remit, for a lender, note owner, note holder or other holder of an interest in a note, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a residential mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

(B) Bringing and maintaining a suit or action to collect amounts owed on a residential mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership; and,

(C) Taking action for the purpose of protecting the lender's, note owner's, note holder's or other owner of an interest in the note's interest in the property and rights under the security instrument.

"Servicing of residential mortgage loans" does not include the activities of any person licensed or authorized to act as an attorney, escrow agent, title company, or title insurer under Oregon law, or any person qualified to serve as a trustee under ORS 86.790.

(f) "Person" has the meaning provided in ORS 646.605(4); and,

(g) "Residential real property" means real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the primary residence of the borrower, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

(5) Prohibited Conduct: A mortgage loan servicer engages in unfair or deceptive conduct in trade or commerce if the mortgage loan servicer:

(a) Assesses a late fee or delinquency charge for a payment received from a borrower by the payment's due date or within any applicable grace period;

(b) Assesses or collects any default-related fee or charge that the servicer is not legally authorized to assess or collect under the terms of the residential mortgage loan, deed of trust, or mortgage;

(c) Fails to follow the guidelines issued by the Federal Home Financing Agency for loans made or held by government sponsored enterprises for borrowers pursuing an alternative to foreclosure;

(d) Misrepresents to a borrower any material information regarding a loan modification;

(e) Misrepresents any information set forth in an affidavit, declaration, or other sworn statement detailing a borrower's default and the servicer's right to foreclose;

(f) Fails to provide a borrower with notice that the borrower's request for loan modification has been denied or rejected within 10 days of the denial or rejection, but in no event, less than 20 days before a scheduled trustee sale;

(g) Fails to comply with the requirements of 12 USC 2605(b), 12 USC 2605(c), 12 USC 2605(d), or 12 USC 2605(e); and,

(h) Fails to deal with a borrower in good faith.

Stat. Auth.: ORS 183, 646

Stats. Implemented.: ORS 646.608(1)(u)

Hist.: DOJ 2-2012(Temp), f. & cert. ef. 1-27-12 thru 7-24-12; Suspended by DOJ 4-2012(Temp), f. & cert. ef. 2-15-12 thru 7-24-12

137-020-0805

Mortgage Loan Servicing

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain practices relating to the servicing of a residential mortgage loan.

(2) Authority: This rule is adopted pursuant to ORS Chapter 183 on authority granted to the Attorney General by ORS 646.608(1)(u) and (4) and Oregon Laws 2010, chapter 94, section 6(3) (Special Session).

(3) Effective Date: February 15, 2012.

(4) Definitions: As used in this rule:

(a) "Borrower" means an individual who is obligated to repay a loan under a residential mortgage loan agreement, and includes the individual's spouse, domestic partner, and heirs;

(b) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(c) "Mortgage loan servicer" means a person engaging in the servicing of residential mortgage loans in this state and includes a person who makes or holds a mortgage loan if the person is the holder of the mortgage servicing rights or has been delegated servicing functions for the mortgage loan;

(d) "Residential mortgage loan" means a loan to a natural person made primarily for personal, family or household use, other than a loan for open-end credit, as that term is defined in 12 CFR 1026.2(20), as in effect on December 30, 2011, secured by a mortgage or other consensual security interest on residential real property located in this state;

(e) "Servicing of residential mortgage loans" includes, but is not limited to:

(A) Collecting or remitting, or having the right or obligation to collect or remit, for a lender, note owner, note holder or other holder of an interest in a note, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a residential mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

(B) Bringing and maintaining a suit or action to collect amounts owed on a residential mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership; and,

(C) Taking action for the purpose of protecting the lender's, note owner's, note holder's or other owner of an interest in the note's interest in the property and rights under the security instrument. "Servicing of residential mortgage loans" does not include the activities of any person licensed or authorized to act as an attorney, escrow agent, title company, or title insurer under Oregon law, or any person qualified to serve as a trustee under ORS 86.790.

(f) "Person" has the meaning provided in ORS 646.605(4); and,

(g) "Residential real property" means real property located in this state improved by a one-to-four family residence or residential unit in a building used or occupied, or intended to be used or occupied, wholly or partly, as the primary residence of the borrower, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

(5) Prohibited Conduct: A mortgage loan servicer engages in unfair or deceptive conduct in trade or commerce if the mortgage loan servicer:

(a) Assesses a late fee or delinquency charge for a payment received from a borrower by the payment's due date or within any applicable grace period;

(b) Assesses or collects any default-related fee or charge that the servicer is not legally authorized to assess or collect under the terms of the residential mortgage loan, deed of trust, or mortgage;

(c) Misrepresents to a borrower any material information regarding a loan modification;

(d) Misrepresents any information set forth in an affidavit, declaration, or other sworn statement detailing a borrower's default and the servicer's right to foreclose;

(e) Fails to provide a borrower with notice that the borrower's request for loan modification has been denied or rejected within 10 days of the denial or rejection, but in no event, less than 20 days before a scheduled trustee sale;

(f) Fails to comply with the requirements of 12 USC 2605(b), 12 USC 2605(c), 12 USC 2605(d), or 12 USC 2605(e), as in effect on January 1, 2012; and,

(g) Fails to deal with a borrower in good faith.

Stat. Auth.: ORS 183 & 646

Stats. Implemented.: ORS 646.608(1)(u)

Hist.: DOJ 4-2012(Temp), f. & cert. ef. 2-15-12 thru 7-24-12

Department of Oregon State Police, Office of State Fire Marshal Chapter 837

Rule Caption: Review and update of Administrative Rules for Oregon's Fire Safer Cigarette Program.

Adm. Order No.: OSFM 1-2012

Filed with Sec. of State: 1-24-2012

Certified to be Effective: 1-24-12

ADMINISTRATIVE RULES

Notice Publication Date: 10-1-2011

Rules Amended: 837-035-0000, 837-035-0060, 837-035-0080, 837-035-0100, 837-035-0160, 837-035-0200, 837-035-0220, 837-035-0240

Subject: Review and update of Administrative Rules for Oregon's Fire Safer Cigarette Program.

The original advisory committee consisting of industry, fire service and other stakeholders were provided opportunity for input in this review of rules originally developed in 2007. Their input has been incorporated in these rule updates.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-035-0000

Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures for *fire standard compliant* (reduced ignition propensity) cigarettes.

(2) The scope of these rules applies to the implementation of ORS 476.755 through 476.806 and 476.995, relating to *fire standard compliant* (reduced ignition propensity) cigarettes.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0060

General

(1) All cigarettes sold or offered for sale in Oregon must be *fire standard compliant* (reduced ignition propensity) as required by ORS 476.760(1).

(2) Initial written certification attesting the cigarette variety has been subjected to ignition propensity testing under ORS 476.780 and meets the fire safety performance standard under ORS 476.770(6), must be provided to the Oregon State Fire Marshal (OSFM) prior to selling cigarettes. Refer to OAR 837-035-0080 for certification requirements.

(3) Re-certification of cigarettes is required every three years after initial certification. Refer to OAR 837-035-0100 for re-certification requirements.

(4) In addition to the above listed requirements, cigarette manufacturers, wholesaler dealers and retailers who sell cigarettes in Oregon must also comply with:

(a) ORS 476.755 through 476.806;

(b) OAR 837-035-0000 through 837-035-0340;

(c) All applicable federal, state and local laws, rules and regulations pertaining to cigarettes.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0080

Certification Requirements

(1) *Cigarette manufacturers* must submit written certification to the OSFM attesting the cigarette variety has been subjected to ignition propensity testing under ORS 476.780, and meets the fire safety performance standard under ORS 476.755 through 476.806 as proof that cigarette varieties have reduced ignition propensity.

(2) Certifications are valid for three years from the date of receipt by the OSFM.

(3) Written certifications must fulfill the requirements of ORS 476.780, for each cigarette variety. In particular, certifications must contain the following information for each variety of cigarette listed:

(a) The brand name shown on the cigarette packaging;

(b) The style or pack identifier;

(c) The length in millimeters;

(d) The circumference in millimeters;

(e) The flavor, such as menthol or chocolate, if applicable;

(f) Whether the cigarette is filtered or nonfiltered;

(g) A packaging description, such as soft pack or box;

(h) A description of the packaging marking approved by the OSFM under ORS 476.785;

(i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the manufacturer;

(j) The date of the ignition propensity testing.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0100

Recertification Requirements

(1) *Manufacturers* must provide written re-certification to the OSFM within three years after the initial certification was received by the OSFM, and each three year period afterward.

(2) The re-certification must fulfill the requirements of ORS 476.780, for each cigarette variety.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0160

Packaging Marking

(1) *Manufacturers* must mark all packaging for cigarettes to indicate that cigarettes sold in this state are fire standard compliant (reduced ignition propensity). A manufacturer must submit to the State Fire Marshal a proposal for marking cigarette packaging. Proposed packaging marking must be in eight-point font or larger and consist of one of the following:

(a) Modification of the universal product code to indicate a visible mark printed at or around the universal product code. The mark may consist of alphanumeric or symbolic characters permanently printed, stamped, engraved or embossed in conjunction with the universal product code;

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the packaging or cellophane wrapping;

(c) Printed, stamped, engraved or embossed test indicating the cigarettes meet the fire safety performance standard established in ORS 476.770(6).

(2) The OSFM will approve or disapprove the proposal for packaging marking, and packaging marking proposals not approved or denied by the OSFM within 10 days of receipt are deemed approved. In determining whether to approve or disapprove a proposal for packaging marking, the OSFM must approve packaging marking with the letters "FSC" (signifying fire standard compliant).

(3) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0200

Manufacturer Requirements

(1) In addition to the requirements of this division, *manufacturers* may sell only cigarettes that are fire standard compliant (reduced ignition propensity) to Oregon wholesaler and retailer dealers.

(2) Manufacturers of any cigarette varieties must submit written certification to the OSFM and their wholesale dealers ensuring their cigarettes are fire standard compliant (reduced ignition propensity).

(3) If a manufacturer makes any changes to a cigarette that are likely to alter the cigarette's compliance with the fire safety performance standard described in ORS 476.770(6), the manufacturer must retest to ensure the cigarette still is fire standard compliant (reduced ignition propensity) before distributing.

(4) Manufacturers must retain copies of all test data for at least three years, and provide test data to the OSFM or Attorney General upon request.

(5) Manufacturers must submit proposals for packaging marking to the OSFM for approval. Refer to OAR 837-035-0160 for packaging marking requirements.

(6) Manufacturers must provide enough copies of the packaging marking illustration to wholesale dealers to allow them to provide one copy to each retail dealer.

(7) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: ORS 476

Stats. Implemented: ORS 476.755 - 476.806 & 476.995

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0220

Wholesale Dealer Requirements

(1) Wholesale dealers must provide one copy of the manufacturer's cigarette packaging marking illustration to each retail dealer.

(2) Wholesale dealers may sell only fire standard compliant/reduced ignition propensity cigarettes.

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(3) Wholesale dealers may house non-compliant cigarettes in Oregon, provided they are not to be sold in Oregon.

(4) Violations of this section are subject to a civil penalty as referenced in ORS 476.765, 476.995 and OAR 837-035-0320.

Stat. Auth.: ORS 476
Stats. Implemented: ORS 476.755 - 476.806 & 476.995
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

837-035-0240

Retail Dealer Requirements

(1) Retail dealers may sell only fire standard compliant/reduced ignition propensity cigarettes.

(2) Violations of this section are subject to a civil penalty as referenced in ORS 476.765 and OAR 837-035-0320.

Stat. Auth.: ORS 476
Stats. Implemented: ORS 476.755 - 476.806 & 476.995
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07; OSFM 1-2012, f. & cert. ef. 1-24-12

Rule Caption: Correlate 2010 Oregon Fire Code with changes made by Building Codes Division to 2010 Oregon Structural Specialty Code.

Adm. Order No.: OSFM 2-2012

Filed with Sec. of State: 1-24-2012

Certified to be Effective: 3-1-12

Notice Publication Date: 12-1-2011

Rules Amended: 837-040-0020

Subject: Rule changes are needed to correlate the 2010 Oregon Fire Code with changes made by Building Codes Division to the 2010 Oregon Structural Specialty Code for ADA requirements.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-040-0020

Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the Oregon Fire Code approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the international Fire Code, the Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstances merit (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications).

(3) Effective April 1, 2011, the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Add new section 908.7, Carbon Monoxide alarms, to correlate with the change to the 2010 Oregon Structural Specialty Code.

(b) Amend Chapter 47, National Fire Protection Association (NFPA) Standards and Underwriters Laboratories Standards, as follows:
NFPA 720-09 Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment — 908.7.

UL 2034-08 Standard for single and Multiple Station Carbon Monoxide Alarms, with revisions through February 20, 2009 — 908.7.

(4) Effective January 1, 2012, the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Amend Section 202, Definitions for Group R-3 Occupancy to correlate to the Oregon Structural Specialty Code, Section 310.

(b) Amend Section 510.2.2 by adding the words “at the agency’s antenna port” after -100 dBm and before shall be received..

(c) Amend Section 906.1 by using language from the 2012 International Fire Code.

(d) Amend Section 914.8.2 by adding a second exception to correlate to the Oregon Structural Specialty Codes, Section 412.4.5.

(e) Amend Section 4001.1, Exception 3 by adding “and SR” occupancies.

(f) Amend Section 4006.1 by adding “and SR” occupancies.

(g) Amend Section 4604.17 by updating with language from 2012 International Fire Code.

(h) Amend Chapter 47, National Fire Protection Association (NFPA) Standards, to current editions as follows:

NFPA 10 to the 2010 edition.
NFPA 13, 13R and 13D to the 2010 edition.
NFPA 17 to the 2009 edition.
NFPA 17A to the 2009 edition.
NFPA 20 to the 2010 edition.
NFPA 58 to the 2011 edition.
NFPA 72 to the 2010 edition.

NFPA 96 to the 2011 edition.

(5) Effective March 1, 2012 the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Adopt model language in Section 604.2.5 of the 2009 International Fire Code.

(b) Adopt model language in Section 604.2.3 of the 2009 International Fire Code.

(c) Amend Section 907.6.2.3.3, adopted July 01, 2010.

(d) Adopt model language in Table 907.6.2.3.3 of the 2009 International Fire Code.

(e) Correlate language in Section 907.6.2.3.4 of the 2010 Oregon Fire Code to the language in Section 907.5.2.3.4 of the 2010 Oregon Structural Specialty Code.

(f) Adopt model language in Section 1003.7 of the 2009 International Fire Code.

(g) Adopt model language in Section 1008.3 of the 2009 International Fire Code.

(h) Adopt model language in Section 1009.1 of the 2009 International Fire Code.

(i) Adopt model language in Section 1009.4.5 of the 2009 International Fire Code.

(j) Adopt model language in Section 1010.1 of the 2009 International Fire Code.

(k) Adopt model language in Section 1010.6.5 of the 2009 International Fire Code.

(l) Adopt model language in Section 1010.9 of the 2009 International Fire Code.

(m) Adopt model language in Section 1011.3 of the 2009 International Fire Code.

(n) Adopt model language in Section 1028.5.1 of the 2009 International Fire Code.

(o) Adopt Section 1007 of the 2009 International Fire Code.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 6-2008, f. 9-2-08, cert. ef. 10-1-08; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09; OSFM 4-2009, f. 11-19-09, cert. ef. 4-1-10; OSFM 2-2010(Temp), f. 2-3-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; OSFM 4-2010, f. & cert. ef. 11-3-10; OSFM 2-2011, f. 3-15-11, cert. ef. 4-1-11; OSFM 4-2011, f. 11-10-11, cert. ef. 1-1-12; OSFM 2-2012, f. 1-24-12, cert. ef. 3-1-12

Rule Caption: Removes fee language from administrative rules. Adds reference to Oregon Revised Statutes for fee amounts.

Adm. Order No.: OSFM 3-2012

Filed with Sec. of State: 1-24-2012

Certified to be Effective: 1-24-12

Notice Publication Date: 11-1-2011

Rules Amended: 837-020-0080, 837-020-0085, 837-020-0115

Subject: This rule change removes specific fee language from administrative rules and adds language to refer the reader to the appropriate Oregon Revised Statute, where the fees are set.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-020-0080

Nonretail Fuel Dispensing During a Governor Declared Emergency

(1) During an emergency as defined in ORS 401.025, a nonretail facility may permit individuals who are not otherwise qualified under ORS 480.345 to dispense Class 1 flammable liquids if all conditions specified in this section are satisfied.

(2) The owner or operator of the nonretail facility holds a valid non-retail facility license issued by the State Fire Marshal;

(3) The owner or operator has paid an application fee for each nonretail facility and customer fees required by House Bill 3696, Chapter 107, 2010 Special Session, ORS 480.350.

(4) The owner or operator has provided a blank copy of the form required by ORS 480.345 and OAR 837-020-0070 that will be used as the written agreement between the owner or operator and nonretail customer that outlines the safety training and emergency procedures to be used at the nonretail facility.

(5) The nonretail customer and the owner or operator of the nonretail facility have entered into a written agreement that meets the requirements of OAR 837-020-0070.

(6) The Class 1 flammable liquid is dispensed only into a motor vehicle or container of an emergency service agency as defined in ORS 401.025

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or to an entity authorized by an emergency service agency to provide services during an emergency.

(7)(a) The nonretail customer, other than the owner or operator, is an emergency service worker as defined in ORS 401.025 and dispenses Class 1 flammable liquids only into the fuel tank of a motor vehicle or container owned or used by the emergency service agency; or

(b) An owner or employee of the entity authorized by the emergency service agency to provide services during an emergency and dispenses Class 1 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by the entity authorized by that agency to provide services during an emergency.

(8) The nonretail customer, other than the owner or operator or employee, dispensing Class 1 flammable liquids satisfies safety training requirements of OAR 837-020-0055.

(9) The owner or operator is responsible to bear the burden of production and proof that the requirements of OAR 837-020-0040, and any other rules of the State Fire Marshal have been satisfied.

Stat. Auth.: ORS 480.347

Stats Implemented: ORS 480

Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 3-2012, f. & cert. ef. 1-24-12

837-020-0085

Nonretail and Conditional Nonretail Facility License Requirements

(1) Nonretail and conditional nonretail facilities must obtain a valid license issued by the State Fire Marshal, prior to operating a nonretail facility or a conditional nonretail facility.

(2) A separate license is required for each nonretail facility and conditional nonretail facility.

(3) All initial facility licenses be valid for one year from the date of issue.

(4) In accordance with ORS 183.705, a renewal date of a facility license may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(5) The State Fire Marshal will issue a license to the owner or operator if the owner or operator has:

(a) Complied with the requirements established by OAR 837-020-0040;

(b) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(c) Certified that the owner or operator will comply with all provisions of ORS 480.345, the OFC, and this division;

(d) Provided a blank copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(e) Provided a blank copy of the safety training that is provided to their nonretail customers and conditional use customers, to ensure the safety training meets all requirements of OAR 837-020-0055;

(f) Paid an application fee for each facility site and customer fees required by House Bill 3696, Chapter 107, 2010 Special Session, ORS 480.350.

(6) Any and all certification required by this section must be made in accordance with ORS 162.075.

(7) The owner or operator bears the burden of production and proof that the requirements of this Division, and all applicable rules of the State Fire Marshal have been satisfied.

(8) The State Fire Marshal may conduct an on-site inspection to determine compliance with OAR 837-020-0040 and other applicable fire and life safety laws prior to issuing a nonretail facility or conditional nonretail facility license to the owner or operator under section (4) of this rule.

(9) In addition to the requirements set forth in this section, owners or operators who wish to operate a dual operations facility, the owner or operator must provide to the State Fire Marshal, on State Fire Marshal forms, the specific hours and days when the owner or operator proposes to conduct only retail dispensing and the specific hours and days when the owner or operator proposes to conduct only nonretail dispensing.

(10) In addition to the requirements set forth in this section, owners or operators who wish to operate a conditional nonretail facility, must comply with the following:

(a) A conditional nonretail facility may permit persons who are not otherwise qualified under OAR 837-020-0050 to dispense Class 1 flammable liquids if all conditions specified in this section are satisfied;

(b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal may issue a conditional nonretail license to an owner or operator for local non-commercial use if the State Fire Marshal finds:

(A) There is no facility where Class 1 flammable liquids are dispensed by attendants at retail, including dual operation facilities, within seven miles of the owner or operator's nonretail facility, and other undue hardship conditions exist. Such undue hardship conditions are determined on a case by case basis and may include, but are not limited to, road conditions, and volume and type of traffic in the affected area;

(B) The owner or operator has certified that the owner or operator will comply with the applicable provisions of ORS 480.345(1), (5), (6)(d), and (6)(e), and this division;

(C) The method of access to a conditional nonretail facility only allows access to that specific conditional nonretail facility and no other nonretail facility or conditional nonretail facility.

(11) Within a given geographical area, applications for conditional nonretail licenses issued under this section are considered in order of priority of receipt. The date the State Fire Marshal actually receives the application determines its priority.

(12) A conditional nonretail license may not be renewed if the requirements of this Section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.380 & 480.355

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 3-2012, f. & cert. ef. 1-24-12

837-020-0115

Application, License Renewals, and Annual Fees

(1) Any owner or operator engaged in, or intending to engage in, the operation of a nonretail facility or a conditional nonretail facility must apply for and obtain a license issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities must be submitted and received by the State Fire Marshal 45 days prior to the start of the operation.

(2) A separate license must be applied for and obtained for each nonretail facility or conditional nonretail facility.

(3) The license must be obtained prior to start of the nonretail facility or conditional nonretail facility operation, or the owner or operator may be assessed a civil penalty and be subject to closure of the Nonretail or conditional nonretail facility.

(4) The application fee for each nonretail facility and conditional nonretail facility license is established by ORS 480.350. Licenses are valid for one year from the date of issue.

(5) In accordance with ORS 183.705, the license renewal date of a facility may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(6) License fees may be either paid at, or mailed to, the State Fire Marshal. The license application may be either delivered to or mailed to the State Fire Marshal.

(7) Payment may be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal may not take any action on the license application until the check has cleared the bank.

(8) In addition to the application and renewal fees assessed by this section, owners or operators of nonretail facilities and conditional nonretail facilities must pay to the State Fire Marshal an annual account fee established by ORS 480.350 for each nonretail customer and conditional use customer who has access to dispense Class 1 flammable liquids at any time during the applicable license year.

(9) License renewal applications, accompanying documentation, and payment must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the license expiration for a license renewal valid for the following license. If the 30 days prior to the license expiration date falls on a day when a postmark cannot be obtained, the applications must be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(10) License application renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty.

(11) License and customer fees received by the Office of State Fire Marshal are deposited with the State Treasurer, placed in the State Fire Marshal Fund, and used to fund the non-retail fuel dispensing program.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-

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2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08; OSFM 3-2012, f. & cert. ef. 1-24-12

Rule Caption: Housekeeping and clarification of fireworks wholesale administrative rules.

Adm. Order No.: OSFM 4-2012(Temp)

Filed with Sec. of State: 2-6-2012

Certified to be Effective: 2-6-12 thru 8-3-12

Notice Publication Date:

Rules Amended: 837-012-0515

Subject: Clarify section 837-012-0515 of the wholesale fireworks administrative rules, and make a few housekeeping changes.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-012-0515

General

(1) Definitions. For purposes of this administrative rule, the following definitions apply:

(a) “Fireworks” has the definition contained in ORS 480.110.

(b) “Person” means any business, entity, or individual.

(c) “Wholesaler” means a person that possesses an Oregon wholesale permit issued by the State Fire Marshal.

(2) Any person intending to sell or provide fireworks by any means within the state of Oregon, must first obtain an Oregon wholesale permit.

(3) Any person intending to sell or provide items described in ORS 480.127 by any means within the state of Oregon, must first obtain an Oregon wholesale permit, unless that person possesses an Oregon retail sales permit.

(4) A wholesaler may sell or provide by any means either fireworks or items described in ORS 480.127 in the state of Oregon only to persons having obtained one of the following State Fire Marshal issued permits:

(a) Fireworks display permit, including general, limited, close proximity, and special effects;

(b) Retail sales permit for the sale of retail fireworks to the general public; or

(c) Agricultural fireworks permit for scaring away birds or animals injurious to crops.

(5) Wholesalers desiring to engage in any Fireworks activities, including retail sales, agricultural use, or fireworks displays must meet all applicable requirements of ORS 480.110 through 480.165 and OAR chapter 837, division 12, including obtaining permits for such activities from local, federal, and state authorities.

(6) Wholesale Permit holders must comply with all applicable federal, state, and local laws, rules and regulations pertaining to Fireworks, including:

(a) ORS 480.110 through 480.165; and

(b) OAR chapter 837, division 12

(7) Wholesalers must notify the State Fire Marshal, in writing, within two weeks of the date of change of:

(a) Identity of the Wholesaler’s Manager;

(b) The Wholesaler’s mailing address or telephone number;

(c) Ownership of the Wholesaler’s Site;

(d) Ownership of the Wholesaler’s Operation; or

(e) The addition, or subtraction, of a Sales Representative for the Wholesaler.

(8) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR chapter 837, division 12. Exempt Fireworks may be sold and purchased at any time, and do not require a permit.

(9) Wholesalers who provide 1.3g Fireworks must provide a minimum of one general operator certification training course annually as required by OAR 837-012-0780.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1982(Temp), f. & cert. ef. 3-5-82; FM 3-1982(Temp), f. & cert. ef. 4-16-82; FM 3-1985, f. & cert. ef. 4-17-85; FM 1-1986, f. & cert. ef. 1-9-86; FM 6-1986(Temp), f. & cert. ef. 6-10-86; FM 9-1986, f. & cert. ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0125; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 4-2012(Temp), f. & cert. ef. 2-6-12 thru 8-3-12

Rule Caption: Correlate the 2010 Fire Code to the 2010 Oregon Structural Specialty Code.

Adm. Order No.: OSFM 5-2012(Temp)

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12 thru 8-3-12

Notice Publication Date:

Rules Amended: 837-040-0020

Subject: A rule change is necessary to amend 837-040-0020(4)(h) language that was effective January 1, 2012. The reference to NFPA 409, 2011 edition needs to be rescinded to correlate the 2010 Oregon Fire Code to the 2010 Oregon Structural Specialty Code (OSSC) as the proposed language in the OSSC did not move forward as anticipated.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-040-0020

Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the Oregon Fire Code approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the international Fire Code, the Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstances merit (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications).

(3) Effective April 1, 2011, the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Add new section 908.7, Carbon Monoxide alarms, to correlate with the change to the 2010 Oregon Structural Specialty Code.

(b) Amend Chapter 47, National Fire Protection Association (NFPA) Standards and Underwriters Laboratories Standards, as follows:

NFPA 720-09 Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment — 908.7.

UL 2034-08 Standard for single and Multiple Station Carbon Monoxide Alarms, with revisions through February 20, 2009 — 908.7.

(4) Effective January 1, 2012, the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Amend Section 202, Definitions for Group R-3 Occupancy to correlate to the Oregon Structural Specialty Code, Section 310.

(b) Amend Section 510.2.2 by adding the words “at the agency’s antenna port” after -100 dBm and before shall be received..

(c) Amend Section 906.1 by using language from the 2012 International Fire Code.

(d) Amend Section 914.8.2 by adding a second exception to correlate to the Oregon Structural Specialty Codes, Section 412.4.5.

(e) Amend Section 4001.1, Exception 3 by adding “and SR” occupancies.

(f) Amend Section 4006.1 by adding “and SR” occupancies.

(g) Amend Section 4604.17 by updating with language from 2012 International Fire Code.

(h) Amend Chapter 47, National Fire Protection Association (NFPA) Standards, to current editions as follows:

(A) NFPA 10 to the 2010 edition.

(B) NFPA 13, 13R and 13D to the 2010 edition.

(C) NFPA 17 to the 2009 edition.

(D) NFPA 17A to the 2009 edition.

(E) NFPA 20 to the 2010 edition.

(F) NFPA 58 to the 2011 edition.

(G) NFPA 72 to the 2010 edition.

(H) NFPA 96 to the 2011 edition.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 6-2008, f. 9-2-08, cert. ef. 10-1-08; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09; OSFM 4-2009, f. 11-19-09, cert. ef. 4-1-10; OSFM 2-2010(Temp), f. 2-3-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; OSFM 4-2010, f. & cert. ef. 11-3-10; OSFM 2-2011, f. 3-15-11, cert. ef. 4-1-11; OSFM 4-2011, f. 11-10-11, cert. ef. 1-1-12; OSFM 2-2012, f. & cert. ef. 1-12-12; OSFM 5-2012(Temp), f. & cert. ef. 2-10-12 thru 8-3-12

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Clarify the private investigator licensure exemption identified in ORS 703.411(1).

Adm. Order No.: DPSST 1-2012(Temp)

Filed with Sec. of State: 2-6-2012

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Certified to be Effective: 2-6-12 thru 7-31-12

Notice Publication Date:

Rules Adopted: 259-061-0018

Subject: This temporary rule clarifies the interpretation of the exception to the private investigator licensure requirement that is identified in ORS 703.411(1). "A person who is employed exclusively by one employer in connection with the affairs of that employer" is explained to be a person who has one, exclusive employer and who conducts business on behalf of that employer only. The exception does not cover a person who conducts investigations on behalf of the employer's clients.

The rule, upon effect, is retroactive to the date in which the Department of Public Safety Standards and Training began relying on Department of Justice advice (August 9, 2011.)

Rules Coordinator: Linsay Hale—(503) 378-2431

259-061-0018

Prohibited Acts

(1) A person may not act as an investigator or represent that the person is an investigator unless that person is licensed under ORS 703.430 and these rules.

(2) Exemptions: Persons described in ORS 703.411 are exempt from regulation as private investigators.

(3) For the purposes of ORS 703.411(1), a person is "employed exclusively by one employer in connection with the affairs of that employer only" when;

(a) The person has one, exclusive employer; and

(b) The person conducts investigations on behalf of that employer only. This subsection does not apply to a person who conducts investigations on behalf of the employer's clients.

(c) This rule applies as of August 9, 2011.

Stat. Auth.: ORS 703.430, 703.480

Stat. Implemented: ORS 703.430, 703.480

Hist.: DPSST 1-2012(Temp), f. & cert. ef. 2-6-12 thru 7-31-12

Department of Revenue

Chapter 150

Rule Caption: Defines signature verification for direct filed tax returns.

Adm. Order No.: REV 1-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 2-1-12 thru 7-29-12

Notice Publication Date:

Rules Amended: 150-305.810

Subject: 150-305.810 – This rule modification defines signature verification for those submit electronically filed returns directly to the Department of Revenue.

Rules Coordinator: Ken Ross—(503) 945-8890

150-305.810

Verification of Returns, Statements, or Documents Filed Under Tax Law

(1) The declaration under Oregon Revised Statute 314.385(2) that a return, statement, or document is made under penalties for false swearing and is true, complete, and correct must be verified by the taxpayer or by an authorized agent, and by both taxpayers or by an authorized agent on a joint personal income tax return. Verification of the declaration may be made through:

(a) Signing the return.

(b) A signed statement, including Oregon Form EF. The statement may be received by the department through personal delivery, mail, e-mail, or fax.

(c) An electronic signature. An electronic signature is either:

(A) The federal personal identification number used to sign the federal return when electronically filing; or

(B) In the case of an electronically filed return submitted without the use of a federal signature method (unlinked), the act of initiating a transmission of a return to the Department of Revenue.

(2) For personal income tax withholding reports filed in compliance with ORS 316.162 to 316.223, a person signing the Oregon Quarterly Tax Report, thus verifying the accuracy of the report, is not automatically deemed an employer that may become personally liable for withholdings due but unpaid for the quarter which is the subject of the filing. Persons not

signing the report may be held liable if acting in the capacity of an employer as defined in 316.162(3).

Stat. Auth.: ORS 305.100 & 305.810

Stats. Implemented: ORS 305.810

Hist.: REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; REV 1-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-29-12

Rule Caption: Clarifies internet provider for valuation purposes.

Adm. Order No.: REV 2-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 2-1-12 thru 7-29-12

Notice Publication Date:

Rules Adopted: 150-308.505(3)

Subject: 150-308.505(3) – This is a new rule to define data transmission services.

Rules Coordinator: Ken Ross—(503) 945-8890

150-308.505(3)

Definition of "Data Transmission Services"

A business provides "data transmission services" over the Internet only if it provides Internet connectivity, either contractually or otherwise, in addition to or exclusive of other Internet services it provides.

Stat. Auth.: ORS 305.100 & 305.655

Stats. Implemented: ORS 308.505

Hist.: REV 2-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-29-12

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

Rule Caption: Licensing Processes and Proof of Medical Qualifications for a Commercial Driver License or Instruction Permit.

Adm. Order No.: DMV 1-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-30-12

Notice Publication Date: 12-1-2011

Rules Adopted: 735-063-0067

Rules Amended: 735-001-0050, 735-010-0030, 735-062-0002, 735-062-0007, 735-062-0080, 735-062-0085, 735-062-0090, 735-062-0110, 735-062-0200, 735-063-0000, 735-063-0050, 735-063-0060, 735-063-0065

Subject: Beginning on January 30, 2012, changes to the federal regulations related to proof of medical qualification requirements for commercial driver license (CDL) holders and CDL instruction permit holders go into effect. The Oregon Legislature enacted Chapter 470, Oregon Laws 2011 (HB 2138). These rule changes result from Section 2 of HB 2138 which authorizes DMV to implement these changes to the federal regulations.

735-001-0050 – This rule lists the circumstances under which DMV will provide administrative review of a suspension or cancellation of driving privileges. DMV amended this rule to include an administrative review if a person's CDL or CDL instruction permit is canceled because the person fails to submit proof of medical qualification to operate a commercial motor vehicle.

735-010-0030 – DMV amended this rule to specify that a CDL holder's employment and non-employment driving record may contain information concerning the person's medical qualification to operate a commercial vehicle. DMV also amended this rule to clarify that an employment driving record will contain information about a positive drug test result under ORS 825.412 only if the requestor has written permission from the person who was subject to the test. Additional amendments clarify the fees for searching DMV records when a requested record is not found and other changes to clarify language.

Chapter 735, division 62 – To further implement the changes to federal regulations, DMV amended several rules in this division to include additional requirements when a person applies for issuance of a CDL or CDL instruction permit. These requirements include certification of driving type when applying for issuance, renewal or replacement of a CDL or CDL instruction permit, submission of

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proof of medical qualification when requested by DMV, and authorizing the waiver of the CDL drive test when an applicant surrenders a CDL issued by another state, a Canadian Province or Mexico. DMV also removed language from OAR 735-062-0080 regarding the waiving of a drive test when an applicant submits a CDL Certificate of Test Completion because the testing is not actually waived, but rather conducted by authorized CDL third-party testers. Finally, DMV amended OAR 735-062-0080 to authorize waiving a drive test for a Class C license if the applicant surrenders a license issued by a jurisdiction with which DMV has a reciprocity agreement.

Other amendments in chapter 735, division 62 are as follows:

- 735-062-0007(1)(c), 735-062-0090(2)(a) and 735-062-0010(3)(a) – Deleted the requirement that a person provide “proof” of a Social Security Number to implement Chapter 282, Oregon Laws 2011 (HB 2139).

- 735-062-0110(2) (c) – Included language to implement Chapter 297, Oregon Laws 2011 (HB 3273) which allows household members of a corrections officer or other eligible employee killed in the line of duty to use an employment address.

OAR chapter 735, division 63 – These amendments implement Section 2 of HB 2138 and align Oregon requirements with the federal regulations concerning certification of driving type and when proof of medical qualification for CDL holders and CDL instruction permit holders will be required by DMV. DMV adopted a new rule setting forth when DMV will cancel a CDL or CDL instruction permit for failing to provide proof of medical qualification and will suspend a CDL or CDL instruction permit if the person has falsified proof of medical qualification. Other amendments were made for clarity.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-001-0050

Administrative Review

In addition to those circumstances specified in ORS 809.140, Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will provide an administrative review of a suspension, revocation, or cancellation action for:

- (1) Failure to install an ignition interlock device under ORS 813.602;
- (2) Failure to complete and pass a security threat assessment required for a hazardous materials endorsement from the federal Transportation Security Administration (TSA) or being assessed as a security threat by TSA under ORS 807.173;
- (3) Notice of violating of an out-of-service order ORS 809.413(7);
- (4) Notification from the Federal Motor Carrier Safety Administration that a person is disqualified from operating a commercial motor vehicle as an imminent hazard under ORS 809.413(8);
- (5) Failure to submit proof of medical qualification to operate a commercial motor vehicle under ORS 807.100(2).
- (6) Failure to pay a judgment under ORS 809.415(1);
- (7) A lapse in making future financial responsibility filings under ORS 809.415(3)(c);
- (8) Notification from the superintendent of a hospital under ORS 807.700;
- (9) A request by a school superintendent or a school district board under ORS 339.254; and
- (10) Notice that a person under 18 years of age has withdrawn from school under ORS 339.257.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.440

Stats. Implemented: ORS 809.440

Hist.: MV 27-1991, f. & cert. ef. 12-16-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 10-2010, f. & cert. ef. 5-18-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-010-0030

Types of Driver and Identification Card Records Available and Their Fees

This rule specifies the types of driver records available from DMV’s driver records database and the fee amounts for the records:

(1) Abstract of Employment Driving Record – Computer-produced record of an individual’s employment driving record. The record includes employment-related accidents, suspensions and convictions for violation of motor vehicle laws, as set forth in ORS 802.200(9). The record covers the three-year period preceding the date of the request. Miscellaneous administrative entries may also be included as determined by DMV. The record

does not include convictions for offenses that result in a mandatory revocation or suspension under ORS 809.409, 809.411, 809.413 and 813.400. The record will include information of a positive drug test result, posted in accordance with ORS 825.412, only if the requestor provides written permission from the person who was subject to the drug test. The fee for each record is:

(a) \$2 for a certified record ordered by mail or through DMV’s Interactive Voice Response System (IVR);

(b) \$2 for an uncertified record provided through DMV’s Real-Time Access to Oregon Driving Record Service (RADR);

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV’s driver records database.

(2) Abstract of Non-employment Driving Record – Computer-produced record of an individual’s non-employment driving record. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, and DUII diversion agreements for the three years preceding the date of the record request. The record also includes suspensions, revocations or cancellations of driving privileges, except those suspensions terminated by court notice under ORS 809.220. Miscellaneous administrative entries may also be included as determined by the department. The fee for each record is:

(a) \$1.50 for a certified record ordered by mail or through IVR;

(b) \$2 for an uncertified record provided through RADR.

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV’s driver records database.

(3) Insurance Abstract of Non-employment Driving Record – Computer-produced record containing certain entries of an individual’s non-employment driving record as described in subsection (b) of this section. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, DUII diversion agreements and suspensions, revocations or cancellations of driving privileges, except those suspensions terminated by court notice under ORS 809.220. This record is available only to insurers or insurance support organizations. An individual may request his or her own insurance abstract to obtain an insurance discount under ORS 746.265(3). The fee for each record is:

(a) \$1.50 for a certified record ordered by mail;

(b) A \$1.50 search fee for any record requested under this subsection but not found in DMV’s driver records database.

(4) Driver License Information Report – Information on the report includes driver name, address, license number, license type, license expiration date, license restrictions, license issue date and status of license. Driver license information may be provided orally or by computer-produced certified print. The fee for each report is:

(a) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV’s driver records database;

(b) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found through IVR.

(5) Identification Card (ID card) Information Report – Information on the report includes ID card holder’s name, address, ID card number, ID card expiration date, issue date, and status of ID card. ID card information may be provided orally through IVR or by computer-produced certified print. The fee for each report is:

(a) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV’s records database;

(b) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found in IVR.

(6) Oregon Police Traffic Crash Report – The fee for a copy of an Oregon Police Traffic Crash Report is \$9.50 for a certified copy or \$8.50 for an uncertified copy. DMV will charge a search fee of \$8.50 for an Oregon Police Traffic Crash Report that is requested but not found. The fee for bulk requests for copies of Oregon Police Traffic Crash Reports filed with DMV on a specific day are \$.50 per report, plus postage, and are not available in certified form.

(7) Driver License/ID Card Application History – The fee for a person’s application history which includes copies of any application for an

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original, renewal or duplicate driver license or ID card is \$18.50 for a certified history or \$17.50 for an uncertified history.

(8) **Miscellaneous Driver Document Copy** – Copies of any document or transaction related to a person's driving record, driver license, or driving privilege. The fee for a miscellaneous driver document is \$5 for a certified copy or \$4 for an uncertified copy.

(9) **Driver Purged File History** – Computer-produced print containing all entries shown on the computer file for a driver, except those entries exempted under the Oregon Public Records Law, ORS 192.410 to 192.505. The fee for a driver purged file history is \$2. DMV will charge a search fee of \$1.50 for any driver file requested under this subsection but not found in DMV's driver records database.

(10) **Court Print** – Computer-produced record of an individual's employment and non-employment driving record. The record includes convictions for major traffic offenses, DUII diversion agreements and any alcohol rehabilitation entries for the ten years preceding the date of the request, and convictions for minor traffic offenses and motor vehicle accidents for the five years preceding the date of the request. The record also includes suspensions, cancellations, revocations and miscellaneous administrative entries, but does not include information exempt from disclosure under the Oregon Public Records Law. Court Print with CDL Medical Certification – Computer-produced record of a CDL holder's employment and non-employment driving record as described above. The record also includes medical certification data that shows if the CDL holder is medically qualified to drive commercial motor vehicles. The fee for each record is:

(a) \$3 for a certified print ordered by mail, through IVR or through the Automated Reporting Service (A.R.S.);

(b) \$2 for a record accessed through RADR;

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(11) **Suspension Package** – Certified court print and certified copies of any of the following documents needed for a court proceeding: a suspension, revocation or cancellation notice; returned envelope, signed receipt, or affidavit showing service of the notice; hardship permit application; license restrictions; or any letter sent by DMV informing the person of a suspension, revocation or cancellation. The fee for a suspension package is \$11.50. There is a \$1.50 search fee if a court print requested under this subsection cannot be found in DMV's driver records database;

(12) **Driver Records List** – Computer produced list of driver names, addresses or other record information created using selection criteria. For example, the selection criteria may be the names and addresses of all licensed drivers of a specific age group. The following apply to a request for a driver records list:

(a) The requester must describe how the list will be used. If the purpose of the list is for bulk distribution, as defined in OAR 735-010-0008, the list will only include individuals who have requested that their personal information be provided to bulk distributors.

(b) The requester must provide paper or magnetic tape. No more than 50,000 records will be provided on paper.

(c) DMV's computer system must be programmed to use the selection criteria requested. If the selection criteria requested requires additional computer programming, DMV will not provide the list unless DMV computer programming resources are available and the requester pays the actual programming costs as set forth in OAR 735-010-0000.

(d) The fee for a driver records list furnished via File Transfer Protocol Secure (FTPS) is \$700.

(13) **Purged Driver Record Information** – Copy of a microfilmed driving record containing entries that have been purged from DMV's driver records database. The fee for a purged information driving record is \$2.50 for a certified copy or \$1.50 for an uncertified copy.

(14) **Insurance Information Search** – A search of DMV records to identify the insurance company and policy number for a vehicle or individual. This information may be provided orally by a DMV employee if requested in person or over the phone or by letter from DMV. The fee for an insurance information search is \$10, regardless of whether the information is actually found in DMV records.

(15) **Automated Reporting Service (A.R.S)** – A court print sent automatically to an enrolled record account holder when an accident, conviction, DUII diversion or suspension, revocation or cancellation is posted to a listed individual's driving record. The fee for an A.R.S. court print is \$3.00. If the account holder requests that DMV add or delete an individual from A.R.S. there is a \$2.00 fee. There is no fee to add or delete an individual if the record account holder uses DMV's online system.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.200, 802.220 & 802.230

Stats. Implemented: ORS 802.200, 746.265, 802.230, 802.220 & 825.412

Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 8-1985, f. & ef. 8-1-85; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0035; MV 44-1989, f. & cert. ef. 10-16-89; MV 15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. & cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 1-2002, f. & cert. ef. 1-17-02; DMV 5-2005, f. & cert. ef. 2-16-05; DMV 16-2009, f. 9-29-09 cert. ef. 10-1-09; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

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) "Driving type" is as defined in OAR 735-063-0000(7).

(5) "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.

(6) "SSA" means the Social Security Administration.

(7) "SSN" means Social Security Number.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.050

Stats. Implemented: ORS 801.163, 802.200, 807.021, 807.024, 807.050

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; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-062-0007

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) "Mother" means the biological or adoptive mother of the applicant;

(B) "Father" means the biological or adoptive father of the applicant; and

(C) "Legal guardian" means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(d) Provide proof of legal presence as provided in OAR 735-062-0015;

(e) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016;

(f) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020;

(g) Provide proof of the person's residence address as provided in OAR 735-062-0030;

(h) Provide proof, as provided in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(i) Surrender all driver permits and driver licenses in the person's possession that have been issued by another jurisdiction, including but not limited to:

(A) Another state;

(B) A Canadian province or territory;

(C) A U.S. territory; or

(D) The United Mexican States, if an Oregon commercial driver license or commercial instruction permit is issued.

(j) In addition to all requirements in subsections (a) through (i) of this section, a person applying for a commercial driver license or commercial instruction permit must:

(A) Certify driving type; and

(B) Meet medical qualifications as described in OAR 735-063-0050.

(C) Satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200 if the person holds a commercial driver license from another jurisdiction.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

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(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license of a United States citizen or permanent legal resident with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term driver license or limited term driver permit and mail it to the address provided by the applicant at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050, 807.060, 807.120, 809.310 & 807.050

Stats. Implemented: ORS 807.021, 807.040, 807.060 & 807.066

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; Renumbered from 735-062-0000, DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-062-0080

Waiving Drive Test Portion of Driver License Examination

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will waive the actual demonstration of an applicant's ability to drive a Class C vehicle required by ORS 807.070(3) if all of the following apply:

(a) The applicant surrenders to DMV a driver license issued to the applicant by another state, the District of Columbia, a United States Territory, a Canadian Province or a jurisdiction with whom DMV has a reciprocity agreement and the driver license has not been expired for more than one year, or if the person's driver license issued by a jurisdiction list-

ed above, has been lost or stolen, the applicant submits a letter of clearance, as required in OAR 735-062-0007;

(b) The surrendered, lost or stolen license authorizes the driving of a vehicle other than a moped or motorcycle;

(c) The surrendered, lost or stolen license includes no restrictions other than a single restriction or a combination of restrictions comparable to restrictions imposed on an Oregon driver license;

(d) The applicant has no physical disabilities or impairments which may necessitate any restrictions other than:

(A) "With corrective lenses";

(B) "Outside or side-view mirror(s)"; or

(C) The restriction(s) imposed on the applicant's surrendered, lost or stolen driver license issued by another jurisdiction.

(e) The applicant has no physical or mental condition that provides DMV with reason to question the applicant's ability to drive a motor vehicle without endangering the safety of persons or property.

(2) DMV may waive the actual demonstration of an applicant's ability to drive a Class A, B, or C commercial motor vehicle or any endorsement related to a commercial driver license if the applicant meets the qualifications set forth in subsections (1)(a) through (e) of this rule and surrenders a commercial driver license issued by another state, the District of Columbia, a Canadian Province or the United Mexican States that authorizes the driving of a commercial motor vehicle included in the Oregon classification for which the application is made.

(3) DMV will waive the actual demonstration of an applicant's ability to drive a motorcycle if:

(a) The applicant surrenders to DMV a motorcycle-endorsed driver license issued to the applicant by another state, the District of Columbia, a United States Territory or a Canadian Province, or submits a clearance letter as provided for in subsection (1)(a) of this rule; and

(b) The applicant meets the qualifications in subsections (1)(c), (d) and (e) of this rule.

(4) In addition to section (3) of this rule, DMV will waive the actual demonstration of an applicant's ability to drive a motorcycle if:

(a) The applicant passes a motorcycle skills test given during a motorcycle rider education course established by the Transportation Safety Division under ORS 802.320; and

(b) The motorcycle skills test administered during the motorcycle education course meets or exceeds the motorcycle skills test administered by DMV.

(5) Evidence of passing the motorcycle skills test identified in section (4) of this rule is a motorcycle education course completion card as provided for in OAR 735-062-0140. The completion card must have been issued within two years of application to be considered valid for waiver of the skills test.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.070, 807.080 & 807.170

Stats. Implemented: ORS 807.070, 807.080 & 807.170

Hist.: MV 61, f. 10-14-75, ef. 11-11-75; MV 15-1986, f. 9-16-86, ef. 10-1-86; MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0045; MV 26-1988, f. & cert. ef. 11-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1990, f. & cert. ef. 8-16-90; MV 1-1991, f. & cert. ef. 3-18-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 6-1992(Temp), f. 5-29-92, cert. ef. 6-1-92; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 4-1995, f. & cert. ef. 3-9-95; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2006(Temp), f. & cert. ef. 8-25-06 thru 2-20-07; DMV 18-2006, f. & cert. ef. 12-13-06; DMV 3-2009, f. & cert. ef. 2-20-09; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-062-0085

Waiving Examination Requirements for Farm Endorsement

DMV may waive the examination requirements of an applicant for a farm endorsement if the applicant meets the qualifications specified in ORS 807.072(4) or (5) and is not disqualified from holding a farm endorsement under ORS 809.406. If the applicant has an accident(s) appearing on his or her driving record in the two years prior to the date of application, DMV may still waive the examination requirements if the applicant was not convicted of any offense relating to the accident(s).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 807.072(6)

Stats. Implemented: ORS 807.072 & 807.170

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; 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 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-062-0090

Renewal Driver Licenses and Identification Cards

(1) DMV will renew the driver license of a person satisfying the requirements set forth in ORS 807.150.

(2) An applicant for the renewal of a driver license or identification card must:

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(a) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(3) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.)

(4) DMV may renew an unexpired driver license or identification card up to 14 months prior to the expiration date.

(5) If a driver license has been expired more than one year, the applicant must re-apply for an original driver license and meet the requirements set forth in OAR 735-062-0007.

(6) An applicant for a renewal of a commercial driver license with a hazardous materials endorsement must retake and pass the hazardous materials knowledge test and meet the requirements set forth in OAR 735-062-0190 to retain the hazardous materials endorsement on the commercial driver license.

(7) An applicant for a renewal of a commercial driver license or commercial instruction permit must:

(a) Meet the medical qualification requirements set forth in OAR 735-063-0050; and

(b) Certify driving type.

(8) Before processing a driver license renewal, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a commercial driver license (CDL) renewal, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in any other jurisdiction.

(9) If the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction, the applicant may not renew an Oregon driver license until the applicant submits a clearance letter that complies with OAR 735-062-0160 and shows the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(10) Notwithstanding section (9) of this rule, DMV will renew the driving privileges of an applicant whose driving privileges are suspended, revoked, canceled or otherwise not valid in another jurisdiction if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(11) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identification card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

(12) Notwithstanding subsection (2)(b) of this rule, DMV will renew a limited term driver license, limited term driver permit or limited term identification card to an applicant who otherwise qualifies for renewal under this rule and has provided proof of temporary legal presence in the United States as described in OAR 735-062-0015(4) that has been extended or is still in effect.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 807.021, 807.022, & 807.040
Stats. Implemented: ORS 802.012, 802.540, 807.021, 807.022, 807.040 - 807.060, 807.100, 807.15 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0009; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; 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 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 7-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08; DMV 10-2008, f. & cert. ef. 4-24-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-062-0110

Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) DMV will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if the applicant meets the requirements set forth in ORS 807.160 and this rule

and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when the applicant:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes a residence address or mailing address from the address noted on the person's driver license, driver permit or identification card or adds a mailing address.

(c) Is a corrections officer, eligible employee, or household member of a corrections officer or eligible employee killed in the line of duty who has requested, in accordance with ORS 802.250 or 802.253, that department records show the address of the corrections officer's or eligible employee's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying for or is required to add or remove a restriction on the person's driver license or driver permit.

(f) Is applying for or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Requests that a veteran designation be added to or removed from his or her driver license, driver permit or identification card. To add a veteran designation, the applicant must provide proof the person is a veteran as set forth in OAR 735-062-0012(2).

(h) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(i) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(j) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(k) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

(L) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(m) Has not received his or her driver license, driver permit or identification card in the mail and the applicant does not meet the requirements under OAR 735-062-0092(3) for a reissued driver license, driver permit or identification card.

(n) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(o) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(p) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(q) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must:

(a) Provide a verifiable SSN, or proof that the person is not eligible for a SSN, as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(4) An applicant for a replacement commercial driver license or commercial instruction permit must:

(a) Certify driving type; and

(b) Provide proof of medical qualification as described in OAR 735-063-0060.

(5) An applicant for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current resi-

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dence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(6) An applicant for a replacement driver license, driver permit, or identification card must surrender the license, driver permit or identification card replaced to DMV, if possible.

(7) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(8) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(9) Notwithstanding section (8) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.160
Stats. Implemented: ORS 807.160, 807.021, 807.220, 807.230, 807.280 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 24-2008, f. 9-11-08, cert. ef. 10-1-08; DMV 19-2010, f. 10-25-10, cert. ef. 1-1-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

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 state, the District of Columbia, a US Territory, a Canadian Province or the United Mexican States 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 state, the District of Columbia, a US Territory, a Canadian Province or the United Mexican States 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.

(d) The applicant is not medically qualified for CDL issuance and the applicant does not provide other proof of medical qualification as described in OAR 735-063-0060.

(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; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-063-0000

Definitions

As used in this division the following definitions apply:

(1) "Accident/conviction records" are records used to establish when a Waiver of Physical Disqualification issued by DMV may be denied or suspended. Accident records include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers. A conviction record is an official record showing a determination of guilt by a court of law upon a plea, verdict, finding, or unvacated bail forfeiture.

(2) "CDL" means commercial driver license.

(3) "CDLIS" means the Commercial Drivers License Information System operated by the American Association of Motor Vehicle Administrators (AAMVA) for FMCSA.

(4) "CMV" means commercial motor vehicle.

(5) "Disqualifying condition" is a medical condition(s) not meeting FMCSA physical qualification standards as set forth in FMCSR Sec. 391.41(b).

(6) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(7) "Driving type" means a certification by an applicant or holder of a CDL of one of the following:

(a) Non-excepted interstate: the person operates or expects to operate in interstate commerce;

(b) Excepted interstate: the person operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3; or

(c) Non-excepted intrastate: the person operates only in intrastate commerce.

(8) "FMCSA" means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

(9) "FMCSR" means the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, CFR Title 49 parts 300 to 399.

(10) "Intrastate commerce" is defined in FMCSR Sec. 390.5 and includes any trade, traffic or transportation exclusively within Oregon.

(11) "Medical Determination Officer" is a physician, nurse practitioner or physician assistant, licensed to provide health care services by the State of Oregon, and employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.

(12) "Medical Specialist" is a person who is licensed as a doctor of medicine, a doctor of osteopathy, an optometrist or an audiologist.

(13) "Physician" is defined in ORS 807.710.

(14) "SPE certificate" is a Skill Performance Evaluation certificate issued by the FMCSA pursuant to FMCSR Sec. 391.49 to a person who demonstrates the ability to safely operate a CMV in spite of limb impairment or loss.

(15) "Waiver of Physical Disqualification" or "waiver" means a waiver issued by the Oregon Department of Transportation to a driver who does not meet certain physical qualifications required for drivers of commercial motor vehicles as set forth in FMCSR Sec. 391.41(b). A Waiver of Physical Disqualification only authorizes the holder to operate a commercial motor vehicle in intrastate commerce.

Stat. Auth.: ORS 184.616, 184.619, 802.010
Stats. Implemented: ORS 807.040 & 807.100
Hist.: DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-063-0050

CDL or Commercial Instruction Permit Medical Standards

(1) DMV adopts FMCSR section 391.41 through 391.49 on January 30, 2012 pertaining to physical qualifications and medical examination of drivers of commercial motor vehicle.

(2) Any person who certifies a driving type of non-excepted interstate must meet the medical qualifications described in FMCSR, sections 391.41 through 391.49 or be exempted from those medical qualifications pursuant to 49 U.S.C. sections 31135 and 31136(e) and FMCSR, sections 381.300 to 381.330 to be issued or to retain an Oregon CDL or commercial instruction permit.

(3) Any person who certifies a driving type of excepted interstate or non-excepted intrastate must:

(a) Meet the medical qualifications in section (2) of this rule to be issued or retain an Oregon CDL or commercial instruction permit; or

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(b) Meet the medical qualifications for a Waiver of Physical Disqualification issued by DMV and described in 735-063-0070 to be issued or retain a restricted Oregon CDL or commercial instruction permit.

(4) DMV will restrict a CDL or commercial instruction permit issued to a person that is not medically qualified under section (2) of this rule to authorize operation of a CMV in intrastate commerce only.

(5) DMV will issue a restricted Class A, B or C CDL or commercial instruction permit if any proof of medical qualification described in 735-063-0060 indicates any applicable restrictions, conditions or limitations for operation of a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040 & 809.419

Stats. Implemented: ORS 807.040, 807.100 & 809.419

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0260, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-063-0060

Proof of Medical Qualification for a CDL or Commercial Instruction Permit

(1) Proof of medical qualification for a person who certifies a driving type of non-excepted interstate is:

(a) A CDLIS record that indicates the person is medically qualified to operate a CMV in interstate commerce; or

(b) A valid unexpired Medical Examiner's Certificate that conforms to the requirements of FMCSR, section 391.43. When indicated, the Medical Examiner's Certificate must be accompanied by one or both of the following:

(A) A valid unexpired notice of exemption issued by FMCSA under the provisions of FMCSR, sections 381.300 through 381.330.

(B) A valid unexpired Skill Performance Evaluation (SPE) certificate issued by FMCSA under the provisions of FMCSR, section 391.49.

(2) Proof of medical qualification for a person who certifies a driving type of excepted interstate or non-excepted intrastate is:

(a) The proof required under section (1) of this rule; or

(b) A valid unexpired Waiver of Physical Disqualification issued by DMV under the conditions described in OAR 735-063-0070.

(3) Medical Examiner Certificates, notices of exemption, Skill Performance Evaluations and Waivers of Physical Disqualification are valid for periods up to two years only.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040

Stats. Implemented: ORS 807.040, 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0750; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0160; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0280, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10; DMV 7-2011, f. & cert. ef. 6-21-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-063-0065

Medical Qualification Procedures for CDL or Commercial Instruction Permit

(1) An applicant for a CDL or commercial instruction permit must have proof of medical qualification as described in OAR 735-063-0060. DMV will not issue a CDL or commercial instruction permit if any proof of medical qualification is denied, expired or revoked.

(2) An applicant for a CDL or commercial instruction permit who certifies a driving type of non-excepted interstate must also certify on the application or renewal form that he or she meets the driver qualification requirements contained in FMCSR Part 391.

(3) To maintain proof of medical qualification to operate a commercial motor vehicle, the holder of a CDL or commercial instruction permit must have a valid medical examiner's certificate. Proof of medical qualification must be provided to DMV when requested. If proof is not provided within 60 days following the expiration of the holder's current proof of medical qualification as described in OAR 735-063-0060, DMV will cancel the holder's CDL or commercial instruction permit as provided in OAR 735-063-0067.

(4) A driver who needs to replace a medical examiner's certificate because it is lost, mutilated, or destroyed may obtain a duplicate from the same source from which they obtained the original medical certificate.

(5) DMV is not responsible for any expenses an applicant may incur from the acquisition of an approved medical examiner's certificate or duplicate medical examiner's certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.040

Stats. Implemented: ORS 807.040, 807.100 & 807.150

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0760; MV 4-1987, f. & ef. 5-18-87; MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0170; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0290, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 7-2011, f. & cert. ef. 6-21-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

735-063-0067

Cancellation or Suspension of CDL or Commercial Instruction Permit Due to No Valid Proof of Medical Qualification

(1) DMV will cancel a person's CDL or commercial instruction permit if any proof of medical qualification, as described in OAR 735-063-0060, is denied, expired or revoked.

(2) DMV will cancel a person's CDL or commercial instruction permit if proof of medical qualification, as described in OAR 735-063-0060, is not submitted when requested by DMV. Such requests will be made only when DMV does not already have proof of medical qualification.

(3) A CDL or commercial instruction permit cancelled under this rule may be reissued if the person submits proof of medical qualification as described in OAR 735-063-0060.

(4) DMV will suspend, for one year, a person's commercial driving privileges and the person's right to apply for a CDL or commercial instruction permit if DMV determines that the person submitted false information to DMV for the purpose of establishing or maintaining qualification to operate a commercial motor vehicle, hold a CDL, or hold a commercial instruction permit.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.100, 809.415

Stats. Implemented: ORS 807.040, 807.100, 809.415

Hist.: DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Procedures for the Establishment of Variable Speed Zones on Certain Public Roads.

Adm. Order No.: HWD 1-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 11-1-2011

Rules Adopted: 734-020-0018, 734-020-0019

Subject: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads, including interstate highways. This rule gives authority to the Department and other road authorities to establish variable speed zones on sections of highway when an engineering investigation and analysis determines that a range of speeds in response to recurring conditions provides for better traffic safety and operation than a single set speed. This rule applies to all public roads except where the Department has delegated its authority to establish designated speeds on low volume or unpaved roads under ORS 810.180(5)(f).

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-020-0018

Establishment of Variable Speed Zones

(1) Purpose:

(a) This rule is adopted for the purpose of the Department and other road authorities establishing variable speed zones on public roads under ORS 810.180. A variable speed zone may be established on a section of highway when an engineering study determines that a range of speeds in response to recurring conditions provides for better traffic safety and operation than a single set speed.

(b) A variable speed zone is established by a written order or rule defining the criteria, boundaries and procedures for speed changes in a designated manner over a given range of speeds at minimum specified intervals. At a particular time and place, the applicable speed zone reflects some of the same factors a prudent driver also considers. Examples include the effects of congestion, road conditions, reduced visibility or weather conditions. Improving the consistency between a responsible driver's speed selection and the speed zone can keep traffic moving smoothly and improve safety. An engineering study is required.

(c) This rule applies to all public roads except where the Department has delegated its authority to establish designated speeds on low volume or unpaved roads under ORS 810.180(5) (f). The delegation of authority for

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low volume roads and unpaved roads is covered in OAR 734-020-0016 and 734-020-0017.

(2) The State Traffic Engineer may apply this rule to establish a limited number of Variable Speed Zone pilot projects around the state. The State Traffic Engineer, subject to the following limitation, will decide the appropriate number of pilot projects to test the criteria and procedures in this rule. There may be pilot projects for a particular recurring condition such as congestion, road conditions, reduced visibility or weather conditions.

(a) An evaluation of each pilot project Variable Speed Zone will be completed by the State Traffic Engineer after two years from the start of operation of that pilot project until each pilot project has been evaluated for an identified recurring condition under Section (1).

(b) The Speed Zone Review Panel will review the evaluations for each identified recurring condition. The Speed Zone Review Panel will make a recommendation to the State Traffic Engineer to continue the evaluation period, terminate the evaluation, amend this rule to revise the criteria and procedures or remove the pilot project requirement.

(c) The State Traffic Engineer will consider the recommendation of the Speed Zone Review Panel and decide whether to continue the evaluation period, terminate the evaluation, amend this rule to review the criteria and procedures or remove the pilot project requirement.

(d) The State Traffic Engineer may continue the established pilot projects pending further evaluation. Speed Zone Review Panel review and final decision on establishing Variable Speed Zones.

(3) Definitions: the following definitions apply to this rule in addition to the speed zone definitions in OAR 734-20-0010 and 734-020-0014,

(a) "Algorithm" means the method or procedure by which the optimum speed is determined based on road, traffic or weather conditions.

(b) "Maximum Speed" means the maximum designated speed or statutory speed that may be posted in the variable speed zone, typically when conditions such as congestion, road conditions, reduced visibility or weather conditions are not present to support a reduced variable speed. A maximum designated speed is determined per OAR 734-020-0010, 734-020-0015 or 734-020-0016. A maximum statutory speed is established as a speed limit under ORS 811.111 or basic speed rule under 811.105.

(c) "Speed Change Interval" means the magnitude of allowed change in miles-per-hour when the posted speed is changed in response to conditions.

(d) "Speed Change Record" is the long term storage of each activated change including the reason or condition, in the posted speed at each variable speed sign in a manner such that the posted speed at a given location and time within a variable speed zone can be determined and reported.

(e) "Transportation Operations Center" (also called a Traffic Management Center or Traffic Management Operations Center) means the facility through which the road, traffic and/or weather conditions are monitored and collected, processed, distributed and communicated to the variable speed signs.

(f) "Variable Speed Zone" means a designated speed that changes based on congestion, road conditions, reduced visibility or weather conditions.

(4) Establishing a Variable Speed Zone on Interstate Highways: the following procedures apply when the Department of Transportation proposes establishing a variable speed zone on any section of interstate highway under ORS 810.180:

(a) The Department may establish variable speed zones on a section of interstate highway based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or weather conditions. For each section of interstate highway under consideration the Department will prepare an engineering study that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week, season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

(D) Traffic characteristics by time of day, day of week, season of year or other periods where recurring congestion levels and reduced average speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(b) The Department will prepare a written analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include:

(A) Locations of each sign,

(B) Set of algorithms,

(C) The speed change intervals,

(D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(c) If appropriate, the Department will institute rulemaking to make changes to the interstate speed designations which are included in OAR 734-020-0019.

(d) The speed change record must be retained and maintained for at least 3 years.

(e) The speed zone becomes enforceable when variable speed signs are installed and operated.

(5) Establishing a Variable Speed Zone on rural state highways except unpaved roads: the following apply when the Department of Transportation proposes to establish variable speed zones on sections of state highway outside city limits:

(a) The Department may establish variable speed zones on a section of rural state highway based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or other weather conditions. For each section of rural state highway under consideration the Department will prepare an engineering study that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week, season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

(D) Traffic characteristics by time of day, day of week or season of year or other periods where recurring congestion levels and reduced speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(b) The Department will prepare a written analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include all of the following:

(A) Locations of each sign,

(B) Set of algorithms,

(C) The speed change intervals,

(D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(c) A written variable speed zone order must be issued by the department to establish a variable speed zone.

(d) The original written variable speed zone order must be retained in the Department of Transportation's records for each speed zone issued.

(e) The speed change record must be retained and maintained for at least 3 years.

(f) The speed zone becomes enforceable when variable speed signs are installed and operated.

(6) Establishing a Variable Speed Zone on state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads: the following procedures apply when the applicable Road Authority proposes to establish variable speed zones on sections of state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads:

(a) The road authority must make a recommendation to the State Traffic Engineer to establish a variable speed zone. The recommendation will include all of the information required in this section including the engineering study.

(b) The Department may establish variable speed zones on a section of state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or other weather conditions. For each section of public road under consideration an engineering study must be completed that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week or season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

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(D) Traffic characteristics by time of day, day of week or season of year or other periods where recurring congestion levels and reduced average speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(c) The road authority, or the Department on state highways, will submit an engineering study to the State Traffic Engineer, which includes the analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include all of the following:

- (A) Locations of each sign,
- (B) Set of algorithms,
- (C) The speed change intervals,
- (D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(d) A written variable speed zone order must be issued by the department to establish a variable speed zone.

(e) The original written variable speed zone order must be retained in the Department of Transportation's records for each speed zone issued.

(f) The speed change record must be retained and maintained for at least 3 years.

(g) The speed zone becomes enforceable when variable speed signs are installed and operated.

Stat. Auth.: ORS 184.616, 184.180 & Ch. 819, OL 2003
Stats. Implemented: ORS 810.180 & Ch. 819, OL 2003
Hist.: HWD 1-2012, f. & cert. ef. 1-27-12

734-020-0019

Locations and Criteria of Variable Interstate Speed Limits

(1) All locations of mainline interstate highways have speed limits set in OAR 734-020-0011 or a maximum speed limit of 65 MPH per ORS 811.111(1)(a). The speed limit for vehicles listed in 811.111(1)(b) is 55 mph unless a lower speed is posted under sections (2 and 3) of this rule or in section (2) of OAR 734-020-0011.

(2) Under the provisions of ORS 810.180(3), variable speed limits on the following sections of interstate highways are established as follows for all vehicles except as provided in section (1) of this rule:

(a) I-5 Southbound, MP 301.36 – MP 298.90: The following sections each may have different speed limits based on the criteria in section (3) of this rule:

- (A) Morrison Bridge to Madison Avenue, MP 301.36 – MP 300.79
- (B) Madison Avenue to Marquam Bridge, MP 300.79 – MP 300.26
- (C) Marquam Bridge to Ross Island Bridge, MP 300.26 – MP 299.75
- (D) Ross Island Bridge to SW Hood Avenue, MP 299.75 – MP 299.36
- (E) SW Hood Avenue to SW Corbett Avenue, MP 299.36 – MP 298.80

(b) I-405 Southbound, MP 1.45 – MP 0.00: The following sections each may have different speed limits based on the criteria in section (3) of this rule:

- (A) Between SW Montgomery Street and SW 12th Avenue structures to SW Broadway structure, MP 1.45 – MP 1.12
- (B) SW Broadway structure to between SW 4th Avenue and SW 1st Avenue structures, MP 1.12 – MP 0.80
- (C) Between SW 4th Avenue and SW 1st Avenue structures to the Ross Island Bridge, MP 0.80 – MP 0.40
- (D) Ross Island Bridge to the juncture with I-5 southbound, MP 0.40 – MP 0.00.

(3) Criteria for Changing Speeds.

(a) Normal automated variable speed limits:

(A) The minimum traffic volume for variable speed limit system operation shall be greater than 1,200 vehicles per hour in any lane.

(B) Speed limits between subsequent highway sections shall not be reduced by more than 10 MPH.

(C) The speed limit shall be lowered in 5 MPH increments.

(D) The speed limit shall not be changed more than once within a 5 minute period.

(E) The minimum variable speed limit shall not be less than 30 MPH.

(F) The variable posted speed limit shall be within 10 MPH below the 85th percentile speed and posted in accordance with the following Table: [Table not included. See ED. NOTE.]

(b) During periods of crashes and other traffic lane blockage incidents the Transportation Operations Center may establish variable speed limits other than the normal automated variable speed limits in accordance with the following:

(A) The speed increment of 5 MPH for changing the speed under normal conditions may be system overridden.

(B) The minimum traffic volume criteria may be system overridden.

(C) The minimum 5 minute period for changing speeds may be system overridden and the posted speed changed immediately to the minimum of 30 MPH.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 810.180 & 811.111
Stat. Implemented: ORS 810.180 & 811.111
Hist.: HWD 1-2012, f. & cert. ef. 1-27-12

Rule Caption: Authority to authorize the movement of over-dimensional loads.

Adm. Order No.: HWD 2-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 12-1-2011

Rules Amended: 734-070-0010, 734-082-0021

Subject: These rules authorize an ODOT official to impose restrictions on travel involving over-dimensional loads and vehicles in order to protect the traveling public and Oregon's infrastructure. Historically that ODOT official was the Chief Engineer. The Administrator of the Motor Carrier Transportation Division (MCTD) was recently appointed to serve as the agency's liaison responsible for freight mobility issues statewide. The amended rules delegate to the Administrator of MCTD the same authority granted the Chief Engineer in regards to oversight of the movement of oversized loads or vehicles.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-070-0010

Imposition of Travel Restrictions

(1) The Chief Engineer and the Administrator of the Motor Carrier Transportation Division are both authorized to impose time of travel restrictions, to halt the movement of over-dimensional vehicles and loads, or to impose other restrictions which alter, rescind, or are in addition to those established under other rules and pertain to the movement of over-dimensional vehicles, combinations of vehicles, or loads on state highways. In exercising such authority, the Chief Engineer or the Administrator of the Motor Carrier Transportation Division may impose such restrictions as may be necessary to protect the safety and convenience of the traveling public, to protect any highway or section thereof from damage, to avoid conflict with highway construction or repair projects, or to cope with other local traffic conditions.

(2) Any directive or restriction imposed by the Chief Engineer or the Administrator of the Motor Carrier Transportation Division under this authority will be in the form of a written, signed order.

(3) Signs giving notice of the restrictions or limitations contained in the order must be posted at each end of the highway or section of highway affected. Such restrictions or limitations will be effective when the signs giving notice of them are posted.

Stat. Auth.: ORS 184.616, 184.619, 823.011
Stats. Implemented: ORS 818.200, 818.220
Hist.: 1 OTC 20-1979(Temp), f. & ef. 9-20-79; 1OTC 8-1980, f. & ef. 3-28-80; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 10-2011(Temp), f. & cert. ef. 9-30-11 thru 3-21-12; HWD 2-2012, f. & cert. ef. 1-27-12

734-082-0021

Days of Travel and Peak Traffic Hour Restrictions

(1) Movement of an oversize vehicle or load is subject to the time of travel restrictions described on Attachment H (rev. 11/2007), which is included with a division 82 permit.

(2) The Chief Engineer and the Administrator of the Motor Carrier Transportation Division may both impose or alter time of travel restrictions. These may be necessary to prevent conflict with highway construction or repair projects or to cope with local or seasonal traffic conditions.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stats. Implemented: ORS 818.220 & 818.225
Hist.: HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 3-2006, f. & cert. ef. 5-24-06; HWD 6-2006, f. & cert. ef. 11-15-06; HWD 10-2011(Temp), f. & cert. ef. 9-30-11 thru 3-21-12; HWD 2-2012, f. & cert. ef. 1-27-12

Rule Caption: Revisions of rules in Chapter 734, Divisions 75 and 76.

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Adm. Order No.: HWD 3-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 12-1-2011

Rules Amended: 734-075-0005, 734-075-0008, 734-075-0010, 734-075-0011, 734-075-0015, 734-075-0020, 734-075-0022, 734-075-0025, 734-075-0035, 734-075-0036, 734-075-0037, 734-075-0040, 734-075-0041, 734-075-0045, 734-075-0055, 734-075-0085, 734-076-0065, 734-076-0075, 734-076-0105, 734-076-0115, 734-076-0135, 734-076-0145, 734-076-0155, 734-076-0165, 734-076-0175

Subject: Division 75 rules govern the transportation of mobile homes, modular building units and chassis units on highways. The amended rules will:

(1) Allow a 30-day multiple trip permit to be used under specific conditions;

(2) Revise the axle, tire and brake requirements to be uniform with the federal definition; and

(3) Describe conditions for use of the single trip permit for combinations of vehicles that exceed the maximum allowable weight for a single non-divisible.

Division 76 rules govern the issuance of permits allowing tow vehicles to tow oversize disabled vehicles or combinations of vehicles on state highways. The amended rules will:

(1) Clarify how to apply for a permit to be used under specific conditions;

(2) Explain requirements for a variance permit when towing other than tow commodities; and

(3) Describe conditions for use of continuous trip permit and single trip permit when towing overweight disabled vehicles;

In addition, rules in both divisions regarding warning flags were amended to add fluorescent orange as an additional allowed color for warning flags.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-075-0005

Scope

OAR chapter 734, division 75 regulates the transportation of mobile homes, modular building units and chassis units on highways under the authority of the Oregon Department of Transportation.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0008

Definitions

(1) "Base" means the widest point of the outside dimension of a mobile home or modular unit exclusive of appurtenances such as door handles, required safety equipment or eaves.

(2) "Business day" is any day, Monday through Friday except holidays as defined in section (8) of this rule.

(3) "Chief Engineer" means the Chief Engineer of the Oregon Department of Transportation or a person designated to act for the Chief Engineer.

(4) "Daylight hours" means one-half hour before sunrise until one-half hour after sunset.

(5) "Eave" means an extension of the roof past the base of the unit. It does not include external accessories or devices attached to the unit.

(6) "Eave cap" means the shingle or roofing material extension over the eave fascia.

(7) "GVWR" means the gross vehicle weight rating as defined in ORS 801.298.

(8) "Holiday" for the purpose of division 75 rules means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and includes any other days the state officially observes these holidays by the closure of State offices.

(9) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(10) "Mobile home" or "manufactured home" means a trailer designed as a structure for human habitation or for business, commercial or office purposes, which can be towed upon public highways and which is

more than 45 feet in length or more than eight feet six inches in width. For the purposes of division 75 rules, all references to mobile homes include manufactured homes.

(11) "Modular building unit" means a structural building component designed to be used alone or with other modules. These modules create a structure for human habitation or for business, commercial or office purposes and are more than 45 feet in length or more than eight feet six inches in width. Modular units are transported or hauled on another vehicle instead of being towed on the unit's own axles or running gear.

(12) "Multi-lane highway" means a highway having two or more lanes of travel in the same direction.

(13) "Overall width" means the width at the base plus any eave.

(14) "Seller" as used in this rule means any person engaged in selling or distributing a manufactured home to persons who in good faith purchase or lease manufactured homes for purposes other than resale.

(15) "Toter" means a motor vehicle designed and used primarily for towing a mobile home.

(16) "Transport" means to tow, haul, drive or otherwise move a vehicle or load on the State highway system.

(17) "Truck-tractor" means a motor vehicle designed and used primarily for drawing (towing) other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load or both, as drawn and having a manufacturer's GVWR in excess of 15,000.

(18) "Unit" means a mobile home, manufactured home or modular building unit as defined in sections (10) and (11) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implementation: ORS 818.200 & 818.220

Hist.: 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0010

Vehicle Combinations and Maximum Size Limitations

This rule establishes the maximum number of vehicles in combination and size of vehicles allowed when moving an over-dimensional unit:

(1) The combination must not exceed two vehicles, the towing vehicle and the unit being transported.

(2) The maximum lengths are as follows:

(a) The maximum overall length of the combination must:

(A) Not exceed 85 feet on State highways;

(B) Not exceed 95 feet on Group 1 highways; and

(C) Not exceed 110 feet on Interstate highways, multilane highways or highways approved for the longer length as authorized by a single trip permit or as authorized by written order of the Chief Engineer.

(b) The mobile home being towed must not exceed 75 feet, including the tongue, except as provided in subsection (c) or OAR 734-075-0011.

(c) The mobile home may be up to 80 feet in length, including the tongue, when the unit will be transported through Oregon on US-95.

(3) The maximum widths are as follows:

(a) Units must not exceed 14 feet overall width, unless a single trip permit or a limited duration permit is issued;

(b) Units transported under a single trip permit or limited duration permit are subject to the following:

(A) The unit must not exceed 16 feet at the base except as described in subsection (e);

(B) The overall width must not, except as described in subsection (e), exceed 18 feet.

(c) Except as prohibited by paragraph (b)(B) of this section, a unit may have an eave, provided the eave does not extend beyond either side by:

(A) More than 30 inches for units with a base width of less than 16 feet; or

(B) More than 16 inches for units with a base width of 16 feet or more.

(d) External appurtenances such as doorknobs, window fasteners, eave cap, clearance lights and load securement devices may exceed the width of the unit by a distance not greater than two inches on each side;

(e) A unit that exceeds 16 feet wide at the base may be allowed if the Administrator of MCTD determines that the public interest requires the impending movement and the movement can be performed safely.

(4) Except as provided in subsection (5) the maximum height for the combination, while in transit, must not exceed 14 feet unless proper route clearance has been obtained and is so indicated on the single trip permit.

(5) A continuous trip permit may be issued for a combination height up to 14 feet six inches over specifically authorized routes.

(6) A combination consisting of a truck-tractor or toter towing a manufactured home, mobile home or modular building unit chassis, which may

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include axles and tires attached to each chassis hauled, may operate on a 30-day multiple trip permit under the following conditions:

- (a) Chassis length including the tongue must not exceed 75 feet;
- (b) The chassis must not be loaded end to end but may be staggered lengthwise for transport;
- (c) Overhang must not extend more than five feet off the rear of the chassis transporting the load;
- (d) Overall length of the combination must not exceed:
 - (A) 105 feet on interstate and multilane highways; and
 - (B) 95 feet on two-lane green and brown routes shown on Route Map 7.
- (e) The chassis transporting the load must be equipped with brakes and lights that meet the requirements of CFR 49 Part 393.

Stat. Auth.: ORS 184.616, 184.619, 810.060, 810.060 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2 HD 7-1982(Temp), f. & ef. 11-22-82; 2HD 15-1983, f. & ef. 8-18-83; HWY 4-1988(Temp), f. & cert. ef. 6-23-88; HWY 4, 1989, f. & cert. ef. 5-23-89; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; HWY 7-1996, f. & cert. ef. 12-19-96; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2008(Temp), f. & cert. ef. 4-24-08 thru 10-21-08; HWD 9-2008, f. & cert. ef. 9-11-08; HWD 5-2009, f. & cert. ef. 3-20-09; HWD 6-2011, f. & cert. ef. 6-21-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0011

Chief Engineer Authority to Approve Greater Length

(1) The Chief Engineer is authorized to issue permits, on an individual basis, to allow transportation of a unit into or through the State when the length exceeds that specified in OAR 734-075-0010.

(2) In issuing permits under this rule, the Chief Engineer will determine the following:

- (a) The safety of other highways users is not impaired; and
- (b) The adjacent states through which the mobile home is transported also permit the movement.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0015

Mobile Home Towing Vehicle Requirements

The following requirements apply to mobile home towing:

- (1) The towing vehicle must be equipped with dual wheels on the drive axle;
- (2) If the towed unit:
 - (a) Is 10 feet or less width at the base or 11 feet or less overall width, the toter utilized must have a minimum GVWR of 8,000 pounds;
 - (b) Exceeds 10 feet width at the base or 11 feet overall width, the toter utilized must have a minimum GVWR of 15,000 pounds; or
 - (c) Exceeds 14 feet width at the base or 15 feet overall width, the toter utilized must have a minimum GVWR of 32,000 pounds.
- (3) Engine horsepower must be enough to maintain minimum speeds of 45 MPH on Interstate highways and 35 MPH on other highways.

Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0020

Axles, Tires and Brakes for Mobile Homes

This rule establishes requirements for axles, tires and brakes for mobile homes transported under variance permit:

- (1) Axles must be in sufficient number to support enough tires to be in compliance with subsection 5(a) through 5(c) of this section.
- (2) A mobile home that exceeds 14 feet at the base in width must have a minimum of four axles, except when a mobile home does not exceed 40 feet in length and has a minimum of three axles.
- (3) Brakes on mobile homes must comply with Federal Motor Carrier Safety Regulations 393.42 (b)(2), provided the combination of vehicles meets the requirement of 393.52 brake performance.
- (4) For any mobile home in transit, a minimum of two spare tires must be carried for the unit being towed. They must be inflated and ready for use.
- (5) Tire loadings restrictions are contingent on when the unit was manufactured and must comply as follows:

(a) Tire loading restrictions for manufactured homes built before January 1, 2002. Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) before January 1, 2002, must not be transported on tires that are loaded more than 18 percent over the load rating marked on the sidewall of the tire or in the absence of such a marking more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119, 49 CFR 571.119, S5.1(b). Manufactured homes labeled before January 1, 2002, transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 50 mph;

(b) Tire loading restrictions for manufactured homes built on or after January 1, 2002. Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) on or after January 1, 2002, must not be transported on tires loaded beyond the load rating marked on the sidewall of the tire or in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119, 49 CFR 571.119, S5.1(b); and

(c) Manufactured homes with no verifiable date of manufacture must not exceed the manufacturer's tire load rating.

(6) The Department shall not issue a permit to move a mobile home that exceeds 14 feet wide at the base unless the Department determines that all of the conditions and specifications set forth in this rule have been met.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0022

Driver Requirements

The individual or company to whom the permit is issued will be responsible to verify that all drivers towing mobile home units with base widths in excess of 14 feet or overall width in excess of 15 feet meet the following requirements:

- (1) Driver must have a minimum of one year experience towing over-width mobile homes;
- (2) Driver must not have been convicted of more than one moving violation while operating commercial motor vehicles in any state, country or province within the last one year; or
- (3) Driver must not have had more than one preventable, recordable accident involving a commercial motor vehicle in any state, country or province within the last two years;
- (4) Driver must not have had a suspension or revocation of driving privileges from operation of a commercial motor vehicle in any state, country or province during the past three years; and
- (5) Driver must not have been convicted of DUII while operating a commercial motor vehicle in any state, country or province within the last five years.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0025

Hauling Vehicles for Modular Building Units

The following requirements apply to vehicles hauling modular building units:

- (1) Modular Building Units must be hauled with a truck-tractor or toter and semitrailer or trailer combination.
- (2) Equipment weights of the combination and the sizes and ratings of all its components must be comparable to those commonly used by the motor carrier industry in general over-the-road trucking operations.
- (3) When operating unladen, the overall length of the combination must not exceed the length authorized by statute or rule, except as authorized in the permit.
- (4) Modifications are permitted to the conventional equipment necessary for hauling modular building units. This may include "stretch-trailer" features, adjustable trailer heights from inflatable air bags, steering capabilities for the semitrailer axles or other modifications. These features must be stipulated in the permit.
- (5) Requests for moves using trailers more than 53 feet in length will be on an individual basis, and permits will be issued for a single trip only. The authorized trailer length must be stipulated in the permit and must not exceed 75 feet in length, except when using a stretch trailer. When not oper-

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ating under the terms of a permit issued under this rule a stretch trailer must be reduced to dimensions authorized by statute or rule.

(6) The modular building unit must be securely fastened to the semi-trailer or trailer. It may be secured by steel cables and winch tighteners, steel cables or chains and chain binders, or by adequate bolting directly to the semitrailer or trailer frame. Alternate securing methods approved by the United States Department of Transportation regulations may be used.

(7) A single trip permit may be issued for a combination of vehicles that exceeds the maximum allowable weight described in ORS 818.010 for a single non-divisible unit when the requirements described in OAR 734-082-0015 (1) and (2) are met and under the following conditions:

(a) Operations are subject to any posted weight limitation in effect on any highway, highway section, bridge or structure;

(b) The vehicle combination must not exceed the manufacturer's GVWR for the vehicle or the vehicle combination; and

(c) The exception to maximum weight limitations for an idle reduction system described in ORS 818.030(10) and 818.340(4) is limited to the actual weight of the idle reduction system, not to exceed 400 pounds. In order to qualify for the exception, the operator of the vehicle may be required to provide:

(A) Written certification of the weight of the auxiliary power unit; and

(B) A demonstration or certification that the idle reduction technology is fully functional.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; TO 3-1999, f. & cert. ef. 10-13-99; TO 5-2001, f. & cert. ef. 10-18-01; HWD 7-2011, f. & cert. ef. 6-21-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0035

Pilot Vehicles

(1) Pilot vehicle(s) may be needed to insure the safety of the traveling public when vehicle and load movements involve excessive width, height, length, or projections to the front or rear of vehicles or combinations of vehicles. The configuration of such pilot vehicles(s) must be a passenger car, pick-up, truck, or truck-tractor of legal size and weight. A pilot vehicle may not tow another vehicle.

(2) Pilot vehicles escorting oversize loads or vehicles are required to have the following:

(a) Warning signs mounted above the roofline of the vehicle. This sign must bear the legend "OVERSIZE LOAD." The sign must be at least five feet wide by ten inches high; have black letters eight inches high with one-inch brush stroke in accordance with Federal Highway Administration series B, on highway yellow background. The sign must be displayed only during the course of the oversize movement, and must be removed or retracted at all other times. The sign must be clean, legible, and mounted adequately to afford full view at all times, when in use, to the front or rear depending upon location of pilot vehicle or relative to the oversize unit;

(b) Warning lights are required in addition to those lights that may otherwise be required by law. The warning lights must be displayed only during the course of the oversize movement, and at all other times the requirements found in ORS 816.350(7) will apply. Strobe lights are allowed. These lights must be mounted above the roof of the cab, be clearly visible from 500 feet, have a minimum of 30 flashes per minute and be either:

(A) Two flashing amber lights as widely spaced laterally as is practical;

(B) Revolving type amber light(s); or

(C) Amber type strobe light(s) with 360 degree visibility.

(c) Two-way radio communications between the oversize vehicle and the pilot vehicle(s) must be maintained at all times;

(d) Two 18-inch-square red or fluorescent orange flags mounted on three-foot length staffs must be carried by each pilot vehicle. The pilot vehicle operator will use the flags to warn oncoming or overtaking traffic when the oversize unit is stopped and obstructing traffic;

(e) Eight safety flares or reflectors. Safety flares may not be used when the movement involves hazardous materials; and

(f) For a load exceeding 14 feet 6 inches high, an over-height pole adequate to determine load clearance is required if the permittee has not provided the department with a signed official ODOT form assuming all liability for any damage that may occur during an over-height movement. Instructions for over-height pole use are found on Permit Attachment 75-A.

(3) The number of pilot vehicles required for certain movements is shown on Permit Attachment 75-A, which is issued with permits requiring

pilot vehicles. The Chief Engineer is authorized to alter the number of pilot vehicles from those specified in Permit Attachment 75-A depending upon local conditions, seasonal traffic, construction projects, or other considerations. The permit will reflect altered requirements. Further, units with an overall width not exceeding 12 feet that meet the warning lights requirements described in 734-075-0040(2) and (3) are exempt from rear pilot car requirements on Group 1 Highways unless specifically required by the permit or Chief Engineer.

(4) Permit Attachment 75-A is available from the Motor Carrier Transportation Division, Over-Dimension Permit Unit.

(5) The highway classification groups referred to in Permit Attachment 75-A are established by and maintained by the Chief Engineer.

(6) Positioning of pilot vehicles — Unless specified otherwise, the pilot vehicle(s) must be positioned ahead of (when one is required) or to the front and rear of (when two or more are required) the oversize unit at a distance of 300 feet to 500 feet from the unit. In areas where increased traffic congestion is encountered, where traffic is controlled by signals, or where other conditions may so require, the spacing will be reduced as may be required to properly safeguard the traveling public.

(7) When for any cause the oversize unit is stopped and occupies or encroaches onto the highway's travel lane, the pilot vehicle(s) must be positioned to warn and safeguard other traffic approaching from any direction from which visibility or sight distance may be limited.

(8) Duties of pilot vehicle operations:

(a) Warn approaching or overtaking traffic of the unit's presence on the highway to provide a maximum of protection and safety for the traveling public; and

(b) When encountering bridges, structures, tunnels, or other locations where clearances may be limited to the extent that normal two-way traffic cannot be maintained, the pilot vehicle operator must signal by hand or radio to the towing vehicle driver when the oversize unit can proceed without conflict to approaching traffic. As the oversize unit then proceeds through such areas of impaired clearance, the pilot vehicle operator must warn approaching traffic.

(9) Pilot vehicle(s) are considered to be under the direct control and supervision of the oversize vehicle operator.

(10) Specific identified locations may require additional precautions. Permits will specify locations that require certified flagging to be conducted. The flagging must be conducted in accordance with the standards in the Manual on Uniform Traffic Control Devices as adopted in OAR 734-020-0005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2 HD 7-1982(Temp), f. & ef. 11-22-82; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0036

Approved Routes for Authorized Combinations of Vehicles

(1) The Chief Engineer, or his designee, may approve, limit or delete by written order the state highways or sections of state highways approved for use by vehicles authorized by OAR Chapter 734, Division 75.

(2) The Chief Engineer may also specify the type(s) of vehicle combinations authorized on approved routes.

(3) The list of approved highways and types of vehicle combinations authorized are maintained by the Chief Engineer.

(4) Trial test runs may be required to revise routes or approved vehicle combinations.

(5) Before adding or deleting highways or sections of highways, the Chief Engineer will investigate the condition of the highway, and may consider road surface width, condition, safe passing opportunities, bridges, structures, accessibility, general sight distance, and other conditions which he deems appropriate along such highways.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.220 & 818.225

Hist.: TO 3-1999, f. & cert. ef. 10-13-99; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0037

Special Provisions

(1) Movement of all units with a base width over 14 feet or an overall width in excess of 15 feet on two lane highways will be required to submit for approval by the Department a traffic control plan that is acceptable to all road authorities through which the vehicle(s) will travel and lists the

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desired date of move, routes of travel, turnouts for traffic relief and dimensions of load.

(2) If the eave extends more than 24 inches beyond either side of the mobile home base, in addition to all other lights required by law, a clearance light as described in ORS 816.200 will be mounted on the outermost front and rear corners of the eave.

(3) Vehicles transporting manufactured homes that exceed 14 feet width at the base must travel only in the right lane unless obstructions, merging traffic or permit requirements dictate otherwise. A vehicle transporting a manufactured home in excess of 14 feet at the base, must not pass other over-dimensional vehicles.

(4) The seller of a manufactured home that exceeds 14 feet width at the base, and is to be transported over Oregon highways, is the shipper of the manufactured home. As the shipper, the seller will have the obligation of pre-determining whether the appropriate road authority may issue an over-dimension permit so that the manufactured home can be delivered to the location specified by the potential purchaser of the manufactured home.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0040

Warning Lights for Power Units Transporting Oversize Units

(1) Except as provided in section (3) of this rule, in addition to any other lights required by law, a power unit transporting an oversize unit must be equipped with warning lights when:

- (a) Width exceeds 10 feet when operating on two lane highways; or
- (b) Width exceeds 12 feet when operating on four lane highways.

(2) The warning lights will be mounted on the transporting power unit above the roof of the cab, be clearly visible from 500 feet, have a minimum of 30 flashes per minute and be either:

(a) Two flashing type amber lights as widely spaced laterally as practical;

- (b) Revolving type amber light(s); or
- (c) Amber type strobe lights with 360 degree visibility.

(3) A power unit transporting an oversize unit is exempt from the warning light requirements when operating with a minimum of two pilot vehicles on all highways or one pilot vehicle if width does not exceed 10 feet.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0041

Warning Lights for Transported Over-Width Mobile Homes

In addition to any other lighting required by law, a transported over-width mobile home must be equipped with two flashing type amber lights mounted on the rear of the towed unit. The lights must be:

(1) On a horizontal plane at least eight feet above the road surface and separated as far as practical; and

(2) Clearly visible from 500 feet.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: TO 2-2001, f. & cert. ef. 6-14-01; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0045

Warning Signs and Flags Required

(1) Over-width movements are required to display to the front and rear standard signs bearing the words "OVERSIZE LOAD":

(a) Signs must be seven feet wide by 18 inches high with black letters 10 inches high with 1-5/8 inch brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between one half hour after sunset and one half hour before sunrise;

(c) Signs must be kept clean, legible and mounted horizontally with adequate support to provide full visibility at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates; and

(f) All such signs must be removed or retracted when not required.

(2) All four lower corners of any over-width load must be marked during daylight hours with red or fluorescent orange flags that are a minimum

18 inches square. Flags must be kept clean and must be clearly visible to the front and rear. The attachment device must not extend beyond the widest extremity by more than three inches on either side.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0055

Days of Travel and Peak Traffic Hour Restrictions

(1) Movement of an oversize vehicle or load is subject to the time of travel restrictions described on Attachment H (rev. 11/2007), which is included with a division 75 permit.

(2) The Chief Engineer may impose or alter time of travel restrictions. These may be necessary to prevent conflict with highway construction or repair projects or to cope with local or seasonal traffic conditions.

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

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; HWD 6-2006, f. & cert. ef. 11-15-06; HWD 3-2012, f. & cert. ef. 1-27-12

734-075-0085

General Permit Provisions

(1) Posted Load Limits: Notwithstanding the weights or dimensions allowed under a permit, the posting of any highway or structure to reduce weights or dimensions will modify the limits allowed under the permit.

(2) Impaired Clearance: Full responsibility for determining adequate clearance, both vertical and horizontal is hereby imposed upon the permittee and the driver of equipment having a width or height in excess of the legal limit. When the vertical or horizontal clearance of any bridge or structure is impaired to the extent that full two-way traffic cannot be maintained, the permittee must provide a pilot vehicle for the purpose of preventing approaching vehicles from entering the bridge or structure while it is impaired by the movement covered by this permit.

(3) Spacing Interval: Two or more vehicles required to display warning signs must maintain a distance of one-half mile between combinations traveling in the same direction, except when overtaking or passing or in areas where increased traffic congestion is encountered, where traffic is controlled by signals or where other conditions may so require. All slow-moving lanes and turn-outs must be used to allow following traffic to pass.

(4) Bond — Highway Damage: Permittee will be held responsible and liable for any and all damage to or destruction of any highway or any highway structure occasioned by the movement over said highways, and hereby agrees to reimburse the Department of Transportation (Department) for the cost or expense of repairing or restoring any highway structure damaged, or destroyed; such reimbursement to be made by the permittee within ten days after being billed for the same by the Department. When requested to do so, permittee must furnish the State either a certified check or a surety bond, in any amount to be specified by the Department to guarantee the payment of claim for damages which may result from movement of an unusually large or heavy nature.

(5) Insurance: Permittee will also be held responsible and liable for any and all injury to persons or damage to property resulting from the movement on said highways, and will indemnify and hold harmless the State of Oregon, and Oregon Transportation Commission, its members, officers, and employees, jointly and severally, from liability in the event that such injury or damage may occur. In this connection, the granting authority may require the permittee to furnish to the Department evidence of satisfactory public liability and property damage insurance, in amounts as may be required by the Department, and evidence of satisfactory indemnity insurance indemnifying the State of Oregon and its Transportation Commission, its members, officers, and employees, jointly or severally against liability in the event of any injury or accident occurring by reason of said permittee's operations on a state highway. This permit will automatically terminate, and be of no force and effect in the event that any insurance filed under this provision is canceled or is allowed to lapse.

(6) County Roads and City Streets: This permit does not authorize operations over county roads or city streets unless specifically noted. To operate over a county road a permit must be obtained from the county authority having jurisdiction over the road; likewise, to operate over a city

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street other than a state highway route, a permit must be obtained from the proper city authority.

(7) Cancellation: This permit may be canceled at any time by the granting authority upon proof satisfactory to it that the permittee has violated any of the terms of the permit or that the permit was obtained through misrepresentation in the application or when in the judgment of the granting authority the public interest requires cancellation (ORS 818.220).

(8) Rear-view Mirrors: A Power unit must be equipped with a minimum of two rear view mirrors positioned to allow the operator to view the rear of the last vehicle of the combination and to see down each side of the vehicle(s) being transported. Mirrors may exceed authorized width only as much as required to provide the operator the required view to the rear and must be retracted to legal width at all other times.

(9) It is the responsibility of the motor carrier to notify the Over-Dimension Permit Unit in the event of striking a structure in the course of a movement. In addition to any other notification required by law, within 24 hours of striking a structure, the motor carrier must initially report the incident to the Over-Dimension Permit Unit pager at (503) 588-9610. The motor carrier will be contacted and provided with a form to report the incident and within 72 hours of the contact must return the completed form by fax to (503) 378-2873 or delivery to the Over-Dimension Permit Unit at 550 Capitol St. NE, Salem, OR 97301-2530.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011
Stats. Implemented: ORS 818.220 & 818.225
Hist.: HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0065

Payment of Appropriate Taxes and Fees

The motor carrier towing a disabled vehicle(s) is responsible for paying the appropriate road use taxes when operating under Division 76 rules. When the gross weight exceeds 98,000 pounds, road use fees described in ORS 818.225 must be paid. When the gross weight is 98,000 pounds or less, weight-mile tax must be paid. All fees must be paid to the MCTD.

Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0075

Application for Permit

(1) To apply for a permit under this rule contact, Motor Carrier Transportation Division at 503-373-0000. The permit may be mailed or transmitted electronically for pick up by the applicant.

(2) To qualify for a permit, a towing company must have vehicles that are registered as tow vehicles under ORS 803. Log truck and full log truck "towing vehicles" are exempt from this requirement.

(3) The applicant must provide:

- (a) Permittee name and address;
- (b) Towing or recovery vehicle year and make;
- (c) Towing or recovery vehicle identification number (also known as VIN number);
- (d) Towing or recovery vehicle registration plate number; and
- (e) Towing or recovery vehicle unit number if one has been assigned by the towing company.

(4) In addition to the requirements in section (3) of this rule, the applicant may be required to provide dimension and weight when applying for a single trip permit (STP).

(5) Permits will not be issued when an application is incomplete.

(6) The following conditions apply to permits:

(a) A continuous trip permit (CTP) must be obtained and carried in the tow or recovery vehicle prior to moving an oversize or overweight disabled vehicle, or a load from a disabled vehicle.

(b) A STP must be obtained prior to operations when weight exceeds 98,000 pounds GVW and does not exceed permit weight table 4 group axle weights or when the size exceeds the dimensions authorized for the load operating under an oversize permit.

(c) Except when directed by law enforcement, the road authority, or the operator of the vehicle after normal business hours to remove a disabled unit from the initial roadside location, a transportation permit, CTP or STP must be obtained no later than the next business day. To qualify for the STP the operator of the tow vehicle must be in possession of a current CTP.

Stat. Auth.: ORS 184.616, 184.619, 823.011
Stats. Implemented: ORS 818.170, 818.200 & 818.220
Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0105

General Permit Provisions

The following provisions apply to permits issued under Division 76 rules:

(1) Posted Load Limits — A vehicle or combination of vehicles may not operate over a highway posted for reduced weights or dimensions unless responding to an emergency on that highway and there is no other route available.

(2) Bond-Highway Damage — Permittee will be held responsible and liable for any and all damage to, or destruction of, any highway or structure caused by the movement of the disabled unit. The permittee hereby agrees to reimburse ODOT for the cost or expense of repairing or restoring the highway. Such payment must be made within 30 days after being billed by ODOT.

(3) Insurance — Permittee will be held responsible and liable for any and all injury to persons or damage to property resulting from the movement of the disabled unit. Permittee must reimburse and hold harmless the State of Oregon, and the Oregon Transportation Commission, its members, officers, and employees, jointly and solely, from liability that may occur.

(4) The driver of a towing vehicle must have the proper operating license and all required endorsements for the operations conducted.

Stat. Auth.: ORS 184.616 & ORS 184.619
Stats. Implemented: ORS 818.170, 818.200 & 818.220
Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0115

Tow Vehicle Authorized Use

(1) The following uses are allowed for tow vehicles towing disabled vehicles when operating under a permit issued by the Over-Dimension Permit Unit:

(a) A Class A tow vehicle may tow a combination of vehicles only the distance necessary to leave the public highway. From that point, no more than one vehicle may be towed;

(b) A Class B and Class C tow vehicle may tow a:

- (A) Single vehicle unrestricted as to distance; or
- (B) Combination of vehicles authorized by statute, rule or variance permit to the nearest population center of at least 15,000 or 100 airmiles in Oregon, whichever is greater; and

(c) A Class D tow vehicle is not authorized to tow more than one vehicle.

(2) A truck-tractor semitrailer load recovery vehicle may only be used to transport the load of a disabled unit from the site of the incident to the nearest population center of at least 15,000, or 100 airmiles in Oregon, whichever is greater. Such load recovery vehicle may transport, in addition to the recovered load, equipment necessary to recover the load. The weight may exceed those established in ORS 818.010 providing the weight does not exceed that allowed by OAR 734-076-0145.

(3) A solo recovery vehicle may be used only to transport the load of a disabled vehicle that is of comparable size to the recovery vehicle.

(4) A log truck or full log truck "towing vehicle" may tow an empty disabled log truck, a disabled log truck with a decked pole trailer, a loaded or unladen disabled full log truck, a disabled motor truck modified to transport logs with a trailer decked, or a loaded disabled log truck and pole trailer combination. A laden disabled log truck and pole trailer combination may be towed only to a destination mill or the motor carrier terminal, whichever is closer.

(5) A towing vehicle may tow a replacement vehicle to the necessary location.

(6) A tow vehicle used to haul commodities other than disabled vehicles, or a replacement vehicle, as referenced in subsection (5) of this rule, must obtain a variance permit in accordance with OAR Chapter 734 applicable to the oversize or overweight load being hauled. The variance permit must be obtained prior to the move and carried in the tow vehicle.

Stat. Auth.: ORS 184.616, 184.619, 823.011
Stats. Implemented: ORS 818.170, 818.200 & 818.220
Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0135

Warning Signs and Flags Required for Oversize Units

(1) Warning signs are required for dimensions exceeding:

- (a) Eight feet, six inches in width;
- (b) An overall length of 105 feet (inclusive of towing vehicle); or
- (c) For a combination of vehicles being towed exceeding 80 feet in length (inclusive of load).

(2) Warning signs must bear the legend "OVERSIZE LOAD" except:

ADMINISTRATIVE RULES

(a) When the width exceeds eight feet, six inches and the combination of vehicles being towed does not exceed 80 feet in length (inclusive of load) or the overall combination length does not exceed 105 feet (inclusive of towing vehicle), the sign may bear the legend "WIDE LOAD"; or

(b) When the width does not exceed eight feet, six inches and when the combination of vehicles being towed exceeds 80 feet in length (inclusive of load) or the overall combination length exceeds 105 feet (inclusive of towing vehicle), the sign may bear the legend "LONG LOAD."

(3) Warning signs must be displayed to the front and rear of the vehicle or combination and must meet the following requirements:

(a) Signs must be seven feet wide by 18 inches high with black letters 10 inches high with 1-5/8 inch brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between one half hour after sunset and one half hour before sunrise;

(c) Signs must be kept clean, legible and mounted horizontally with adequate support to provide full visibility and readability at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates; and

(f) All such signs must be removed or retracted when not required.

(4) The outermost extremities of any overwidth load must be marked during daylight hours with red or fluorescent orange flags not less than 18 inches square. Flags must be kept clean and must be clearly visible to the front and rear. The attachment device must not extend beyond the widest extremity by more than three inches on either side.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0145

Maximum Weights

(1) Maximum weight for towing vehicles is as follows:

(a) Class A and Class D tow vehicles must conform to ORS 818.010;

(b) All towing vehicles must conform to ORS 818.010 when towing a disabled unit by draw bar or tow chain method; and

(c) When any portion of the weight of the disabled unit rests upon a Class B or Class C tow vehicle:

(A) A single drive axle may not exceed 600 pounds per inch of tire width not to exceed 23,000 pounds on a single axle;

(B) A tandem drive axle may not exceed 600 pounds per inch of tire width not to exceed 23,000 pounds on each axle or 46,000 pounds on the tandem axle;

(C) Any group of three or more axles may not exceed 600 pounds per inch of tire width not to exceed the weight allowed by Weight Table 3 (permit attachment); and

(D) The steering axle of the towing vehicle must carry sufficient weight required to maintain a safe operation and at no time will weigh less than 3,000 pounds for Class B tow vehicles or 3,500 pounds for Class C tow vehicles.

(2) Maximum weights for disabled units are as follows:

(a) When being towed by Class A or any Class D tow vehicle, all weights must conform to ORS 818.010;

(b) When being towed by a Class B or Class C tow vehicle using a draw bar or tow chain method, the weight of the disabled unit must conform to ORS 818.010 or to the transportation variance permit issued to the disabled unit;

(c) When a Class B or Class C tow vehicle carries a portion of the weight of the disabled unit, the first load bearing axle(s) of the disabled unit may weigh 600 pounds per inch of tire width, not to exceed 21,500 pounds on any single axle or 43,000 pounds on a tandem axle, unless otherwise provided by a transportation variance permit issued to the disabled unit; and

(d) When being towed by a log truck or full log truck "towing vehicle," the weight of the disabled unit must conform to ORS 818.010 or to the transportation variance permit issued to the disabled unit.

(3) When operating under a CTP, the combination maximum weight for the tow vehicle and disabled vehicle must not exceed the weight allowed in section (1) and (2) of this rule.

(4) When operating under a STP the single drive axle must not exceed:

(a) 600 pounds per inch of tire width,

(b) 23,000 pounds on each axle;

(c) 46,000 pounds on the tandem axle and group axle; or

(d) The gross weight authorized by permit Weight Table 4.

(5) A load recovery vehicle consisting of a truck-tractor semitrailer may transport a divisible or non-divisible load. Except when operating under a STP, the weight must not exceed:

(a) 600 pounds per inch of tire width;

(b) 21,500 pounds on a single axle or 43,000 pounds on a tandem axle;

(c) 98,000 pounds; and

(d) The weight stated in Permit Weight Table 3.

(6) A solo recovery vehicle may transport a non-divisible load. The weight must not exceed:

(a) 600 pounds per inch of tire width;

(b) 21,500 pounds on a single axle; and

(c) 43,000 pounds on a tandem axle; and

(d) The weight stated in Permit Weight Table 3.

(7) Lift axles must be deployed when axle weights exceed that allowed under ORS 818.010.

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

Stat. Auth.: ORS 184.616, 818.619, 184.619 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 17-1980(Temp), f. & ef. 9-19-80; 2HD 1-1981, f. & ef. 1-28-81; HWY 8-1997, f. & cert. ef. 8-26-97, Renumbered from 734-076-0025; TO 1-1999, f. & cert. ef. 2-19-99; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0155

Maximum Dimensions for Continuous Trip Permit Operations

(1) Height and Width: No disabled unit, including load, will exceed 14 feet in height or eight feet-six inches in width with the exception of:

(a) When initially operating under a transportation permit authorizing a greater height or width issued to the disabled vehicle, the allowances granted and restrictions imposed by that permit will apply only to movement over highway routes described in the permit; or

(b) Where an accident or collision has resulted in a width greater than eight feet-six inches, but not exceeding 10 feet in width. In that event, during daylight hours the extreme width must be marked by red or fluorescent orange flags not less than 12 inches square visible to the front and rear, and during the hours of darkness the extreme width must be illuminated by clearance lights or markers as described in ORS Chapter 816.

(c) Rear View Mirrors — Towing vehicles or load recovery vehicles transporting overwidth units must be equipped with rear-view mirrors capable of affording the operator a view to the rear of the disabled unit or load. Such mirrors must be retracted to legal width when an overwidth disabled unit is not being transported.

(2) Length:

(a) Except as described in subsection (d) of this section, Class A, B, and C tow vehicles must not exceed 40 feet. Class D tow vehicles must not exceed 45 feet;

(b) The length of any towed vehicle must not exceed the length established by statute or rule unless authorized by a transportation permit issued to the vehicle. Combination length of towed vehicles may be temporarily extended when towing provided the combination was of legal length prior to the incident;

(c) A log truck or full log truck "towing vehicle" must not exceed 40 feet in length. A log truck or full log truck "towing vehicle" must not tow a loaded log truck and pole trailer combination that exceeds the lengths established by OAR 734-071-0010; and

(d) When a Class B or C tow vehicle is using a towing device to tow another vehicle, the length of the tow vehicle and towing device must not exceed 55 feet in total length and the distance between the rear bumper of the towing vehicle and the front or foremost point of the towed vehicle must not exceed five feet.

Stat. Auth.: ORS 184.616, 184.619, 810.060 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 17-1980(Temp), f. & ef. 9-19-80; 2HD 1-1981, f. & ef. 1-28-81; HWY 8-1997, f. & cert. ef. 8-26-97, Renumbered from 734-076-0030; TO 1-1999, f. & cert. ef. 2-19-99; TO 1-2000, f. & cert. ef. 1-20-00; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0165

Pilot Vehicle(s)

(1) Pilot vehicles may be needed to ensure the safety of the traveling public when the tow vehicle and disabled unit involve excessive width, height, length or projections to the front or rear of vehicles or combinations of vehicles. The configuration of such pilot vehicle(s) must be a passenger car, pick-up, truck or truck-tractor of legal size and weight. Combinations of vehicles are not allowed as pilot vehicles. The number of pilot vehicles required for certain movements is shown on permit Attachment 76-A, which is provided with the permit.

ADMINISTRATIVE RULES

(2) Pilot vehicles escorting oversize loads or vehicles are required to have the following:

(a) Warning signs mounted above the roofline of the vehicle. This sign must bear the legend "OVERSIZE LOAD." The sign must be at least five feet wide by ten inches high and have black letters eight inches high with one-inch brush stroke in accordance with Federal Highway Administration series B, on highway yellow background. The sign must be displayed only during the course of the oversize movement, and must be removed or retracted at all other times. The sign must be clean, legible and mounted adequately to afford full view at all times, when in use, to the front or rear depending upon location of pilot vehicle or relative to the oversize unit.

(b) Warning lights are required in addition to those lights that may otherwise be required by law. The warning lights must be displayed only during the course of the oversize movement, and at all other times the requirements found in ORS 816.350(7) will apply. Strobe lights are allowed. These lights must be mounted above the roof of the cab, be clearly visible from 500 feet, have a minimum of 30 flashes per minute and be either:

(A) Two flashing amber lights as widely spaced laterally as is practical;

(B) Revolving type amber light(s); or

(C) Amber type strobe light(s) with 360 degree visibility.

(c) Two-way radio communications between the towing vehicle and the pilot vehicle(s) must be maintained at all times.

(d) Two 18-inch-square red or fluorescent orange flags mounted on three-foot length staffs must be carried by each pilot vehicle. The pilot vehicle operator will use the flags to warn oncoming or overtaking traffic when the oversize unit is stopped and obstructing traffic; and

(e) Eight safety flares or reflectors. Safety flares may not be used when the movement involves hazardous materials.

(3) The number of pilot vehicles required for certain movements is shown on Permit Attachment 76-A, which is issued with permits requiring pilot vehicles. The Chief Engineer is authorized to alter the number of pilot vehicles from those specified in permit Attachment 76-A depending upon local conditions, seasonal traffic, construction projects or other considerations. The permit will reflect altered requirements.

(4) Permit Attachment 76-A is available from the Motor Carrier Transportation Division, Over-Dimension Permit Unit.

(5) The highway classification groups referred to in Permit Attachment 76-A are established and maintained by the Chief Engineer.

(6) Positioning of pilot vehicles -- Unless specified otherwise, the pilot vehicle(s) must be positioned ahead of (when one is required) or to the front and rear of (when two or more are required) the oversize unit at a distance of 300 feet to 500 feet from the unit. In areas where traffic congestion is encountered, where traffic is controlled by signals or where other conditions may require, the spacing will be reduced as may be required to properly safeguard the traveling public.

(7) When for any cause the oversize unit is stopped and occupies or encroaches onto the highway's travel lane, the pilot vehicle(s) must be positioned to warn and safeguard other traffic approaching from any direction from which visibility or sight distance may be limited.

(8) Duties of pilot vehicle operators:

(a) Warn approaching or overtaking traffic of the unit's presence on the highway to provide a maximum of protection and safety for the traveling public; and

(b) When encountering bridges, structures, tunnels or other locations where clearances may be limited to the extent that normal two-way traffic cannot be maintained, the pilot vehicle operator must signal by hand or radio to the towing vehicle driver when the oversize unit can proceed without conflict to approaching traffic. As the oversize unit then proceeds through such areas of impaired clearance, the pilot vehicle operator must warn approaching traffic.

(9) Pilot vehicle(s) are considered to be under the direct control and supervision of the tow truck operator.

(10) Specific identified locations may require additional precautions. Permits will specify locations that require certified flagging to be conducted. The flagging must be conducted in accordance with the standards in the Manual on Uniform Traffic Control Devices as adopted in OAR 734-020-0005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 816.350, 818.170, 818.200, 818.220

Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

734-076-0175

Approved Routes

(1) When removing a load or vehicles from the initial emergency, towing vehicles or load recovery vehicles operating under Division 76 rules may operate on all state highways. Thereafter, vehicles may operate over Group 1 highways shown on Group Map 1 or approved routes shown on Route Map 7, or approved routes shown on the permit issued to the disabled unit. Overweight vehicles and combinations of vehicles may not operate on highways with weight restrictions shown on Route Map 8 and the most current Attachment 100A. Group Map 1, Route Map 7 and Route Map 8 are available from the Over-Dimension Permit Unit, Motor Carrier Transportation Division, 550 Capitol Street NE, Salem OR 97301 or at www.oregontruckingonline.com.

(2) The Chief Engineer may add additional highway routes to those approved for operation or delete from the approved routes any highway or section of highway when continued operation of the units is not in the public's best interest.

(3) This rule does not authorize operation over highways, streets, or roads not under the jurisdiction of the Department of Transportation. For such operations, separate permission must be obtained from the appropriate authority.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 17-1980(Temp), f. & cert. ef. 9-19-80; 2HD 1-1981, f. & cert. ef. 1-28-81; HWY 8-1997, f. & cert. ef. 8-26-97, Renumbered from 734-076-0055; TO 1-1999, f. & cert. ef. 2-19-99; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 3-2012, f. & cert. ef. 1-27-12

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Department of Transportation, Rail Division Chapter 741

Rule Caption: Adoption of procedures to implement ORS 271.310.

Adm. Order No.: RD 1-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 11-1-2011

Rules Adopted: 741-040-0010, 741-040-0020, 741-040-0030, 741-040-0040, 741-040-0050, 741-040-0060, 741-040-0070

Subject: ODOT has adopted procedures necessary to implement changes to ORS 271.310 as a result of HB 2370.

Rules Coordinator: Lauri Kunze—(503) 986-3171

741-040-0010

Definitions

As used in OAR 741-040-0020 to 741-040-0060, the following definitions apply:

(1) "At-Grade crossing" means a highway-rail grade crossing as defined in the Manual on Uniform Traffic Control Devices as adopted in OAR 734-020-0005.

(2) "Division" means Oregon Department of Transportation, Rail Division.

(3) "Light Rail Corridor" means Real Property within 100 feet of a rail that is for trolley, streetcar or automated guideway that is not regulated by the Federal Railroad Administration, but does not include such property that is within 100 feet of a Railroad Right of Way or within 500 feet of an At-Grade crossing.

(4) "Political subdivision" as defined by ORS 271.005(3).

(5) "Rail Corridor" means any Real Property within 100 feet of a Railroad Right of Way or within 500 feet of an At-Grade crossing.

(6) "Railroad Right of Way" means Real Property on which rail operation has taken place and that remains subject to the jurisdiction of the federal Surface Transportation Board.

(7) "Real Property" means all real property together with any and all improvements thereon and any interest therein.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011

Stats. Implemented: ORS 271.310

Hist.: RD 1-2012, f. & cert. ef. 1-27-12

741-040-0020

Purpose

To provide procedures to share advance notice of Real Property for sale, exchange or conveyance by political subdivisions with private providers of rail service.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011

Stats. Implemented: ORS 271.310

Hist.: RD 1-2012, f. & cert. ef. 1-27-12

ADMINISTRATIVE RULES

741-040-0030

Notification Required

Unless an exception applies pursuant to OAR 741-040-0040, at least 30 days before listing or placing any Real Property for sale, exchange or conveyance, a Political subdivision shall notify the Rail Division Administrator of its intent to undertake such listing or placement if the Real Property is within:

- (1) 100 feet of a Railroad Right of Way;
- (2) 500 feet of an At-Grade crossing.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011
Stats. Implemented: ORS 271.310
Hist.: RD 1-2012, f. & cert. ef. 1-27-12

741-040-0040

Exempt from Notification

Listing or placing any Real Property for sale, exchange or conveyance within a Light Rail Corridor is exempt from the notice requirements of ORS 271.310(3) or Division 40.

Stat. Auth.: ORS 271
Stats. Implemented: ORS 271-310
Hist.: RD 1-2012, f. & cert. ef. 1-27-12

741-040-0050

Form of Notification

The Political subdivision will provide on forms approved by the Division the following information:

- (1) A detailed description of the Real Property to be sold, including its approximate size in square feet or acreage and its legal description;
- (2) A map showing the location of the Real Property in relation to the Railroad Right of Way and/or At-Grade crossing;
- (3) A completed notice using a form provided by the Division; and
- (4) Any other information the Division may request.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011
Stats. Implemented: ORS 271.310
Hist.: RD 1-2012, f. & cert. ef. 1-27-12

741-040-0060

Submission Process

The Political subdivision shall submit notification and notification materials either electronically or in hard copy format.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011
Stats. Implemented: ORS 271.310
Hist.: RD 1-2012, f. & cert. ef. 1-27-12

741-040-0070

Railroad Notification

(1) Division shall solicit from each provider of rail service operating within the State first-class U.S. and electronic mail addresses to which Division shall send notifications required hereunder.

(2) Division will notify any provider of rail service using the Railroad Right of Way within the area specified by ORS 271.310(3) of the Real Property being sold, exchanged or conveyed by at least one of the following methods:

- (a) Mailed notice;

- (b) Electronic mail notice.

Stat. Auth.: ORS 184.616, 184.619, Ch. 446 OL 2011
Stats. Implemented: ORS 271.310
Hist.: RD 1-2012, f. & cert. ef. 1-27-12

Employment Department
Chapter 471

Rule Caption: Clarify definition of “good cause” for late and reopened appeals.

Adm. Order No.: ED 1-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 1-1-2012

Rules Amended: 471-040-0010, 471-040-0040, 471-040-0041

Rules Repealed: 471-040-0010(T), 471-040-0040(T), 471-040-0041(T)

Subject: For late hearing requests, requests to reopen hearing, and late requests to reopen hearings, clarify what constitutes “good cause”. this modification will convey reasons that are acceptable for late requests.

This change impacts lower appeals hearings with the Office of Administrative hearings.

Rules Coordinator: Courtney Brooks—(503) 947-1724

471-040-0010

Late Request for Hearing

(1) “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.

- (a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

- (b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance.

(3) “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.

(5) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(6) This rule is effective for all hearing requests filed on or after August 26, 2011.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.875

Hist.: IDE 150, f. & ef. 2-9-76; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06; ED 8-2011(Temp), f. & cert. ef. 8-26-11 thru 2-18-12; ED 1-2012, f. & cert. ef. 2-10-12

471-040-0040

Reopening of a Hearing

(1) After service of an administrative law judge’s written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

- (a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and

- (c) Has good cause for failing to appear at the hearing.

(2) “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.

- (a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

- (b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge’s ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The filing date for a request to reopen shall be determined under OAR 471-010-0040.

ADMINISTRATIVE RULES

(6) The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.

(7) Nothing in subsection (3) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(8) This rule is effective for all requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.280, 657.610 & 657
Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06; ED 8-2011(Temp), f. & cert. ef. 8-26-11 thru 2-18-12; ED 1-2012, f. & cert. ef. 2-10-12

471-040-0041

Late Request to Reopen

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative Hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The filing date for a late request to reopen shall be determined under OAR 471-010-0040.

(6) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(7) The administrative law judge's decision on a late request to reopen shall be in writing and mailed to the parties.

(8) This rule is effective for all late requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657.270 & 657.875
Stats. Implemented: ORS 657.280, 657.610 & 657.875
Hist.: ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06; ED 8-2011(Temp), f. & cert. ef. 8-26-11 thru 2-18-12; ED 1-2012, f. & cert. ef. 2-10-12

Land Conservation and Development Department Chapter 660

Rule Caption: Amendments to conform agency rules to new laws.
Adm. Order No.: LCDD 1-2012

Filed with Sec. of State: 2-14-2012

Certified to be Effective: 2-14-12

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Rules Amended: 660-007-0000, 660-007-0005, 660-007-0015, 660-007-0018, 660-007-0020, 660-007-0022, 660-007-0030, 660-007-

0033, 660-007-0035, 660-007-0037, 660-007-0045, 660-007-0050, 660-007-0060

Subject: The adopted rule amendments implement laws enacted by the 2010 and the 2011 legislatures. The amendments revise existing rules to conform rule wording to new and revised state laws and to ensure consistency between rules and statutes.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-007-0000

Statement of Purpose

The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization. OAR 660-007-0035 implements the Commission's determination in the Metro UGB acknowledgment proceedings that region wide, planned residential densities must be considerably in excess of the residential density assumed in Metro's "UGB Findings". The new construction density and mix standards and the criteria for varying from them in this rule take into consideration and also satisfy the price range and rent level criteria for needed housing as set forth in ORS 197.303.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0005

Definitions

For the purposes of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions apply:

(1) A "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas.

(2) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(3) "Buildable Land" means residentially designated land within the Metro urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6 or 15;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

(4) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(5) "Housing Needs Projection" refers to a local determination, justified in the plan, as to the housing types, amounts and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with OAR 660-007-0010 through 660-007-0037 and any other adopted regional housing standards; and

(c) Consistent with Goal 14 requirements for the efficient provision of public facilities and services, and efficiency of land use.

(6) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(7) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

ADMINISTRATIVE RULES

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(8) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0015

Clear and Objective Approval Standards Required

(1) Except as provided in section (2) of this rule, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(2) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in section (1) of this rule, a local government may adopt and apply an optional alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of section (1);

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in section (1) of this rule.

(3) Subject to section (1), this rule does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0018

Specific Plan Designations Required

(1) Plan designations that allow or require residential uses shall be assigned to all buildable land. Such designations may allow nonresidential uses as well as residential uses. Such designations may be considered to be "residential plan designations" for the purposes of this division. The plan designations assigned to buildable land shall be specific so as to accommodate the varying housing types and densities identified in OAR 660-007-0030 through 660-007-0037.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 4-1999, f. & cert. ef. 7-2-99; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0020

The Rezoning Process

A local government may defer rezoning of land within the urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified:

(1) The plan must contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0022

Restrictions on Housing Tenure

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall either justify such restriction by an analysis of housing need according to tenure or otherwise demonstrate that such restrictions comply with ORS 197.303(1)(a) and 197.307(3).

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0030

New Construction Mix

(1) Jurisdictions other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances. Factors to be considered in justifying an alternate percentage shall include, but need not be limited to:

(a) Metro forecasts of dwelling units by type;

(b) Changes in household structure, size, or composition by age;

(c) Changes in economic factors impacting demand for single family versus multiple family units; and

(d) Changes in price ranges and rent levels relative to income levels.

(2) The considerations listed in section (1) of this rule refer to county-level data within the UGB and data on the specific jurisdiction.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0033

Consideration of Other Housing Types

Each local government shall consider the needs for manufactured housing and government assisted housing within the Portland Metropolitan UGB in arriving at an allocation of housing types.

Stat. Auth.: ORS 183 & 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0035

Minimum Residential Density Allocation for New Construction

The following standards shall apply to those jurisdictions which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing:

(1) The Cities of Cornelius, Durham, Fairview, Happy Valley and Sherwood must provide for an overall density of six or more dwelling units per net buildable acre. These are relatively small cities with some growth potential (i.e. with a regionally coordinated population projection of less than 8,000 persons for the active planning area).

(2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density of eight or more dwelling units per net buildable acre.

(3) Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard must provide for an overall density of ten or more dwelling units per net buildable acre. These are larger urbanized jurisdictions with regionally coordinated population projections of 50,000 or more for their active planning areas, which encompass or are near major employment centers, and which are situated along regional transportation corridors.

(4) Regional housing density and mix standards as stated in OAR 660-007-0030 and sections (1), (2), and (3) of this rule do not apply to small developed cities which had less than 50 acres of buildable land in 1977 as determined by criteria used in Metro's UGB Findings. These cities include King City, Rivergrove, Maywood Park, Johnson City and Wood Village.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

ADMINISTRATIVE RULES

660-007-0037

Alternate Minimum Residential Density Allocation for New Construction

The density standards in OAR 660-007-0035 shall not apply to a jurisdiction which justifies an alternative new construction mix under the provisions of OAR 660-007-0030. The following standards shall apply to these jurisdictions:

(1) The jurisdiction must provide for the average density of detached single family housing to be equal to or greater than the density of detached single family housing provided for in the plan at the time of original LCDC acknowledgment.

(2) The jurisdiction must provide for the average density of multiple family housing to be equal to or greater than the density of multiple family housing provided for in the plan at the time of original LCDC acknowledgment.

(3) A jurisdiction which justifies an alternative new construction mix must also evaluate whether the factors in OAR 660-007-0030 support increases in the density of either detached single family or multiple family housing or both. If the evaluation supports increases in density, then necessary amendments to residential plan and zone designations must be made.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0045

Computation of Buildable Lands

(1) The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

(2) The Buildable Land Inventory (BLI): The mix and density standards of OAR 660-007-0030, 660-007-0035 and 660-007-0037 apply to land in a buildable land inventory required by OAR 660-007-0010, as modified herein. Except as provided below, the buildable land inventory at each jurisdiction's choice shall either be based on land in a residential plan/zone designation within the jurisdiction at the time of periodic review or based on the jurisdiction BLI at the time of acknowledgment as updated. Each jurisdiction must include in its computations all plan and/or zone changes involving residential land which that jurisdiction made since acknowledgment. A jurisdiction need not include plan and/or zone changes made by another jurisdiction before annexation to a city. The adjustment of the BLI at the time of acknowledgment shall:

(a) Include changes in zoning ordinances or zoning designations on residential planned land if allowed densities are changed;

(b) Include changes in planning or zoning designations either to or from residential use. A city shall include changes to annexed or incorporated land if the city changed type or density or the plan/zone designation after annexation or incorporation;

(c) The county and one or more cities affected by annexations or incorporations may consolidate buildable land inventories. A single calculation of mix and density may be prepared. Jurisdictions which consolidate their buildable lands inventories shall conduct their periodic review simultaneously;

(d) A new density standard shall be calculated when annexation, incorporation or consolidation results in mixing two or more density standards (OAR 660-007-0035). The calculation shall be made as follows:

(A)(i) $BLI \text{ Acres} \times 6 \text{ Units/Acre} = \text{Num. of Units}$;

(ii) $BLI \text{ Acres} \times 8 \text{ Units/Acre} = \text{Num. of Units}$;

(iii) $BLI \text{ Acres} \times 10 \text{ Units/Acre} = \text{Num. of Units}$;

(iv) $\text{Total Acres (TA)} - \text{Total Units (TU)}$.

(B) $\text{Total units divided by Total Acres} = \text{New Density Standard}$;

(C) Example:

(i) Cities A and B have 100 acres and a 6-unit-per-acre standard: (100 x 6 = 600 units); City B has 300 acres and a 10-unit-per-acre standard: (300 x 10 = 3000 units); County has 200 acres and an 8-unit-per-acre standard: (200 x 08 = 1600 units); Total acres = 600 — Total Units = 5200.

(ii) 5200 units divided by 600 acres = 8.66 units per acre standard.

(3) Mix and Density Calculation: The housing units allowed by the plan/zone designations at periodic review, except as modified by section (2) of this rule, shall be used to calculate the mix and density. The number of units allowed by the plan/zone designations at the time of development shall be used for developed residential land.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0050

Regional Coordination

(1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

(2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0060

Applicability

(1) The new construction mix and minimum residential density standards of OAR 660-007-0030 through 660-007-0037 shall be applicable at each periodic review. During each periodic review local government shall prepare findings regarding the cumulative effects of all plan and zone changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant to OAR 660-007-0045) shall be a supporting document to the local jurisdiction's periodic review order.

(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

Rule Caption: Amendments to conform agency rules to new laws.

Adm. Order No.: LCDD 2-2012

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Rules Amended: 660-008-0000, 660-008-0005, 660-008-0010, 660-008-0015, 660-008-0020, 660-008-0025, 660-008-0030, 660-008-0035, 660-008-0040

Subject: The adopted rule amendments implement laws enacted by the 2010 and 2011 legislatures. The amendments revise existing rules to conform rule wording to new and revised state laws and to ensure consistency between rules and statute.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-008-0000

Purpose

(1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

(2) OAR chapter 660, division 7, Metropolitan Housing, is intended to complement and be consistent with OAR chapter 660, division 8 and Statewide Planning Goal 10 Housing (OAR 660-015-0000(10)). Should differences in interpretation between division 8 and division 7 arise, the provisions of division 7 shall prevail for cities and counties within the Metro urban growth boundary.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0005

Definitions

For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

(1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses.

ADMINISTRATIVE RULES

Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

(3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and

(c) Consistent with Goal 14 requirements.

(5) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(6) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(7) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0010

Allocation of Buildable Land

The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0015

Clear and Objective Approval Standards Required

(1) Except as provided in section (2) of this rule, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(2) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in section (1) of this rule, a local government may adopt and apply an optional alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of section (1);

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in section (1) of this rule.

(3) Subject to section (1), this rule does not infringe on a local government's prerogative to: (a) Set approval standards under which a particular housing type is permitted outright; (b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0020

Specific Plan Designations Required

(1) Plan designations that allow or require residential uses shall be assigned to all buildable land. Such designations may allow nonresidential uses as well as residential uses. Such designations may be considered to be "residential plan designations" for the purposes of this division. The plan designations assigned to buildable land shall be specific so as to accommodate the varying housing types and densities identified in the local housing needs projection.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 5-1999, f. & cert. ef. 7-2-99; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0025

The Rezoning Process

A local government may defer rezoning of land within an urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified. If such is the case, then:

(1) The plan shall contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective and meet other requirements in OAR 660-008-0015.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0030

Regional Coordination

(1) Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.

(2) The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0035

Substantive Standards for Taking a Goal 2, Part II Exception Pursuant to ORS 197.303(3)

(1) A local government may satisfy the substantive standards for exceptions contained in Goal 2, Part II, upon a demonstration in the local housing needs projection, supported by compelling reasons and facts, that:

(a) The needed housing type is being provided for elsewhere in the region in sufficient numbers to meet regional needs;

(b) Sufficient buildable land has been allocated within the local jurisdiction for other types of housing which can meet the need for shelter at the particular price ranges and rent levels that would have been met by the excluded housing type; and

(c) The decision to substitute other housing types for the excluded needed housing type furthers the policies and objectives of the local comprehensive plan, and has been coordinated with other affected units of government.

ADMINISTRATIVE RULES

(2) The substantive standards listed in section (1) of this rule shall apply to the ORS 197.303(3) exceptions process in lieu of the substantive standards in Goal 2, Part II.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0040

Restrictions on Housing Tenure

Any local government that restricts the construction of either rental or owner occupied housing shall include a determination of housing need according to tenure as part of the local housing needs projection.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

Rule Caption: Amendments to conform agency rules to new laws.

Adm. Order No.: LCDD 3-2012

Filed with Sec. of State: 2-14-2012

Certified to be Effective: 2-14-12

Notice Publication Date: 1-1-2012

Rules Amended: 660-018-0005, 660-018-0010, 660-018-0020, 660-018-0021, 660-018-0022, 660-018-0025, 660-018-0035, 660-018-0040, 660-018-0045, 660-018-0050, 660-018-0055, 660-018-0060, 660-018-0085, 660-018-0150

Rules Repealed: 660-018-0020(T), 660-018-0021(T), 660-018-0022(T), 660-018-0040(T), 660-018-0030, 660-018-0140

Subject: The adopted amendments would modify rules pertaining to notice of changes to acknowledge comprehensive plans and land use regulations and related topics. The amendments, including the repeal of two rules are needed in order to implement new laws (Oregon Laws 2011, chapter 280) regarding changes to comprehensive plans and land use regulations and are needed in order to conform existing rules to these new laws.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-018-0005

Purpose

This division is intended to implement provisions of ORS 197.610 through 197.625. The overall purpose of this division is to carry out the state policies outlined in ORS 197.010.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0010

Definitions and Computation of Time

(1) For the purpose of this division, the definitions in ORS 197.015 apply. In addition, the following definitions apply:

(a) "A change" to an acknowledged comprehensive plan or land use regulation means an amendment to the plan or implementing land use regulations, including an amendment to the plan text or map. This term includes additions and deletions to the acknowledged plan or regulations, the adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation.

(b) "Date of Decision" means the date on which the local government adopts the change.

(c) "Date of Mailing" means the date the documents are postmarked or the date of U.S. Postal Service proof of mailing.

(d) "Decision" means a local government adoption of a change to a comprehensive plan or land use regulation. Except where adoption is required by ORS 197.646 for new statutes or rules, a local government denial of a proposed change shall not be considered a "Decision" for purposes of notices of adoption otherwise required by this division.

(e) "Final Evidentiary Hearing" means the last hearing where all interested persons are allowed to present evidence and rebut testimony on a proposal to adopt a change to a comprehensive plan or land use regulation. A hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body is not a "final evidentiary hearing."

(f) "First Evidentiary Hearing" means the first hearing conducted by the local government where interested persons are allowed to present and rebut evidence and testimony on a proposal to adopt a change to a comprehensive plan or land use regulation. "First evidentiary hearing" does not include a work session or briefing where public testimony is not allowed.

(g) "Map Change" means a change in the designation or boundary of an area as shown on the comprehensive plan map, zoning map or both, including an area added to or removed from a comprehensive plan or zoning map.

(2) Computation of time: for purposes of this division, the time within which a particular act must be done, such as "35 days before," is computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday under ORS 187.010 or 187.020. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 187.010, 187.020, 197.610-197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0020

Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation

(1) Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless circumstances described in OAR 660-018-0022 apply, the local government shall submit the proposed change to the department, including the information described in section (2) of this rule. The local government must submit the proposed change to the director at the department's Salem office at least 35 days before holding the first evidentiary hearing on adoption of the proposed change.

(2) The submittal must include applicable forms provided by the department and all of the following materials:

(a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan, as provided in section (3) of this rule;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the relevant portion of the map that is created or altered, preferably on 8 1/2 by 11 inch paper;

(c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director and members of the public of the effect of the proposed change;

(d) The date set for the first evidentiary hearing;

(e) The notice or a draft of the notice required under ORS 197.763 regarding a quasi-judicial land use hearing, if applicable; and

(f) Any staff report on the proposed change or information that describes when the staff report will be available and how a copy may be obtained.

(3) The proposed text submitted to comply with subsection (2)(a) of this rule must include all of the proposed wording to be added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal or its purpose, by itself, is not sufficient. For map changes, the material submitted to comply with Subsection (2)(b) must include a graphic depiction of the change; a legal description, tax account number, address or similar general description, by itself, is not sufficient. If a goal exception is proposed, the submittal must include the proposed wording of the exception.

(4) If a local government proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal, or a rule implementing the statutes or goals, the local government may adopt such a change without holding a public hearing, notwithstanding contrary provisions of state and local law, provided:

(a) The local government provides notice to the department of the proposed change identifying it as a change described under this section, and includes the materials described in section (2) of this rule, 35 days before the proposed change is adopted by the local government, and

(b) The department confirms in writing prior to the adoption of the change that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

(5) For purposes of computation of time for the 35-day notice under this rule and OAR 660-018-0035(1)(c), the proposed change is considered to have been "submitted" on the day that paper copies of the applicable notice forms and other documents required by section (2) this rule are received or, if mailed, on the date of mailing. The materials must be mailed to or received by the department at its Salem office.

Stat. Auth.: ORS 197.040

ADMINISTRATIVE RULES

Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0021

Joint Submittal of Notices and Changes

(1) Where two or more local governments are required by plan provisions, coordination agreements, statutes or goals to agree on and mutually adopt a change to a comprehensive plan or land use regulation, the local governments shall jointly submit the notice required in OAR 660-018-0020 and, if the change is adopted, the decision and materials required by OAR 660-018-0040. Notice of such proposed changes must be jointly submitted at least 35 days prior to the first evidentiary hearing. For purposes of notice and appeal, the date of the decision is the date of the last local government's adoption of the change.

(2) For purposes of this rule, a change to a comprehensive plan or land use regulation that requires two or more local governments to agree on and mutually adopt the change includes, but is not limited to, the establishment or amendment of an urban growth boundary or urban reserve by a city and county in the manner specified in Goal 14.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0022

Exemptions to Notice Requirements Under OAR 660-018-0020

(1) When a local government determines that no goals, commission rules, or land use statutes apply to a particular proposed change, the notice of a proposed change under OAR 660-018-0020 is not required.

(2) If a local government determines that emergency circumstances beyond the control of the local government require expedited review such that the local government cannot submit the proposed change consistent with the 35-day deadline under OAR 660-018-0020, the local government may submit the proposed change to the department as soon as practicable. The submittal must include a description of the emergency circumstances.

(3) A local government must submit any adopted change to an acknowledged comprehensive plan or land use regulation to the department within 20 days after the decision to adopt the change, as required by OAR 660-018-0040, regardless of the reason for not submitting the proposed change in advance, as provided in ORS 197.615(1) and (2).

(4) Notwithstanding the requirements of ORS 197.830(2) to have appeared before the local government in the proceedings concerning the proposal, if a local government does not provide any notice described in OAR 660-018-0020, regardless of the reason for not providing the notice, the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845, except as provided in ORS 197.620(3).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610(2)
Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0025

Requests for Department Notice of Proposed Changes

(1) Within 15 days of receipt of a notice of a proposed change to an acknowledged comprehensive plan or a land use regulation described under OAR 660-018-0020, the department shall provide notice of the proposed change to persons that have requested notice of such changes. The notice shall be provided using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method.

(2) The department shall notify persons that are generally interested in proposed changes to acknowledged comprehensive plans by posting notices received under OAR 660-018-0020 on a weekly basis on the department website using the Internet or a similar electronic method.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0035

Department Participation

(1) When the department determines that a proposed change to an acknowledged comprehensive plan or a land use regulation may not be in compliance with land use statutes or the statewide land use planning goals, including administrative rules implementing either the statutes or the goals,

the department shall notify the local government of the concerns at least 15 days before the final evidentiary hearing, unless:

(a) The local government holds only one hearing on the proposal, in which case the notification must occur prior to the close of the hearing;

(b) The proposed change has been modified to the extent that resubmission is required under OAR 660-018-0045; or

(c) The local government did not submit the proposed change within 35 days in advance of the final hearing in accordance with OAR 660-018-0020(1), regardless of the circumstances that resulted in that delay.

(2) Notwithstanding section (1) of this rule, the department may provide advisory recommendations to the local government concerning a proposed change to the acknowledged comprehensive plan or land use regulation at any time prior to the adoption of the change.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0040

Submittal of Adopted Change

(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation it shall submit the decision to the department, with the appropriate notice forms provided by the department, within 20 days.

(2) For purposes of the 20-day requirement under section (1) of this rule, the proposed change is considered submitted to the department:

(a) On the day the applicable notice forms and other required documents are received by the department in its Salem office, if hand-delivered, or

(b) On the date of mailing if the local government mails the forms and documents.

(3) The submission to the department must include all of the following materials:

(a) A copy of final decision;

(b) The findings and the text of the change to the comprehensive plan or land use regulation;

(c) If a comprehensive plan map or zoning map is created or altered by the proposed change:

(A) A map showing the area changed and applicable designations, preferably on 8 1/2 by 11 inch paper; and

(B) Electronic files containing geospatial data showing the area changed, as specified in section (5) of this rule, if applicable.

(d) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under OAR 660-018-0020 and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and

(e) A statement by the individual transmitting the decision identifying the date of the decision and the date the submission was mailed to the department.

(4) Where amendments or new land use regulations, including supplementary materials, exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be included with the submittal to the director.

(5) For local governments that produce geospatial data describing an urban growth boundary (UGB) or urban or rural reserve that is created or altered as part of an adopted change to a comprehensive plan or land use regulation, the submission must include electronic geospatial data depicting the boundary change. Local governments that create or alter other zoning or comprehensive plan maps as geospatial data are encouraged but not required to share this data with the department. Geospatial data submitted to the department must comply with the following standards endorsed by the Oregon Geographic Information Council:

(a) Be in an electronic format compatible with the State's Geographic Information System software standard described in OAR 125-600-7550; and

(b) Be accompanied by metadata that meets at least the minimum requirements of the federal Content Standard for Digital Geospatial Metadata.

(6) Local government must notify the department of withdrawals or denials of proposals previously sent to the department under requirements of OAR 660-018-0020.

(7) If a local government did not submit a notice of a proposed change to a comprehensive plan or land use regulation to the department as required by OAR 660-018-0020, the transmittal must clearly indicate which provisions of OAR 660-018-022 are applicable.

ADMINISTRATIVE RULES

NOTE: ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the director even if they were not required to be submitted for review prior to adoption.

(8) ORS 197.620 provides that a local government may cure the untimely submission of materials by either postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or by holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. The local government shall provide notice of such postponement or record extension to the department.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0045

Alterations to a Proposed Change

(1) If, after initially submitting the notice and accompanying materials under OAR 660-018-0020, a proposed change to an acknowledged comprehensive plan or land use regulation is altered to such an extent that the materials submitted no longer reasonably describe the proposed change, the local government must, at least 10 days before the final evidentiary hearing on the proposal:

(a) Notify the department of the alterations to the proposed change, and

(b) Provide a summary of the alterations along with any alterations to the proposed text or map and other materials described in OAR 660-018-0020.

(2) When the department receives a notification of alteration of a proposal as described in section (1) of this rule, the department shall issue a new notice to persons that have requested notice in the manner described OAR 660-018-0025.

(3) Circumstances requiring resubmission of a proposed change to a comprehensive plan or land use regulation under this rule may include, but are not limited to:

(a) Alteration of the proposed principal uses that would be allowed under the proposed change to the comprehensive plan or land use regulations;

(b) A significant change in the location at which the principal uses would be allowed, limited or prohibited; or

(c) A significant change in the conditions or restrictions that would be applied to a proposed use.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0050

Notice to Other Parties of Adopted Changes

(1) Notice of an adopted change to a comprehensive plan or land use regulation to persons other than the department is governed by ORS 197.615(4) and (5), which require that on the same day the local government submits the decision to the director the local government shall mail or otherwise deliver notice of the decision to persons that:

(a) Participated in the local government proceedings that led to the decision to adopt the change to the acknowledged comprehensive plan or the land use regulation; and

(b) Requested in writing that the local government provide them with notice of the change to the acknowledged comprehensive plan or the land use regulation.

(2) The notice to persons who participated and requested notice as required by section (1) of this rule must:

(a) Clearly describe the decision;

(b) State the date of the decision;

(c) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;

(d) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(e) List the locations and times at which the public may review the decision and findings; and

(f) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.615(2)

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0055

Notice by the Department of Local Adoption

(1) Within five working days of the receipt of a local government notice of adoption of a change to a comprehensive plan or a land use regulation described under OAR 660-018-0040, the department shall provide notice of the decision and an explanation of the requirements for appealing the land use decision under ORS 197.830 to 197.845, to persons that have requested notice from the director of such adopted changes. The notice shall be provided using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method.

(2) The department shall notify persons that are generally interested in changes to acknowledged comprehensive plans by posting notices received under OAR 660-018-0040 periodically on the department website using the Internet or a similar electronic method.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0060

Who May Appeal

Eligibility to appeal a local government decision to adopt a change to a comprehensive plan or land use regulation is governed by ORS 197.620, 197.830, and Oregon Laws 2011, chapter 280, section 6.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610-197.845; OL 2011, Ch 280, § 6

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0085

Acknowledgement of a Change to a Plan or Land Use Regulation

(1) Pursuant to ORS 197.625, an adopted change to a comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615, the applicable requirements of this division, and either:

(a) The 21-day appeal period set out in ORS 197.830(9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) Pursuant to ORS 197.625(3), prior to acknowledgment of an adopted change to an acknowledged comprehensive plan or a land use regulation as provided in section (1) of this rule, the adopted change is effective at the time specified by local government charter or ordinance.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0150

Time Limits Regarding Certified Industrial Sites

(1) Upon application for a change to a comprehensive plan or land use regulation necessary to expedite and facilitate industrial or traded sector development on any of the certified industrial sites identified and prioritized under Oregon Laws 2003, chapter 800, section 12, a local government shall take action approving, approving with modifications, or denying the application no later than 180 days after the date the application is deemed complete by the local government.

(2) For purposes of this rule, "certified industrial sites" are those sites so designated by the Economic Revitalization Team Regulatory Efficiency Group established by Oregon Laws 2003, chapter 800, section 2 in accordance with the requirements of Oregon Laws 2003, chapter 800, section 12.

(3) Persons, including the director, who participated in the local government proceedings leading to the adoption of a change to a comprehensive plan or land use regulation described in section (1) of this rule may appeal the decision by the local government in accordance with requirements and time limits specified in ORS 197.610 through 197.625, except as provided in section (4) of this rule.

(4) For a decision to expand an urban growth boundary or designate an urban reserve necessary to expedite and facilitate industrial or traded sector development on any of the certified industrial sites identified and prioritized under Oregon Laws 2003, chapter 800, section 12, and provided the decision is subject to ORS 197.626, the commission shall review the

ADMINISTRATIVE RULES

action following the timelines and procedures specified in OAR 660-025-040, 660-025-140 through 660-025-160, and 660-025-175.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610-197.625; OL 2003, Ch 800, § 17(2)

Hist.: LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

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Rule Caption: Amendments to existing rules implementing new laws regarding periodic review.

Adm. Order No.: LCDD 4-2012

Filed with Sec. of State: 2-14-2012

Certified to be Effective: 2-14-12

Notice Publication Date: 1-1-2012

Rules Amended: 660-025-0010, 660-025-0020, 660-025-0030, 660-025-0035, 660-025-0040, 660-025-0050, 660-025-0060, 660-025-0070, 660-025-0080, 660-025-0085, 660-025-0090, 660-025-0100, 660-025-0110, 660-025-0130, 660-025-0140, 660-025-0150, 660-025-0160, 660-025-0170, 660-025-0175, 660-025-0180, 660-025-0210, 660-025-0220, 660-025-0230, 660-025-0250

Subject: The adopted amendments modifies rules pertaining to periodic review and related topics. The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding periodic review and are needed in order to conform existing rules to these new laws.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-025-0010

Purpose

The purpose of this division is to carry out the state policy outlined in ORS 197.010 and 197.628. This division is intended to implement provisions of ORS 197.626 through 197.651. The purpose for periodic review is to ensure that comprehensive plans and land use regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, the commission's rules and applicable land use statutes. Periodic review also is intended to ensure that local government plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services, and urbanization, and that local plans are coordinated as described in ORS 197.015(5). Periodic Review is a cooperative planning process that includes the state and its agencies, local governments, and other interested persons.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.010, 197.626 - 197.651

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0020

Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 197.303, and 197.747 shall apply unless the context requires otherwise. In addition, the following definitions apply:

(1) "Economic Revitalization Team" means the team established under ORS 284.555.

(2) "Filed" or "Submitted" means that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon, office.

(3) "Final Decision" means the completion by the local government of a work task on an approved work program, including the adoption of supporting findings and any amendments to the comprehensive plan or land use regulations. A decision is final when the local government's decision is transmitted to the department for review.

(4) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 USC § 5303(c).

(5) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program, or completed work task.

(6) "Participated at the local level" means to have provided substantive comment, evidence, documents, correspondence, or testimony to the local government during the local proceedings regarding a decision on an evaluation, work program or work task.

(7) "Work Program" means a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to ensure the plan and regulations achieve the statewide planning goals. A

work program must indicate the date that each work task must be submitted to the department for review.

(8) "Work Task" or "task" means an activity that is included on an approved work program and that generally results in an adopted amendment to a comprehensive plan or land use regulation.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.015 & 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0030

Periodic Review Schedule

(1) The commission must approve, and update as necessary, a schedule for periodic review. The schedule must include the date when the department, pursuant to ORS 197.629, must send a local government a letter requesting the local government to commence the periodic review process.

(2) The schedule developed by the commission must reflect the following:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review.

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(c) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(d) Notwithstanding subsection (c) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(3) The commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(4) The director must maintain and implement the schedule. Copies of the schedule must be provided upon request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0035

Initiating Periodic Review Outside the Schedule

(1) A local government may request, and the commission may approve, initiation of periodic review not otherwise provided for in the schedule established under OAR 660-025-0030. The request must be submitted to the commission along with justification for the requested action. The justification must include a statement of local circumstances that warrant periodic review and identification of the statewide planning goals to be addressed.

(2) In consideration of the request filed pursuant to section (1), the commission must consider the needs of the jurisdiction to address the issue(s) identified in the request for periodic review, the interrelationships of the statewide planning goals to be addressed in the periodic review project, and other factors the commission finds relevant. If the commission approves the request, the provisions of this division apply, except as provided in section (3) of this rule.

(3) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review. In order for a voluntary comprehensive plan review to be initiated by the commission, the city must request initiation of such a modified periodic review. The provisions of this division apply except as follows:

ADMINISTRATIVE RULES

(a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the periodic review under this section will not replace or delay the next scheduled periodic review;

(b) If the city misses a deadline related to an evaluation, work program or work task, including any extension, the commission must terminate the evaluation, work program, or work task or impose sanctions pursuant to OAR 660-025-0170(3).

(4) If the commission pays the costs of a local government that is not subject to OAR 660-025-0030 to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation Commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

(5) As used in section (4) of this rule, "the costs of a local government" means: normal and customary expenses for supplies, personnel and services directly related to preparing a work program, and completing studies and inventories, drafting of ordinances, preparing and sending notices of hearings and meetings, conducting meetings and workshops, and conducting hearings on possible adoption of amendments to plans or codes, to complete a work task.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0040

Exclusive Jurisdiction of LCDC

(1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction for review of completed periodic review work tasks for compliance with the statewide planning goals and applicable statutes and administrative rules, as provided in ORS 197.633(3). The director also has authority to review the periodic review evaluation, work program and completed work tasks, as provided in ORS 197.633 and 197.644.

(2) Pursuant to ORS 197.626, the commission has exclusive jurisdiction for review of the following final decisions for compliance with the statewide planning goals:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, including an amendment of the boundary of a rural reserve.

(3) A final order of the commission pursuant to sections (1) or (2) of this rule may be subject to judicial review in the manner provided in applicable provisions of ORS 197.650 and 197.651.

(4) The director may transfer one or more matters arising from review of a work task, urban growth boundary amendment or designation or amendment of an urban reserve area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0050

Commencing Periodic Review

(1) The department must commence the periodic review process by sending a letter to the local government pursuant to OAR 660-025-0030 or 660-025-0035. The department may provide advance notice to a local government of the upcoming review and must encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter must include the following information:

(a) A description of the requirements for citizen involvement, evaluation of the plan and preparation of a work program;

(b) The date the local government must submit the evaluation and work program or evaluation and decision that no work program is required;

(c) Applicable evaluation forms; and

(d) Other information the department considers relevant.

(3) The director must provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0060

Periodic Review Assistance Team(s)

(1) The director may create one or more Periodic Review Assistance Team(s) to coordinate state, regional or local public agency comment, assistance, and information into the evaluation and work program development process. The director must seek input from agencies, regional governments and local governments on the membership of Periodic Review Assistance Team(s).

(2) Members of the Periodic Review Assistance Team will provide, as appropriate:

(a) Information relevant to the periodic review process;

(b) New and updated information;

(c) Technical and professional land use planning assistance; or

(d) Coordinated evaluation and comment from state agencies.

(3) Membership. The Periodic Review Assistance Team may include representatives of state agencies with programs affecting land use described in ORS 197.180, and representatives of regional or local governments who may have an interest in the review.

(4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide information and advice to a local government in periodic review.

(5) Authority. The Periodic Review Assistance Team shall be an advisory body. The team may make recommendations concerning an evaluation, a work program or work task undertaken pursuant to an approved work program. The team may also make recommendations to cities, counties, state agencies and the commission regarding any other issues related to periodic review.

(6) In addition to the Periodic Review Assistance Team(s), the department may utilize the Economic Revitalization Team or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(7) The commission must consider the recommendations, if any, of the Periodic Review Assistance Team(s).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0070

Need for Periodic Review

(1) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations when periodic review is required under OAR 660-025-0030:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

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(b) Decisions based on acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The local government, commission or department determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization.

(2) When a local government requests initiation of periodic review under OAR 660-025-0035, the need for periodic review may be based on factors not contained in section (1) of this rule and the scope of such a periodic review may be more limited than would be the case for scheduled periodic review under section (1) of this rule.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0080

Notice and Citizen Involvement

(1) The local government must use its acknowledged citizen involvement program, or amend the program if necessary consistent with section (2) of this rule, to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government must publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review. The local government must also provide written notice of the initiation of the local periodic review to persons who request, in writing, such notice.

(2) Each local government must review its citizen involvement program at the beginning of its periodic review and, if necessary, amend the program to ensure it will provide adequate opportunities for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities must, at a minimum, include:

(a) Interested persons must have the opportunity to review materials in advance and to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to propose periodic review work tasks prior to or at one or more hearings. The local government must provide a response to comments at or following the hearing on the evaluation.

(b) Interested persons must have the opportunity to review materials in advance and to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on a periodic review work task. The local government must respond to comments at or following the hearing on a work task.

(3) A local government proposing to change an acknowledged comprehensive plan or a land use regulation under a work task must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing, as provided in ORS 197.610 and OAR 660-018-0020.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0085

Commission Hearings Notice and Procedures

(1) Hearings before the commission on a referral of a local government submittal of a work program or hearings on referral or appeal of a work task must be noticed and conducted in accordance with this rule.

(2) The commission shall take final action on an appeal or referral of a completed work task within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

(a) At the request of a local government and a person who files a valid objection or appeals the director's decision, the department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the commission shall delay its hearing until the mediation process is concluded or the director, after consultation with the mediator,

determines that mediation is of no further use in resolution of the work program or work task disagreements;

(b) If the appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit the commission is not required to take final action within that time limit; or

(c) If the parties to the appeal and the commission agree to an extension, the hearing may be continued for a period not to exceed an additional 90 days.

(3) The director must provide written notice of the hearing to the local government, the appellant, objectors, and individuals requesting notice in writing. The notice must contain the date and location of the hearing.

(4) The director may prepare a written report to the commission on an appeal or referral. If a report is prepared, the director must mail a copy to the local government, objectors, the appellant, and individuals requesting the report in writing.

(5) Commission hearings will be conducted using the following procedures:

(a) The chair will open the hearing and explain the proceedings;

(b) The director or designee will present an oral report regarding the nature of the matter before the commission, an explanation of the director's decision, if any, and other information to assist the commission in reaching a decision. If another state agency participated in the periodic review under ORS 197.637 or 197.638, the agency may participate in the director's oral report.

(c) Participation in the hearing is limited to:

(A) The local government or governments whose decision is under review;

(B) Persons who filed a valid objection to the local decision in the case of commission hearing on a referral;

(C) Persons who filed a valid appeal of the director's decision in the case of a commission hearing on an appeal; and

(D) Other affected local governments.

(d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.

(e) Persons or their authorized representative may present oral argument.

(f) The local government that submitted the task may provide general information from the record on the task submittal and address those issues raised in the department review, objections, or the appeal. A person who submitted objections or an appeal may address only those issues raised in the objections or the appeal submitted by that person. Other affected local governments may address only those issues raised in objections or an appeal.

(g) As provided in ORS 197.633(3), the commission will confine its review of evidence to the local record.

(h) The director or commission may take official notice of law defined as:

(A) The decisional, constitutional and public statutory law of Oregon, the United States and any state, territory or other jurisdiction of the United States.

(B) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, and any other state, territory or other jurisdiction of the United States.

(C) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States or any state, territory or possession of the United States.

(D) Rules of court of any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(E) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(F) An ordinance, comprehensive plan or enactment of any local government in this state, or a right derived therefrom.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0090

Evaluation, Work Program or Decision that No Work Is Necessary

(1) The local government must conduct an evaluation of its plan and land use regulations based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The local evaluation process must comply with the following requirements:

ADMINISTRATIVE RULES

(a) The local government must follow its citizen involvement program and the requirements of OAR 660-025-0080 for conducting the evaluation and determining the scope of a work program.

(b) The local government must provide opportunities for participation by the department and Periodic Review Assistance Team. The local government must consider issues related to coordination between local government comprehensive plan provisions and certified state agency coordination programs that are raised by the affected agency or Periodic Review Assistance Team.

(c) The local government may provide opportunities for participation by the Economic Revitalization Team.

(d) At least 21 days before submitting the evaluation and work program, or decision that no work program is required, the local government must provide copies of the evaluation to members of the Periodic Review Assistance Team, if formed, and others who have, in writing, requested copies.

(e) After review of comments from interested persons, the local government must adopt an evaluation and work program or decision that no work program is required.

(2) The local government must submit the evaluation and work program, or decision that no work program is required, to the department according to the following requirements:

(a) The evaluation must include completed evaluation forms that are appropriate to the jurisdiction as determined by the director. Evaluation forms will be based on the jurisdiction's size, growth rate, geographic location, and other factors that relate to the planning situation at the time of periodic review. Issues related to coordination between local government comprehensive plan provisions and certified agency coordination programs may be included in evaluation forms.

(b) The local government must also submit to the department a list of persons who requested notice of the evaluation and work program or decision that no work program is required.

(c) The evaluation and work program, or decision that no work program is necessary, must be submitted within six months of the date the department sent the letter initiating the periodic review process, including any extension granted under section (3) of this rule.

(3) A local government may request an extension of time for submitting its evaluation and work program, or decision that no work program is required. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than 90 days.

(4) A decision by the director to deny a request for an extension may be appealed to the commission according to the procedures in OAR 660-025-0110(5), or the director may refer a request for extension under section (3) of this rule to the commission pursuant to OAR 660-025-0085.

(5) If a local government fails to submit its evaluation and work program, or decision that no work program is necessary, by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission according to OAR 660-025-0170(3).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0100

Notice and Filing of Objections (Work Program Phase)

(1) After the local government approves the evaluation and work program, or the evaluation and decision that no work program is necessary, the local government must notify the department and persons who participated at the local level orally or in writing during the local process. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's evaluation and work program or the evaluation and decision that no work program is necessary, and how a person may obtain a copy of the decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the evaluation, work program or decision that no work program is necessary; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated at the local level orally or in writing during the local process leading to the evaluation and work program or decision that no work program is necessary may object to the local government's decision. To be valid, an objection must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the evaluation, work program or decision that no work program is necessary;

(c) Suggest a specific work task that would resolve the deficiency;

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet all the requirements of section (2) of this rule will not be considered by the director or commission.

(4) If the department does not receive any valid objections within the 21-day objection period, the director may approve the evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the department must make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If the department receives one or more valid objections, the department must issue a report that addresses the issues raised in valid objections. The report must identify specific work tasks to resolve valid objections or department concerns. A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0110

Director and Commission Action (Work Program Phase)

(1) In response to an evaluation and work program submitted to the department pursuant to OAR 660-025-0100, the director may:

(a) Issue an order approving the evaluation and work program or determination that no work program is necessary; or

(b) Issue an order rejecting the evaluation and work program or determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal.

(2) The director may postpone action, pursuant to section (1) of this rule to allow the department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or determination that no work program is necessary.

(3) The director must provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The director's decision to approve an evaluation and work program or determination that no work program is necessary is final and may not be appealed.

(5) The director's decision to deny an evaluation and work program or determination that no work program is necessary may be appealed to the commission by the local government, or a person who filed an objection, or other person who participated orally or in writing at the local level.

(a) Appeal of the director's decision must be filed with the department within 21 days of the date notice of the director's action was mailed;

(b) A person appealing the director's decision must show that the person participated in the local government decision. The person appealing the director's decision must show a deficiency in the director's decision to deny the evaluation, work program or decision that no work program is necessary. The person appealing the director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(6) If no such appeal is filed, the director's decision shall be final.

(7) In response to an appeal, the director may prepare and submit a report to the commission. The provisions in OAR 660-025-0160(4) and (5) apply.

(8) The commission shall hear referrals and appeals of evaluations and work programs according to the procedures in OAR 660-025-0085.

(9) Following its hearing, the commission must issue an order that either:

(a) Establishes a work program; or

(b) Determines that no work program is necessary.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

ADMINISTRATIVE RULES

660-025-0130

Submission of Completed Work Task

(1) A local government must submit completed work tasks as provided in the approved work program to the department along with the notice required in OAR 660-025-0140 and any form required by the department. A local government must submit to the department a list of persons who participated orally or in writing in the local proceedings leading to the adoption of the work task or who requested notice of the local government's final decision on a work task.

(2) After receipt of a work task, the department must determine whether the submittal is complete.

(3) To be complete, a submittal must be a final decision containing all required elements identified for that task in the work program. The department may accept a portion of a task or subtask as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government. Task submittals are subject to the following requirements:

(a) If the local record does not exceed 2,000 pages, a submittal must include the entire local record, including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;

(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a detailed index listing all items in the local record and indicating whether or not the item is included in the submittal. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;

(c) A task submittal of over 500 pages must include an index of all submitted materials.

(4) A submittal includes only the materials provided to the department pursuant to section (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the local government may:

(a) Provide written correspondence that is not part of the local record which identifies material in the record relevant to filed objections. The correspondence may not include or refer to materials not in the record submitted or listed pursuant to section (3) of this rule. The local government must provide the correspondence to each objector at the same time it is sent to the department.

(b) Submit materials in the record that were not part of the submittal under section (3) if the materials are relevant to one or more filed objections. The local government may not include or refer to materials not in the local record. The local government must provide the materials to each objector at the same time it is sent to the department.

(5) If the department determines that a submittal is incomplete, it must notify the local government. If the department determines that the submittal should be reviewed despite missing information, the department may commence a formal review of the submittal. Missing material may be identified as a deficiency in the review process and be a basis to require further work by the local government.

(6) A local government may request an extension of time for submitting a work task. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than one year.

(7) If a local government fails to submit a complete work task by the deadline set by the director, or the commission, including any extension, the director must schedule a hearing before the commission. The hearing must be conducted according to the procedures in OAR 660-025-0170(3).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0140

Notice and Filing of Objections (Work Task Phase)

(1) After the local government makes a final decision on a work task, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the work task; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government mailed the notice;

(b) Clearly identify an alleged deficiency in the work task sufficient to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;

(c) Suggest specific revisions that would resolve the objection; and

(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.

(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.

(4) If no valid objections are received within the 21-day objection period, the director may approve the work task. Regardless of whether valid objections are received, the director may make a determination of whether the work task final decision complies with the statewide planning goals and applicable statutes and administrative rules.

(5) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal, applicable statute or administrative rule related to a previous work task, the director or commission shall not approve the submittal until all conflicts and compliance issues are resolved. In such case, the director or commission may enter an order deferring acknowledgment of all, or part, of the work task until completion of additional tasks.

(6) If valid objections are received or the department conducts its own review, the department must issue a report. The report shall address the issues raised in valid objections. The report shall identify specific work tasks to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the statewide planning goals, or applicable statutes or administrative rules.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0150

Director Action and Appeal of Director Action (Work Task Phase)

(1) In response to a completed work task submitted to the department for review in accordance with OAR 660-025-0140, the director may:

(a) Issue an order approving the completed work task;

(b) Issue an order remanding the work task to the local government including a date for resubmittal;

(c) Refer the work task to the commission for review and action; or

(d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

(2) The director must send the order to the local government, persons who filed objections and persons who, in writing, requested a copy of the action.

(3) The director shall take action on, and the order or referral must be sent, not later than 120 days of the date the department received the task submittal from the local government, unless the local government waives the 120-day deadline or the commission grants the director an extension. The local government may withdraw the submittal, in which case the 120-day deadline does not apply, provided the withdrawal will not result in the local government passing the deadline for work task submittal in the work program and any extension allowed in OAR 660-025-0130(6).

(4) If the director does not issue an order or refer the work task within the time limits set by section (3) of this rule, and the department did not receive any valid objections to the work task, the work task shall be deemed approved. In such cases, the department will provide a letter to the local government certifying that the work task is approved.

(5) If the department received one or more valid objections to the work task, the director must either issue an order or refer the work task to the commission for review.

(6) Appeals of a director's decision are subject to the following requirements:

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(a) A director's decision approving or partially approving a work task may be appealed to the commission only by a person who filed a valid objection.

(b) A director's decision remanding or partially remanding a work task may be appealed to the commission only by the local government, a person who filed a valid objection, or by another person who participated orally or in writing in the local proceedings leading to adoption of the local decision under review.

(c) Appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was mailed;

(d) A person, other than the local government that submitted the work task and an affected local government, appealing the director's decision must:

(A) Show that the person participated in the local proceedings leading to adoption of the work task orally or in writing;

(B) Clearly identify a deficiency in the work task sufficiently to identify the relevant section of the submitted task and the statute, goal, or administrative rule the local government is alleged to have violated; and

(C) Suggest a specific modification to the work task necessary to resolve the alleged deficiency.

(7) If no appeal to the commission is filed within the time provided by section (6) of this rule, the director's order is deemed affirmed by the commission. If the order approved a work task, the work task is deemed acknowledged.

(8) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal, applicable statute or administrative rule related to a previous work task, the director or commission shall not approve the submittal until all conflicts and compliance issues are resolved. In such case, the director or commission may enter an order deferring acknowledgment of all, or part, of the subsequent work task until completion of additional tasks.

(9) The director's standard of review is the same as the standard that governs the commission expressed in OAR 660-025-0160(2).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0160

Commission Review of Referrals and Appeals (Work Task Phase)

(1) The commission shall hear appeals and referrals of work tasks according to the applicable procedures in OAR 660-025-0085 and 660-025-0150.

(2) The commission's standard of review, as provided in ORS 197.633(3), is:

(a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829 or to Metro's interpretation of its regional framework plan or functional plans. For purposes of this subsection, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

(3) In response to a referral or appeal, the director may prepare and submit a report to the commission.

(4) The department must mail a copy of the report to the local government, all persons who submitted objections, and other persons who appealed the director's decision. The department must mail the report at least 21 days before the commission meeting to consider the referral or appeal.

(5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director's report within 10 days of the date the report is mailed. Objectors may refer to or append to their exceptions any document from the local record, whether or not the local government submitted it to the department under OAR 660-025-0130. The director may issue a response to exceptions and may make revisions to the director's report in response to exceptions. The department may provide the commission a response or revised report at or prior to its hearing on the referral or appeal.

A revised director's report does not require mailing 21 days prior to the commission hearing.

(6) The commission shall hear appeals based on the local record. The written record shall consist of the submittal, timely objections, the director's report, timely exceptions to the director's report including materials described in section (5) of this rule, the director's response to exceptions and revised report if any, and the appeal if one was filed.

(7) Following its hearing, the commission must issue an order that does one or more of the following:

(a) Approves the work task or a portion of the task;

(b) Remands the work task or a portion of the task to the local government, including a date for resubmittal;

(c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task by the specified deadline requiring the director to initiate a hearing before the commission according to the procedures in OAR 660-025-0170(3);

(d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or

(e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

(8) If the commission approves the work task or portion of a work task under subsection (7)(a) of this rule and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the work task or portion of a work task shall be deemed acknowledged. If the commission decision on a work task is under subsection (7)(b) through (e) of this rule and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the decision is final.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0170

Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

(1) The commission may direct, or, upon request of the local government, the director may authorize, a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review requires an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, economic development, transportation, public facilities and services, or urbanization were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) Failure to complete a modified work task shall constitute failure to complete a work task by the specified deadline, requiring the director to initiate a hearing before the commission according to the procedures in section (3).

(3) If a local government fails to submit its evaluation and work program, a decision that no work program is necessary, or a work task by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission. The notice must state the date and location at which the commission will conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and as follows:

(a) The director shall notify the local government in writing that its submittal is past due and that the commission will conduct a hearing and consider imposing sanctions against the local government as required by ORS 197.636(2);

(b) The director and the local government may prepare written statements to the commission addressing the circumstances causing the local government to miss the deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The written statements must be filed in a manner and according to a schedule established by the director;

(c) The commission shall issue an order imposing one or more of the sanctions listed in ORS 197.636(2) until the local government submits its

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evaluation and work program or its decision that no work program is required, or its work task required under OAR 660-025-0130, as follows:

(A) Require the local government to apply those portions of the goals and rules to land use decisions as specified in an order issued by the commission,

(B) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task,

(C) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4),

(D) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0175

Review of UGB Amendments and Urban Reserve Area Designations

(1) A local government must submit the following land use decisions to the department for review for compliance with the applicable statewide planning goals, statutes and rules in the manner provided for review of a work task under ORS 197.633:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, including an amendment of the boundary of a rural reserve.

(2) The standards and procedures in this rule govern the local government process and submittal, and department and commission review.

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgment plan amendments in ORS 197.610 and OAR 660-018-0020.

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

(5) Department and commission review and decision on the submittal from the local government must follow the procedures and requirements for review and decision of a work task submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, 197.626 - 197.646

Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0180

Stay Provisions

(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is required to submit a final decision to the department under OAR 660-025-0175(1), interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.

(2) The director may grant a temporary stay of a final decision on a local government decision described in section (1) of this rule. A temporary stay must meet applicable stay requirements of the Administrative Procedures Act. A temporary stay issued by the director shall only be effective until the commission has acted on a stay request pursuant to section (1) of this rule.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0210

Updated Planning Documents

(1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS 197.010 and 197.633, each local government must file a complete and accurate copy of its comprehensive plan and land use regulations bearing the date of adoption (including plan and zone maps bearing the date of adoption) with the department following completion of periodic review. These materials may be either a new printing or an up-to-date compilation of the required materials, and must include data described in OAR 660-018-0040(4), if applicable.

(2) Local governments that create or alter zoning or comprehensive plan maps as geospatial data are encouraged but not required to share this data with the department, except for geospatial data describing an urban growth boundary or urban or rural reserve that is created or altered under a completed work task, in which case the submission must include electronic geospatial data depicting the boundary change. Geospatial data submitted to the department must comply with the following standards endorsed by the Oregon Geographic Information Council:

(a) The data must be in an electronic format compatible with the State's Geographic Information System software standard described in OAR 125-600-7550; and

(b) The data must be accompanied by metadata that meets at least the minimum requirements of the federal Content Standard for Digital Geospatial Metadata.

(3) Materials described in sections (1) and (2) of this rule must be submitted to the department within six months of completion of the last work task.

(4) The updated plan must be accompanied by a statement signed by a city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect the changes made as part of periodic review.

(5) Jurisdictions that do not file an updated plan on time shall not be eligible for periodic review grants from the department until such time as the required materials are provided to the department.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.190, 197.270 & 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0220

Computation of Time

(1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless otherwise provided by rule, the time to complete required tasks, notices, objections, and appeals shall be computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday under ORS 187.010 or 187.020. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday. When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or legal holidays shall not be counted.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 174.120, 187.010, 187.020, 197.628 - 197.650

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0230

Applicability

(1) Except as otherwise required by law, amendments to this division apply as follows:

(a) Local governments in periodic review that have not submitted an evaluation and work program, or decision that no work program is required, must apply the amendments to the evaluation and work program or decision that no work program is required;

(b) Local governments in periodic review must apply amendments to work tasks not completed or submitted to the department on the effective date of the amendments;

(c) The commission may modify approved work programs to carry out the priorities and standards reflected in amendments;

(d) The procedures and standards in amendments for department and commission review and action on periodic review submittals, requests for extensions, and late submittals apply to all such submittals and requests filed with the department after the effective date of the amendments, as well

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as any such submittals and requests awaiting initial department action on the effective date of the amendments.

Stat. Auth.: ORS 197.040-197.245
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0250

Transfer of Matters to the Land Use Board of Appeals

(1) The director may elect to transfer a matter to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A), including but not limited to an appeal of the director's decision pursuant to OAR 660-025-0150(6).

(2) The director may transfer matters to the board when:

(a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or

(b)(A) The matter concerns a provision of law not directly related to compliance with a statewide planning goal;

(B) The matter is an appeal of the director's decision and concerns a clearly identified provision of the work task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and

(C) The matter is sufficiently well-defined such that it can be separated from other issues in the work task that are not transferred to the board.

(3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, any objectors, and the board. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.

(4) The director's decision under this rule is final and may not be appealed.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.825
Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

Rule Caption: Amendments to conform agency rules to new laws.
Adm. Order No.: LCDD 5-2012

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Certified to be Effective: 2-14-12

Notice Publication Date: 1-1-2012

Rules Amended: 660-027-0070

Subject: The adopted rule amendments implement laws enacted by the 2010 and 2011 legislatures. The amendments revise existing rules to conform rule wording to new and revised state laws and to ensure consistency between rules and statutes.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-027-0070

Planning of Urban and Rural Reserves

(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

(d) Other uses and land divisions that a county could have allowed under ORS 215.130(5)–(11) or as an outright permitted use or as a conditional use under 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves;

(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses allowed on the land under the exception provided:

(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws; and

(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system.

(6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).

(7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take an exception to a statewide land use planning goal in order to allow the establishment of a transportation facility in an area designated as urban reserve.

(8) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

(9) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050.

Stat. Auth.: ORS 195.141 & 197.040
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2010, f. 4-29-10, cert. ef. 4-30-10; LCDD 10-2010, f. & cert. ef. 10-20-10; LCDD 5-2012, f. & cert. ef. 2-14-12

Rule Caption: Amendments to conform agency rules to new laws.

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Notice Publication Date: 1-1-2012

Rules Amended: 660-028-0010, 660-028-0020, 660-028-0030

Subject: The adopted rule amendments implement laws enacted by the 2010 and 2011 legislatures. The amendments revise existing rules to conform rule wording to new and revised state laws and to ensure rule consistency between rules and statutes.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-028-0010

Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) "Conservation easement" has the meaning provided in ORS 271.715.

(2) "Local Government" means a city, county, metropolitan service district or state agency as defined in ORS 171.133.

(3) "Receiving area" means a designated area of land to which a holder of development rights generated from a sending area may transfer the

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development rights, and in which additional residential or other uses or development, not otherwise allowed, are allowed by reason of the transfer.

(4) "Sending area" means a designated area of resource land from which development rights generated from forgone development are transferable, for residential uses or development not otherwise allowed, to a receiving area.

(5) "Transferable development right or TDR" means a severable residential development interest in real property that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel or tract in a receiving area. This term has the same meaning as "transferable development credit" under Oregon Laws 2009, chapter 504, section 2(10).

Stat. Auth.: ORS 197.040

Stats. Implemented: 2009 OL Ch 636, § 6

Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

660-028-0020

Selection of Pilot Projects

(1) This rule establishes the process for the commission to select up to three TDR pilot projects from among projects nominated by one or more local governments, as provided in Oregon Laws 2009, chapter 636.

(2) A proposed TDR pilot project will be considered by the department and the commission if the local governments with land use jurisdiction over the proposed sending and receiving areas submit:

(a) A completed application form;

(b) A letter of interest along with the owner(s) of at least fifty percent of the land in the proposed sending area;

(c) A concept plan consistent with the requirements of OAR 660-028-0030 that describes the proposed TDR pilot project and that includes:

(A) Proposed amendments to the local government comprehensive plan and land use regulations necessary to implement the pilot project, a tentative schedule for adoption of the amendments, and a description of any other proposed actions intended to implement the proposed TDR pilot project;

(B) Maps and other pertinent information describing the proposed sending areas and receiving areas;

(C) Proposed transfer ratios as specified in OAR 660-028-0030(5) and other incentives for participation; and

(D) A letter from a qualified entity as defined in ORS 271.715 expressing interest in holding and monitoring any conservation easement or similar restriction to ensure that development rights are transferred off of the proposed sending area.

(3) The commission may extend the deadline in section (2) of this rule if it finds that additional time is necessary to ensure a satisfactory pool of applications for consideration under this program.

(4) The department will review applications and submit its recommendations for review by the commission within 120 days of the deadline established under section (2) or (3) of this rule. The department will base its recommendations on its assessment of:

(a) The beneficial qualities and attributes of the lands in the proposed sending area for forest management and the degree of risk that those qualities and attributes will be lost in the absence of the proposed project based on information in the proposal and other available information provided by the State Forestry Department and others;

(b) The location, attributes, size and configuration of proposed sending and receiving areas, including the quality of the forest land intended to be conserved under the proposed TDR pilot project;

(c) The demonstrated intent and ability of the local government and other participants to implement the proposed TDR pilot project within a reasonable timeframe; and

(d) The likelihood that the proposed TDR pilot project will succeed and achieve the purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009, chapter 636.

(5) Upon review of the applications, the commission may select up to three qualified TDR pilot projects for inclusion in the Oregon TDR Pilot Program. In deciding which TDR pilot projects to select, the commission must consider the department's recommendations, the written applications and concept plans, and any other available and pertinent information it deems relevant to its decision.

(6) When selecting a TDR pilot project the commission must find that the pilot project will comply with the requirements specified in OAR 660-028-0030 and other requirements of law, and that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state and achieve the purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009, chapter 636;

(b) Designed to avoid or minimize adverse effects on transportation, natural resources, public facilities and services, nearby urban areas and nearby farm and forest uses; and

(c) Designed so that new development authorized in a receiving area as a result of the transferred development rights will not conflict with:

(A) Significant Goal 5 resources, including natural, scenic, and historic resources, open spaces and other resources and resource areas inventoried in accordance with Goal 5 and OAR chapter 660, division 23 or OAR chapter 660, division 16; or

(B) Areas identified as conservation opportunity areas in the Oregon Department of Fish and Wildlife's 2006 "Oregon Conservation Strategy."

Stat. Auth.: ORS 197.040

Stats. Implemented: 2009 OL Ch 636, § 6

Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

660-028-0030

Requirements for TDR Pilot Projects

(1) At the time the local government(s) submits an application for a proposed TDR pilot project, the proposed sending area must be planned and zoned for forest use, may not exceed 10,000 acres, and must contain four or fewer dwelling units per square mile.

(2) At the time the local government(s) submits an application for a proposed TDR pilot project, the proposed receiving area or areas may not be located within 10 miles of the Portland metropolitan area urban growth boundary. The receiving area or areas must be only the appropriate size necessary to accommodate the anticipated development rights that will reasonably be generated and transferred from the sending area, with consideration of uses and density to be authorized under the proposed amendments to the local government comprehensive plan and land use regulations to implement the proposed TDR pilot project if it is selected.

(3) In proposing a receiving area for a TDR pilot project, the local government must select the area based on consideration of the following priorities:

(a) First priority is lands within an urban growth boundary.

(b) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception to Goal 3 or Goal 4.

(c) Third priority is lands that are:

(A) Within a designated urban unincorporated community or rural community; or

(B) In a resort community, or a rural service center, that contains at least 100 dwelling units at the time the pilot project is approved.

(d) Fourth priority is exception areas approved under ORS 197.732 that are adjacent to urban unincorporated communities or rural communities, if the county agrees to bring the receiving area within the boundaries of the community and to provide the community with water and sewer service.

(4) With respect to the priority of receiving areas described in subsection (3) of this rule, the commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a TDR pilot project only if the local government has established, to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(5) The minimum residential density of development allowed in receiving areas intended for residential development is:

(a) For second priority lands described in subsection (3)(b) of this rule, at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(b) For third priority and fourth priority lands described in subsection (3)(c) and (d) of this rule, at least 125 percent of the average residential density allowed on land planned for residential use within the unincorporated community when the pilot project is approved by the commission. If these lands are within one jurisdiction but adjacent to another jurisdiction, the written consent of the adjacent jurisdiction is required for designation of the receiving area.

(6) The ratio of transferable development rights to severed residential development interests in a sending area must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending and receiving areas to participate in the TDR pilot project. The maximum ratio:

(a) May not exceed one transferable development right to one severed development interest if the receiving area is outside of urban growth boundaries and outside unincorporated communities, except that this maximum ratio does not apply to an exception area described in subsection (3)(b) of

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this rule provided the TDR pilot project concept plan ensures the inclusion of the receiving area within an urban growth boundary, either under applicable requirements of Goal 14 and other laws or the alternative provisions in section (12) of this rule. The concept plan may allow the transfer of development rights authorized in this subsection prior to the inclusion of the receiving area in an acknowledged urban growth boundary provided the amended comprehensive plan and land use regulations ensure that the transferred rights cannot be exercised at a higher ratio than specified in this rule until the receiving area is included in the urban growth boundary.

(b) May not exceed two transferable development rights to one severed development interest if the receiving area is in an unincorporated community; and

(c) Must be consistent with plans for public facilities and services in the receiving area.

(7) Within one year after the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending and receiving areas must adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations to implement the concept plan and to identify and authorize the additional residential development allowed through participation in the pilot project. The local governments must submit and the commission must review the comprehensive plan and land use regulation amendments in the manner of periodic review under ORS 197.628 to 197.650. Transfer of development interests may not occur prior to the commission's acknowledgment of the comprehensive plan and land use regulation amendments.

(8) The comprehensive plan and land use regulation amendments required by section (7) of this rule must specify the type and density of the additional development to be transferred and allowed in a receiving area through participation in a TDR pilot project, in accordance with the concept plan approved by the commission and other applicable requirements of this rule.

(9) In addition to the requirements of section (7) of this rule, before any development rights may be exercised in the receiving area, the participating owners of land in a sending area must grant a conservation easement pursuant to ORS 271.715 to 271.795 or otherwise ensure on a permanent basis that additional residential development does not occur in the sending area.

(10) If the receiving area for a TDR pilot project is intended for residential development and is within an urban growth boundary expansion area approved under section (12) of this rule, or is in an exception area described in subsection (3)(b) and section (11) of this rule, the amended comprehensive plan and land use regulations required by section (7) of this rule must authorize a residential density of:

(a) For second priority lands described in subsection (3)(b), at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(b) For third priority and fourth priority lands described in subsections (3)(c) and (d), at least 125 percent of the average residential density allowed on land planned for residential use within the unincorporated community when the pilot project is approved by the commission.

(11) Notwithstanding contrary provisions of statewide land use planning Goals 11 and 14 and related rules, and notwithstanding ORS 215.700 to 215.780, if the commission approves a TDR pilot project, a local government may amend its comprehensive plan and land use regulations to allow transferred rights under an approved TDR pilot project to develop as urban level development, with urban levels of public facilities and services, including transportation, in a receiving area that consists of land adjacent to an urban growth boundary or unincorporated community boundary and subject to an exception to Goal 3 or Goal 4, consistent with subsections (3)(b), (c) and (d) and section 10 of this rule. The concept plan described under OAR 660-028-0020(2)(b) must indicate whether a local government intends to change comprehensive plan and land use regulations to allow urban level of development and urban levels of public facilities and services in the receiving area and, where intended for residential development, must include an agreement to rezone the receiving area to authorize a residential density as provided in section (10) of this rule.

(12) Notwithstanding ORS 197.296 and 197.298, statewide land use planning Goal 14 and its implementing rules (OAR chapter 660, division 24), a local government may amend its urban growth boundary or unincorporated community boundary to include land that is in a receiving area of a selected TDR pilot project and that is adjacent to an urban growth boundary and subject to an exception to Goal 3 or Goal 4. The proposed concept plan described under OAR 660-028-0020(2)(c) must indicate whether a local government intends to include adjacent exception lands in a receiving

area approved as a pilot project under this program, and, where intended for residential development, must include an agreement to rezone the receiving area to authorize a residential density as provided in section (10) of this rule.

(13) Local governments or other entities may establish a development rights bank or other system to facilitate the transfer of development rights.

(14) When development rights transfers authorized by the pilot project under Oregon Laws 2009, chapter 636, sections 6 to 8, result in the transfer of development rights from the jurisdiction of one local government to another local government and cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving area.

Stat. Auth.: ORS 197.040

Stats. Implemented: 2009 OL Ch 636, § 6

Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

Rule Caption: Amendments for conform agency rules to new state laws.

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Subject: The adopted rule amendments implement laws enacted by the 2010 and 2011 legislatures. The amendments revise existing rules to conform wording of new and revised state laws and to ensure consistency between rules and statutes.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0030

Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

(4) When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(b) If a person concludes that more detailed soils information than that contained in the Internet soil survey of soil data and information produced by the National Cooperative Soil Survey operated by the NRCS of the USDA as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.

(c) This section and OAR 660-033-0045 apply to:

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(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and

(B) Excepting land use decisions under section (7) of this rule, any other proposed land use decision in which more detailed data is used to demonstrate that land planned and zoned for exclusive farm use does not meet the definition of agricultural land under OAR 660-033-0020(1)(a)(A).

(d) This section and OAR 660-033-0045 implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

(e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and 660-033-0020.

(6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as "marginal lands" according to those provisions and criteria in *former* ORS 197.247 (1991), as long as the county has not applied the provisions of 215.705 to 215.750 to lands zoned for exclusive farm use.

(7)(a) For the purposes of approving a land use application on high-value farmland under ORS 215.705, the county may change the soil class, soil rating or other soil designation of a specific lot or parcel if the property owner:

(A) Submits a statement of agreement from the NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(B) Submits a report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(C) Submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subsection (7)(B) of this section and finds the analysis in the report to be soundly and scientifically based.

(b) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the NRCS Internet soil survey for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsection (a) of this section.

(8) For the purposes of approving a land use application on high-value farmland under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS Internet survey as of January 2, 2012 for that class, rating or designation.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710

Hist.: LCDD 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 10-2011, f. & cert. ef. 12-20-11; LCDD 7-2012, f. & cert. ef. 2-14-12

660-033-0045

Soils Assessments by Professional Soil Classifiers

(1) A "professional soil classifier" means any professional in good standing with the Soil Science Society of America (SSSA) who the SSSA has certified to have met its requirements that existed as of October 1, 2011 for:

(a) Certified Professional Soil Classifier; or

(b) Certified Professional Soil Scientist, and who has been determined by an independent panel of soils professionals as defined in section (8) of this rule to have:

(A) Completed five semester hours in soil genesis, morphology and classification;

(B) At least five years of field experience in soils classification and mapping that meets National Cooperative Soil Survey standards, as maintained by the NRCS, or three years of field experience if the applicant holds an MS or PhD degree; and

(C) Demonstrated competence in practicing soils classification and mapping without direct supervision, based on published SSSA standards.

(2) The department will develop, update quarterly and post a list of professional soil classifiers (henceforth "soils professionals") who are qualified to perform soils assessments under this rule.

(a) Qualified soils professionals shall include those individuals who have either met the requirements of subsection (1)(a) of this section or the

requirements of subsection (1)(b) of this section as determined by a majority vote of an independent panel of soils professionals.

(A) A person must apply to the department for initial inclusion on the list described in section (2) of this rule.

(B) Qualified soils professionals must reapply to the department for listing on a biennial basis.

(b) A soils assessment auditing committee as defined in section (9) of this rule will periodically reevaluate qualifications of soils professionals by auditing soils assessments, considering sample department reviews and field checks as described in section (6) of this rule and verifying continued good standing of soils professionals with the SSSA.

(A) When reviewing applications for relisting, the department will consider the recommendations of the auditing committee and make final determinations as to the continued qualifications of soils professionals to perform soils assessments under this rule.

(B) The department will re-approve soils professionals for listing when audits, sample reviews and field checks reveal a pattern of demonstrated competence in practicing soils classification and mapping consistent with paragraph (1)(b)(C) of this rule, and when the SSSA verifies that the soils professional is in good standing with the SSSA.

(3) A person requesting a soils assessment shall:

(a) Choose a soils professional from the posted list described in section (2) of this rule:

(b) Privately contract for a soils assessment to be prepared; and

(c) On completion of the soils assessment, submit to the department payment of the non-refundable administrative fee established by the department as provided in statute to meet department costs to administer this rule.

(4) On completion of the soils assessment, the selected soils professional shall submit to the department:

(a) A Soils Assessment Submittal Form that includes the property owner's and soils professional's authorized signatures and a liability waiver for the department; and

(b) A soils assessment that is soundly and scientifically based and that meets reporting requirements as established by the department.

(5) The department shall deposit fees collected under this rule in the Soils Assessment Fund established under Oregon Laws 2010, chapter 44, section 2.

(6) The department shall review the soils assessment by:

(a) Performing completeness checks for consistency with reporting requirements for all submitted soils assessments; and

(b) Performing sample reviews and field checks for some submitted soils assessments, as follows:

(A) The department shall arrange for a person who meets the qualifications of "professional soil classifier" in section (1) of this rule to conduct systematic sample reviews and field checks of soils assessments and make recommendations to the department as to whether they are soundly and scientifically based.

(B) Within 30 days of the receipt of a soils assessment subject to review under this subsection, the department shall determine whether the soils assessment is soundly and scientifically based. Where soils assessments are determined not to be soundly and scientifically based, the department will provide an opportunity to the soils professional to correct any noted deficiencies. Where noted deficiencies are not corrected to the satisfaction of the department, the department will provide written notification of the noted deficiencies to the soils professional, property owner and person who requested the soils assessment.

(7)(a) A soils assessment produced under this rule is not a public record, as defined in ORS 192.410, unless the person requesting the assessment utilizes the assessment in a land use proceeding. If the person decides to utilize a soils assessment produced under this section in a land use proceeding, the person shall inform the department and consent to the release by the department of certified copies of all assessments produced under this section regarding the land to the local government conducting the land use proceeding. The department may not disclose a soils assessment prior to its utilization in a land use proceeding as described in this rule without written consent of the person paying the fee for the assessment and the property owner.

(b) On receipt of written consent, the department shall release to the local government all soils assessments produced under this rule as well as any department notifications provided under section (6) of this rule regarding land to which the land use proceeding applies.

(8) As used in this rule, "Independent panel of soils professionals" means a committee of three professionals appointed by the department that, quarterly or as needed, reviews and makes determinations regarding the

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qualifications of individuals seeking to be listed as soils professionals to perform soils analyses.

- (a) Such panel shall consist of:
 - (A) A member of the SSSA;
 - (B) The Oregon State Soil Scientist; and
 - (C) An Oregon college or university soils professional.

(b) Panel members shall meet the qualifications of professional soil classifiers as defined in this rule or shall have experience mapping and teaching soil genesis, morphology and classification in a college or university setting.

(c) The department's farm and forest lands specialist shall serve as staff to the panel.

(d) In reviewing qualifications of applicants with respect to required semester hours of academic study under paragraph (1)(b)(A) of this rule, panel members may adjust for differences in academic calendars.

(9) As used in this rule, "Soils assessment auditing committee" means a group of three professionals that, annually or as needed, reviews and makes recommendations to the department regarding the continuing qualifications of soils professionals to perform soils analyses under this rule.

(a) Committee members shall be appointed by the independent panel of soils professionals and shall meet the qualifications of professional soil classifier as defined in section (1) of this rule.

(b) The department's farm and forest lands specialist shall serve as staff to the committee.

(10) As used in this rule, "person" shall have the meaning set forth in ORS 197.015(18).

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710

Hist.: LCDD 7-2012, f. & cert. ef. 2-14-12

660-033-0100

Minimum Parcel Size Requirements

(1) Counties shall establish minimum sizes for new parcels for land zoned for exclusive farm use. For land not designated rangeland, the minimum parcel size shall be at least 80 acres. For land designated rangeland, the minimum parcel size shall be at least 160 acres.

(2) A county may adopt a minimum parcel size lower than the Commission that it can do so while continuing to meet the requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are appropriate to maintain the existing commercial agricultural enterprise within an area. This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in an area. This standard does not require that every new parcel created be as large as existing farms or ranches in an area. The minimum parcel size may allow creation of parcels smaller than the size of existing farms or ranches. However, the minimum parcel size shall be large enough to keep commercial farms and ranches in the area successful and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling facilities shall not be considered appropriate to maintain the existing commercial agricultural enterprise in any area where other types of agriculture occur.

(a) To determine a minimum parcel size under this section, the county shall complete the following steps:

- (A) Identify different agricultural areas within the county, if any;
- (B) Determine the nature of the commercial agricultural enterprise in the county, or within areas of the county;
- (C) Identify the type(s) and size(s) of farms or ranches that comprise this commercial agricultural enterprise; and
- (D) Determine the minimum size for new parcels that will maintain this commercial agricultural enterprise.

(b) To determine whether there are distinct agricultural areas in a county, the county should consider soils, topography and land forms, land use patterns, farm sizes, ranch sizes and field sizes, acreage devoted to principal crops, and grazing areas and accepted farming practices for the principal crops and types of livestock.

(c) To determine the nature of the existing commercial agricultural enterprise within an area, a county shall identify the following characteristics of farms and ranches in the area: Type and size of farms and ranches, size of fields or other parts, acreage devoted to principal crops, the relative contribution of the different types and sizes of farms and ranches to the county's gross farm sales, and their contribution to local processors and established farm markets. The following sources may assist in a county's analysis: The most recent Census of Agriculture and special tabulations from the census developed by Oregon State University, the Oregon Department of Agriculture, the United States Department of Agriculture's

Agricultural Stabilization and Conservation Service (AACS), Soil and Water Conservation Districts, the Oregon State University Extension Service and the county assessors office.

(d) To determine the minimum parcel size, a county shall evaluate available data and choose a size that maintains the existing commercial agricultural enterprise within the county or within each area of the county. In areas where the size of commercial farms and ranches is mixed, and the size of parcels needed to maintain those commercial farms and ranches varies, the county shall not choose a minimum parcel size that allows larger farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the area. The activities of the larger as well as smaller holdings must be maintained.

(3) A minimum size for new parcels for farm use does not mean that dwellings may be approved automatically on parcels that satisfy the minimum parcel size for the area. New dwellings in conjunction with farm use shall satisfy the criteria for such dwellings set forth in OAR 660-033-0130(1).

(4) A minimum size for new parcels may be appropriate to maintain the existing agricultural enterprise in the area, but it may not be adequate to protect wildlife habitat pursuant to Goal 5. When farmland is located in areas of wildlife habitat, the provisions of Goal 5 continue to apply.

(5) A county may choose to establish a different minimum parcel size for distinct commercial agricultural areas of the county. The appropriate minimum lot or parcel size for each area shall reflect the type of commercial agriculture in the area, consistent with section (2) of this rule.

(6) Counties may allow the creation of new parcels for nonfarm uses only as authorized by ORS 215.263. Such new parcels shall be the minimum size needed to accommodate the use in a manner consistent with other provisions of law except as required for the nonfarm dwellings authorized by section (7) of this rule.

(7)(a) Counties may allow the creation of new lots or parcels for dwellings not in conjunction with farm use pursuant to ORS 215.263(4) or (5), whichever is applicable.

(b) In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or parcel is equal to or larger than the applicable minimum lot or parcel size, and:

- (A) Is not stocked to the requirements under ORS 527.610 to 527.770;
- (B) Is composed of at least 95 percent Class VI through VIII soils; and
- (C) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber; and
- (D) The new lot or parcel will not be smaller than 20 acres.

(c) No new lot or parcel may be created for this purpose until the county finds that the dwelling to be sited on the new lot or parcel has been approved under the requirements for dwellings not in conjunction with farm use in ORS 215.284(3) or (4), 215.236 and OAR 660-033-0130(4).

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 1994, f. & cert. ef. 1994; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 7-2012, f. & cert. ef. 2-14-12

660-033-0120

Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

(2) R — Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

(3) * — Use not allowed.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

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

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Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780
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 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; 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 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12

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 June 17, 2010.

(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 on a pre-existing lot or parcel 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; and

(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);

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practically 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 practically 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 practically 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); and

(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; and

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon 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);

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C) 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

(D) 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 one-quarter 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

(E) 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 one-quarter 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, niece, nephew, stepparent, stepchild, grandparent or grandchild

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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) A single-family residential dwelling not provided in conjunction with farm use 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) 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; and

(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; and

(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), 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) through 215.213(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 surrounding lands devoted to farm or forest use.

(6) A facility for the primary processing of forest products 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 that 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

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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:

(A) Removed, demolished, or converted to an allowable nonresidential 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

(B) 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 relatives 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 92.192 or the minimum lot or parcel requirements under 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(9)(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 recre-

ational 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). 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 468B.095, and with the requirements of 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 is allowed.

(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) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule 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 otherwise 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 para-

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graph are subject to 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 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 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 January 1, 2010, the effective date of 2009 Oregon 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 six-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 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 this section, "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 nine 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 nine or 18 hole regulation golf course or a combination nine 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 nine 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 three 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; and

(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 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:

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(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;

(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 reappraised under these rules; or

(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations 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 farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in 215.278 and not the meaning in 315.163; 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(3) or (4), 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, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned 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; or

(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, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of 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 former 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 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(8); 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;

(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 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 former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, 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 section 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 is controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon 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 accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of

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Environmental Quality under OAR 340-093-0050 and 340-096-0060. 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 meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. 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 3,000 or fewer 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 197.015(10) or subject to review under this division. Agritourism and other commercial events or activities may not be permitted as mass gatherings under 215.213(11) and 215.283(4).

(34) Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

(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 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 ini-

tial 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 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; and

(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;

(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;

(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-

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0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project.

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar 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. The governing body or its designate must find that:

(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. 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 photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a photovoltaic solar power generation 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;

(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;

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified indi-

vidual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;

(E) The project is not located on high-value farmland soils unless it can be demonstrated that:

(i) Non high-value farmland soils are not available on the subject tract;

(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(g) For arable lands, a photovoltaic solar 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. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10) unless an exception is taken pursuant to 197.732 and OAR chapter 660, division 4;

(C) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.

(ii) When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches 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; and

(D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.

(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 100 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

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(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(C) No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(F) If a proposed photovoltaic solar power generation facility is located on lands where the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), or to wildlife species of concern identified and mapped by the Oregon Department of Fish and Wildlife (including big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife species of concern are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife species of concern as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(G) The provisions of paragraph (F) are repealed on January 1, 2022.

(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(j) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

(k) The commission may re-evaluate the acreage thresholds identified in subsections (f), (g) and (h) should ORS 469.300(11)(a)(D) be amended.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. & cert. ef. 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; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12

660-033-0135

Dwellings in Conjunction with Farm Use

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least:

(A) 160 acres and not designated rangeland; or

(B) 320 acres and designated rangeland; or

(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203.

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

(d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract.

(2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this section, the county may determine that on land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(A) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile from the perimeter of the subject tract;

(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;

(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in paragraph (B) of this subsection;

(D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in western Oregon or 20 acres in eastern Oregon;

(E) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.

(b) In order to identify the commercial farm or ranch tracts to be used in paragraph (2)(a)(A) of this rule, the gross sales capability of each tract in the study area, including the subject tract, must be determined, using the gross sales figures prepared by the county pursuant to subsection (2)(c) of this section as follows:

(A) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;

(B) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;

(C) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the commission pursuant to subsection (2)(c) of this section. Add these to obtain the potential earning capability for each tract;

(D) Identify those tracts capable of grossing at least \$10,000 based on the data generated in paragraph (C) of this subsection; and

(E) Determine the median size and median gross sales capability for those tracts capable of generating at least \$10,000 in annual gross sales to use in paragraphs (2)(a)(A) and (B) of this subsection.

(c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may prepare, subject to review by the director, a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this section. The director shall provide assistance and guidance to a county in the preparation of this table. The table shall be prepared as follows:

(A) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or other USDA/Extension Service documentation;

(B) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:

ADMINISTRATIVE RULES

(i) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);

(ii) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five year period;

(iii) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types;

(iv) Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop; and

(v) Add the weighted sales per acre amounts for each indicator crop type identified in subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per acre.

(C) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308A.092; and

(D) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in paragraph (C) of this subsection. Adjust the combined weighted sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this subsection by the percent of average land rent value from paragraph (C) of this subsection). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.

(3) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator earned the lower of the following:

(A) At least \$40,000 in gross annual income from the sale of farm products; or

(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on lands designated for exclusive farm use pursuant to ORS Chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation;

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(4) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on lands designated for exclusive farm use pursuant to ORS Chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation; and

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section;

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(5)(a) For the purpose of sections (3) or (4) of this rule, noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a dwelling in the other part of the state.

(b) Prior to the final approval for a dwelling authorized by sections (3) and (4) of this rule that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

(A) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and

(B) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

(c) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(d) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(e) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section;

(f) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, a dwelling may be considered customarily provided in conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it meets the standards and requirements of 215.213(2)(a) or (b).

(7) A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined by OAR 660-033-0135(8) if:

(a) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-0135(8);

(b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;

(c) Except as permitted by ORS 215.213(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;

(e) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

(f) The Oregon Department of Agriculture has approved the following:

(A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(B) A Producer License for the sale of dairy products under ORS 621.072.

(8) As used in this division, the following definitions apply:

ADMINISTRATIVE RULES

(a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and

(b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.

(9) A dwelling may be considered customarily provided in conjunction with farm use if:

(a) Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;

(b) The subject lot or parcel on which the dwelling will be located is:

(A) Currently employed for the farm use, as defined in ORS 215.203, that produced in each of the last two years or three of the last five years, or in an average of three of the last five years the gross farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable; and

(B) At least the size of the applicable minimum lot size under OAR 215.780;

(c) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(e) In determining the gross income required by subsections (a) and (b)(A) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

(B) Only gross income from land owned, not leased or rented, shall be counted.

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

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 7-2012, f. & cert. ef. 2-14-12

Oregon Board of Dentistry Chapter 818

Rule Caption: Amends Agency Rules regarding Procedures to correct text that was omitted in error.

Adm. Order No.: OBD 1-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 10-1-2011

Rules Amended: 818-001-0087

Subject: The Board amended 818-001-0002 Definitions to reflect changes in Oregon laws. This is a re-filing of the original filing effective November 15, 2011, to make a correction. Text that was not supposed to be amended in the original Certificate and Order for Filing Permanent Administrative Rules was deleted in error.

Rules Coordinator: Sharon Ingram—(971) 673-3200

818-001-0087

Fees

(1) The Board adopts the following fees:

(a) Biennial License Fees:

(A) Dental – \$315;

(B) Dental – retired – \$0;

(C) Dental Faculty – \$260;

(D) Volunteer Dentist – \$0;

(E) Dental Hygiene – \$155;

(F) Dental Hygiene – retired – \$0;

(G) Volunteer Dental Hygienist – \$0.

(b) Biennial Permits, Endorsements or Certificates:

(A) Nitrous Oxide Permit – \$40;

(B) Minimal Sedation Permit – \$75;

(C) Moderate Sedation Permit – \$75;

(D) Deep Sedation Permit – \$75;

(E) General Anesthesia Permit – \$140;

(F) Radiology – \$75;

(G) Expanded Function Dental Assistant – \$50;

(H) Expanded Function Orthodontic Assistant – \$50;

(I) Instructor Permits – \$40;

(J) Dental Hygiene Restorative Functions Endorsement – \$50;

(K) Restorative Functions Dental Assistant – \$50;

(L) Anesthesia Dental Assistant – \$50.

(M) Dental Hygiene, Expanded Practice Permit – \$75;

(c) Applications for Licensure:

(A) Dental – General and Specialty – \$345;

(B) Dental Faculty – \$305;

(C) Dental Hygiene – \$180;

(D) Licensure Without Further Examination – Dental and Dental Hygiene – \$790.

(d) Examinations:

(A) Jurisprudence – \$0;

(B) Dental Specialty:

(i) \$750 at the time of application; and

(ii) If only one candidate applies for the exam, an additional \$1,250 due ten days prior to the scheduled exam date;

(iii) If two candidates apply for the exam, an additional \$250 (per candidate) due ten days prior to the scheduled exam date;

(iv) If three or more candidates apply for the exam, no additional fee will be required.

(e) Duplicate Wall Certificates – \$50.

(2) Fees must be paid at the time of application and are not refundable.

(3) The Board shall not refund moneys under \$5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 293.445, 679.060, 679.120, 680.050, 680.200, 680.205

Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2009(Temp), f. 6-11-09, cert. e. 7-1-09 thru 11-1-09; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2012, f. & cert. ef. 1-27-12

Oregon Criminal Justice Commission Chapter 213

Rule Caption: Correction of categorization of Failure to Report as a Sex Offender in sentencing guidelines.

Adm. Order No.: CJC 1-2012(Temp)

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12 thru 7-24-12

Notice Publication Date:

Rules Amended: 213-017-0007

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. CJC previously classified the offense of Failure to Report as a Sex Offender under ORS 181.599 as a Level 4 on the Crime Seriousness Scale. The offense has erroneously been listed as being categorized both as a Level 5 on the Crime Seriousness Scale, as well as a Level 4 on the Crime Seriousness Scale. This rule change corrects that error, by deleting the listing of Failure to Report as a Sex Offender from Level 5 of the Crime Seriousness Scale. The rule change also includes numbering changes necessitated by deleting from the list of numerically ordered crimes.

Rules Coordinator: Craig Prins—(503) 378-4830

213-017-0007

Crime Category 5

The following offenses are classified at crime category 5 on the Crime Seriousness Scale:

(1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).

(2) DRUG-RELATED OFFENSES. (See division 19).

(3) ORS 162.185 – SUPPLYING CONTRABAND – (C). (If contraband includes a controlled substance but no firearms (CC 7) or dangerous weapons (CC 6); otherwise CC 4.)

ADMINISTRATIVE RULES

- (4) ORS 163.537 – BUYING OR SELLING THE CUSTODY OF A MINOR – (B). (If cannot be ranked at CC 8.)
- (5) ORS 163.686 – ENCOURAGING CHILD SEX ABUSE II – (C).
- (6) ORS 164.055 – THEFT I* – (C).
- (7) ORS 164.057 – AGGRAVATED THEFT – (B). (If not categorized at CC 6.)
- (8) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY* – (C).
- (9) ORS 164.075 – THEFT BY EXTORTION* – (B).
- (10) ORS 164.085 – THEFT BY DECEPTION* – (C).
- (11) ORS 164.095 – THEFT BY RECEIVING – (C). (If part of an organized operation; otherwise CC 3.)
- (12) ORS 164.125 – THEFT OF SERVICES* – (C).
- (13) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE * – (C).
- (14) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY * – (C).
- (15) ORS 164.215 – BURGLARY II* – (C).
- (16) ORS 164.315 – ARSON II* – (C).
- (17) ORS 164.365 – CRIMINAL MISCHIEF I * – (C).
- (18) ORS 164.377(5) – COMPUTER FRAUD (LOTTERY) * – (C).
- (19) ORS 164.377(5) – COMPUTER CRIME* – (C).
- (20) ORS 164.395 – ROBBERY III – (C).
- (21) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
- (22) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
- (23) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
- (24) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
- (25) ORS 165.013 – FORGERY I* – (C).
- (26) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
- (27) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
- (28) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
- (29) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD * – (C).
- (30) ORS 165.800 – IDENTITY THEFT* – (C).
- (31) ORS 166.087 – ABUSE OF CORPSE I – (B).
- (32) ORS 166.385(3) – FELONY POSSESSION OF A HOAX DESTRUCTIVE DEVICE – (C).
- (33) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).
- (34) ORS 609.990(3)(b) – MAINTAINING A DANGEROUS DOG – (C).
- (35) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
- (36) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
- (37) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
- (38) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).
- (If not categorized at CC 6.)
- (39) 2003 Oregon Laws Ch 804 – UNLAWFUL DISTRIB. CIGARETTES – (C) <120,000.
- (40) 2003 Oregon Laws Ch 804 – UNLAWFUL DISTRIB. TOBACCO PRODUCTS – (C)
- (41) 2007 Oregon Laws Ch 584 – AGGRAVATED IDENTITY THEFT – (B).
- (42) 2007 Oregon Laws Ch 681 – PURCHASE OR SALE OF A BODY PART FOR TRANSPLANTATION OR THERAPY – (C).
- (43) 2007 Oregon Laws Ch 684 – CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* – (C).
- (44) 2007 Oregon Laws Ch 811 – SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE II – (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 5 if the value of the property stolen was \$10,000 but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.643 & 2003 OL Ch. 383, 453, 543, 632, 2005 OL Ch. 708, 2007 OL Ch. 584, 681, 684, & 811

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 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 1-2008, f. & cert. ef. 10-9-08; CJC 1-2012(Temp), f. & cert. ef. 1-27-12 thru 7-24-12

Oregon Department of Education Chapter 581

Rule Caption: Interdistrict Transfers.
Adm. Order No.: ODE 1-2012
Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 12-1-2011

Rules Amended: 581-021-0019

Subject: Clarifies that Interdistrict Transfer Rule does not apply to transfers under House Bill 3681.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-021-0019

Interdistrict Transfer Agreement

(1) Definitions. As used in this rule:

(a) “ADM” means the average daily membership as defined in ORS 327.006.

(b) “Individualized education program” means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established by rules of the State Board of Education for each child eligible for special education and related services under ORS Chapter 343.

(c) “Interscholastic activities” includes but is not limited to athletics, music, speech, and other related activities.

(d) “Nonresident school district” means a school district that is not the resident school district of a child.

(e) “Person in parental relationship” means, as defined in ORS 339.133, an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. “Person in parental relationship” does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(f) “Resident school district” means the school district that has a legal responsibility to education a child because the child resides in the district with a parent, guardian or person in parental relationship.

(g) “School district” means a school district as defined in ORS 332.002, a state-operated school or any legally constituted combination of such entities.

(2)(a) A nonresident school district may enroll a student who is a resident of another district and receive State School Fund money for the student only if there is a signed Interdistrict Transfer Agreement between the resident school district, nonresident school district, and the parent/guardian(s) or person in parental relationship.

(b) The provisions of this rule does not affect the authority of a school district to enroll students under section 9, chapter 718, Oregon Laws 2011 (Enrolled House Bill 3681) and does not apply to students who attend a school under that section.

(c) The provisions of this rule do not affect the authority of a school district to enter into a contract with another district under ORS 339.125.

(3) It is understood that upon approval by the district of the Interdistrict Transfer Agreement that:

(a) The Resident District shall fully release the student to the Nonresident District. The Nonresident District shall claim the student as a resident student for the purposes of claiming basic school support under the State School Fund and shall report itself as the Resident District of record for ADM purposes.

(b) The Nonresident District shall report the student as a resident student for ADM per ORS 339.133. The Resident District turns over to the Nonresident District all portions of the ADMr and the ADMw that is paid from the State School Fund. Funds may only be exchanged between the districts for the student based on the Interdistrict Transfer Agreement.

(c) The Nonresident District will be accountable for meeting the requirements of the standards described in OAR chapter 581, division 22.

(d) The Resident District holds the responsibility of ensuring a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for students on an Individualized Education Program (IEP).

(4) Modification to the original Interdistrict Transfer Agreement requires written consent by all parties (resident school district, nonresident school district, and parent/guardian or person in parental relationship).

(5) The Interdistrict Transfer Agreement will only be in effect beginning with the effective date listed on the form. The resident and nonresident district policy must include an annual review of each approved interdistrict transfer agreement including an annual notification to parents/guardians or person in parental relationship of the children subject to the interdistrict transfer agreement.

(6) The Interdistrict Transfer Agreement must contain the following data about the student whom is the subject of the transfer:

(a) Legal Last Name;

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- (b) Legal First Name;
 - (c) Legal Middle Name;
 - (d) Gender;
 - (e) Date of Birth;
 - (f) Enrolled Grade;
 - (g) House Number/Street Address: (P.O. Box as determined by District Superintendent or Designee);
 - (h) Apartment Complex;
 - (i) Apartment Number;
 - (j) City;
 - (k) State;
 - (l) Zip;
 - (m) Resident School District;
 - (n) Nonresident School District;
 - (o) Effective Date of Transfer;
 - (p) Primary Phone Number of Parent/Guardian/Person of Parental Relationship;
 - (q) Secondary Phone Number;
 - (r) Parent/Guardian/Person of Parental Relationship Name;
 - (s) Individualized Education Plan (IEP) for Special Education Services: If the student seeking transfer has an IEP in place, both the sending and receiving districts need to ensure required services are provided.
 - (t) Interscholastic Organization participation: A transfer does not guarantee eligibility to participate in competitive activities/athletics at the receiving school. Competitive eligibility is determined by the organization's rules.
 - (u) Student suspension reason and when;
 - (v) Student expulsion reason and when;
 - (w) Reason for the transfer request;
 - (x) Attendance records;
 - (y) Certification of truth: Parent/guardian/Person of Parental Relationship to certify the above information is true;
 - (z) Signature of Parent/Guardian/Person of Parental Relationship with date;
 - (aa) Final Action of Resident District with Approved or Denied; Reason for denial;
 - (bb) Resident Superintendent/Designee Signature with date;
 - (cc) Final Action of Nonresident District with Approved or Denied; Reason for denial;
 - (dd) Nonresident Superintendent/Designee Signature with date.
 - (7) The Oregon Department of Education (ODE) will provide a sample agreement form. Resident school districts are responsible for developing their own written instructions.
 - (8) An Interdistrict Transfer Agreement shall only be between districts within the state of Oregon.
 - (9) Upon request by the nonresident district, a resident district shall release student records to the nonresident district.
- Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.133
Hist.: ODE 21-2008, f. 8-28-08, cert. ef. 8-29-08; ODE 1-2012, f. 2-1-12, cert. ef. 2-3-12
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Rule Caption: Modifies rule relating to public school employee criminal background checks, implementing 2011 legislation.

Adm. Order No.: ODE 2-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 12-1-2011

Rules Amended: 581-021-0500

Subject: Implements legislation which amended list of crimes which prohibit person if committed from becoming school employee.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-021-0500

Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

- (1) Definitions of terms shall be as follows:
 - (a) "Subject individual" means:
 - (A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;
 - (B) Any person newly hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;
 - (C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed

Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) A person who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day; and

(E) A person who is an employee of a public charter school.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

- (A) Oregon State Police (OSP) – \$28;
- (B) Federal Bureau of Investigation (FBI) – \$24;
- (C) Oregon Department of Education – \$10;
- (D) TOTAL – \$62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

- (A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and
- (B) A properly completed Department of Education form #581-2283-M.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(f) "Knowingly made a false statement" means that a subject individual has failed to disclose a crime on the Department of Education form #581-2283-M as part of the criminal background check process.

(g) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(h) "Newly hired" means the employment of a person after application or request for a position without regard to that person's current or previous employer; and

(i) "School district" means:

- (A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;
- (B) An education service district;
- (C) The Oregon School for the Deaf;
- (D) An educational program under the Youth Corrections Education Program; and

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- (E) A public charter school.
- (2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:
- (a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal record checks required by law;
- (b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;
- (c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;
- (d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has been convicted, of the crimes prohibiting employment that are listed in section (9) of this rule;
- (e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;
- (f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;
- (g) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and
- (h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.
- (3) Fingerprints may be collected by one of the following:
- (a) Employing school district staff;
- (b) Contracted agent of employing school district;
- (c) Local or state law enforcement agency.
- (4) School districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.
- (5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.
- (6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.
- (7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.
- (8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.
- (9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 are:
- (a) ORS 163.095 – Aggravated Murder;
- (b) ORS 163.115 – Murder;
- (c) ORS 163.185 – Assault in the First Degree;
- (d) ORS 163.235 – Kidnapping in the First Degree;
- (e) ORS 163.355 – Rape in the Third Degree;
- (f) ORS 163.365 – Rape in the Second Degree;
- (g) ORS 163.375 – Rape in the First Degree;
- (h) ORS 163.385 – Sodomy in the Third Degree;
- (i) ORS 163.395 – Sodomy in the Second Degree;
- (j) ORS 163.405 – Sodomy in the First Degree;
- (k) ORS 163.408 – Unlawful Sexual Penetration in the Second Degree;
- (l) ORS 163.411 – Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 – Sexual Abuse in the Third Degree;
- (n) ORS 163.425 – Sexual Abuse in the Second Degree;
- (o) ORS 163.427 – Sexual Abuse in the First Degree;
- (p) ORS 163.432 – Online sexual corruption of a child in the second degree;
- (q) ORS 163.433 – Online sexual corruption of a child in the first degree;
- (r) ORS 163.435 – Contributing to the Sexual Delinquency of a Minor;
- (s) ORS 163.445 – Sexual Misconduct;
- (t) ORS 163.465 – Public Indecency;
- (u) ORS 163.515 – Bigamy;
- (v) ORS 163.525 – Incest;
- (w) ORS 163.547 – Child Neglect in the First Degree;
- (x) ORS 163.575 – Endangering the Welfare of a Minor;
- (y) ORS 163.670 – Using Child in Display of Sexually Explicit Conduct;
- (z) ORS 163.675 (1985 Replacement Part) – Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;
- (aa) ORS 163.680 (1993 Edition) – Paying for Viewing Sexual Conduct Involving a Child;
- (bb) ORS 163.684 – Encouraging Child Sex Abuse in the First Degree;
- (cc) ORS 163.686 – Encouraging Child Sex Abuse in the Second Degree;
- (dd) ORS 163.687 – Encouraging Child Sex Abuse in the Third Degree;
- (ee) ORS 163.688 – Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
- (ff) ORS 163.689 – Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
- (gg) ORS 164.325 – Arson in the First Degree;
- (hh) ORS 164.415 – Robbery in the First Degree;
- (ii) ORS 166.005 – Treason;
- (jj) ORS 166.087 – Abuse of Corpse in the First Degree;
- (kk) ORS 167.007 – Prostitution;
- (ll) ORS 167.008 – Patronizing a Prostitute;
- (mm) ORS 167.012 – Promoting Prostitution;
- (nn) ORS 167.017 – Compelling Prostitution;
- (oo) ORS 167.057 – Luring a minor;
- (pp) ORS 167.062 – Sadoomasochistic Abuse or Sexual Conduct in Live Show;
- (qq) ORS 167.075 – Exhibiting an Obscene Performance to a Minor;
- (rr) ORS 167.080 – Displaying Obscene Materials to Minors;
- (ss) ORS 167.090 – Publicly Displaying Nudity or Sex for Advertising Purposes;
- (tt) ORS 475.808 – Unlawful manufacture of hydrocodone within 1,000 feet of school;
- (uu) ORS 475.810 – Unlawful delivery of hydrocodone;
- (vv) ORS 475.812 – Unlawful delivery of hydrocodone within 1,000 feet of school;
- (ww) ORS 475.818 – Unlawful manufacture of methadone within 1,000 feet of school;
- (xx) ORS 475.820 – Unlawful delivery of methadone; and
- (yy) ORS 475.822 – Unlawful delivery of methadone within 1,000 feet of school.
- (zz) ORS 475.828 – Unlawful manufacture of oxycodone within 1,000 feet of school;
- (aaa) ORS 475.830 – Unlawful delivery of oxycodone;
- (bbb) ORS 475.832 – Unlawful delivery of oxycodone within 1,000 feet of school;
- (ccc) ORS 475.848 – Unlawful manufacture of heroin within 1,000 feet of school;
- (ddd) ORS 475.852 – Unlawful delivery of heroin within 1,000 feet of school;
- (eee) ORS 475.858 – Unlawful manufacture of marijuana within 1,000 feet of school;
- (fff) ORS 475.860 – Unlawful delivery of marijuana;
- (ggg) ORS 475.862 – Unlawful delivery of marijuana within 1,000 feet of school;
- (hhh) ORS 475.864(4) – Unlawful possession of marijuana within 1,000 feet of school;

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- (iii) ORS 475.868 – Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (jjj) ORS 475.872 – Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (kkk) ORS 475.878 – Unlawful manufacture of cocaine within 1,000 feet of school;
- (lll) ORS 475.880 – Unlawful delivery of cocaine;
- (mmm) ORS 475.882 – Unlawful delivery of cocaine within 1,000 feet of school;
- (nnn) ORS 475.888 – Unlawful manufacture of methamphetamine within 1,000 feet of school;
- (ooo) ORS 475.890 – Unlawful delivery of methamphetamine;
- (ppp) ORS 475.892 – Unlawful delivery of methamphetamine within 1,000 feet of school;
- (qqq) ORS 475.904 – Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;
- (rrr) ORS 475.906 – Penalties for distribution to minors.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) A school district may terminate the employment of any subject individuals who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.

(12) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(13) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(14) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) District submitting the cards;
- (c) Date cards and Department form received;
- (d) Date completed card sent to Oregon State Police;
- (e) Date denial or probationary approval sent to district;
- (f) Date FBI card returned to Department; and
- (g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: ODE 25-2008, f. & cert. ef. 9-26-08; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 18-2009, f. & cert. ef. 12-10-09; ODE 2-2012, f. 2-1-12, cert. ef. 2-3-12

Rule Caption: Modifies rule requiring school districts to award extended diplomas to certain students, implementing HB 2283 (2011).

Adm. Order No.: ODE 3-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 10-1-2011

Rules Amended: 581-022-1133

Subject: The 2011 legislature enacted HB 2283, which modifies the extended diploma requirements relating to transition services and consent.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1133

Extended Diploma

(1) Definitions.

(a) “Other services” for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These “other services” are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A school district or public charter school shall award an extended diploma to a student who satisfies the requirements of this rule.

(3) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations.

(4) A school district or public charter school may award an extended diploma to a student only upon the consent of the parent or guardian of the student, or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the extended diploma is awarded. (A) If student is under 18, consent must be received from the parent or guardian.

(B) If the student is under age 18 and emancipated, consent must be received from the student.

(C) If the adult student is 18 or older, consent must be received from the student.

(D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(5) To be eligible for an extended diploma, a student must:

(a) Have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers or have a documented history of a medical condition that creates a barrier to achievement; and

(b)(A) Participate in an alternate assessment beginning no later than grade six and lasting for two or more assessment cycles; or

(B) Have a serious illness or injury that occurs after grade eight, that changes the student’s ability to participate in grade level activities and that results in the student participating in alternate assessments.

(c) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of science;

(D) Three credits of history, geography, economics or civics;

(E) One credit of health;

(F) One credit of physical education; and

(G) One credit of the arts or a second language;

(6)(a) A student shall have the opportunity to meet the requirements of an extended diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(b) A student may complete the requirements for an extended diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an extended diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an extended diploma in less than three years.

(7) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an extended diploma at each high school in the school district or at the public charter school.

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(b) Beginning in grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an extended diploma and the requirements for the extended diploma.

(c) A school district or public charter school may not deny a student who has the documented history described in subsection (1)(a) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.

(8)(a) A student who receives an extended diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(9) School districts and public charter schools shall make extended diplomas as required by ORS 329.451 and this rule first available to students during the 2009-2010 school year.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 329.451

Hist.: ODE 21-2009, f. & cert. ef. 12-10-09; ODE 3-2012, f. 2-1-12, cert. ef. 2-3-12

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Rule Caption: Modifies modified diploma requirements related to transition services and consent, implementing HB 2283 (2011).

Adm. Order No.: ODE 4-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 10-1-2011

Rules Amended: 581-022-1134

Subject: The 2011 legislature enacted HB 2283 which changed the requirements relating to transition services and consent for the modified diploma.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1134

Modified Diploma

(1) Definitions. As used in this rule:

(a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.

(b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.

(c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.

(d) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) On or after July 1, 2009, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma even with reasonable modifications and accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies. In addition, on or after July 1, 2009, a district school board or public charter school governing board may only award a modified diploma to a student who meets the eligibility criteria specified in section 3 of this rule.

(3)(a) Except as provided in paragraph (c) or (d) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) A student shall have the opportunity to meet the requirements of a modified diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for a modified diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for a modified diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction.

(D) The consent may not be used to allow a student to satisfy the requirements for a modified diploma in less than three years.

(d) A school district or public charter school may not deny a student who has the documented history described in paragraph (a) of this subsection the opportunity to pursue a diploma with more stringent requirements than a modified diploma for the sole reason that the student has the documented history.

(e) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(f) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(g) Notwithstanding paragraph (c) and (d) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

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(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student's school team must include an adult student, parent/ guardian of the student.

(b) A school district or public charter school may award a modified diploma to a student only upon the consent of the parent or guardian of the student or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the modified diploma is awarded.

(A) If student is under 18, consent must be received from the parent or guardian.

(B) If the student is under age 18 and emancipated, consent must be received from the student.

(C) If the adult student is 18 or older, consent must be received from the student or guardian.

(D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(c) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.

(d) Beginning in grade five, school district and public charter schools shall annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of a modified diploma and the requirements for the modified diploma.

(e) A student's school team may formally decide to revise a modified diploma decision.

(f) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit from high school if the documented history of the student described in section (3) of this rule has changed.

(5) Unit of credit requirements for students graduating with a modified diploma:

(a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:

(A) English Language Arts — 3;

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;

(E) Health Education — 1;

(F) Physical Education — 1; and

(G) Career Technical Education, The Arts or Second Languages (units may be earned in any one or a combination) — 1.

(b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:

(A) Additional core credits described in paragraph (a) of this section;

(B) Professional technical education;

(C) Electives; and

(D) Career development.

(c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.

(d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.

(e) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.

(f) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.

(6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through a continuum of instruction beginning at basic skills and progressing through high level skills.

(7) A school district or public charter school shall award a regular diploma under OAR 581-022-1130 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma; however, required core courses taken under modified conditions must be retaken under standard conditions to be counted toward a regular diploma.

(8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.

(9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-1130.

(10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.

(11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.

(12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;

(13) Each student receiving a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(14)(a) A student who receives a modified diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team or school team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

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(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(i) School districts and public charter schools shall ensure that students have on-site access to the appropriate resources to achieve a modified diploma at each high school in the school district or at the public charter school.

(15)(a) The unit of credit requirements in section (5) of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2007.

(b) If a student entered 9th grade prior to July 1, 2007, the student's team shall decide whether the student must meet the unit of credit requirements in section (5) of this rule to receive a modified diploma or the unit of credit requirements specified by the school district or public charter school for a modified diploma when the student entered 9th grade. If a student's team decides that a student may receive a modified diploma by meeting the unit of credit requirements required by the district or school when the student entered 9th grade, a school district or public charter school may award a student who entered 9th grade prior to July 1, 2007 a modified diploma if the student meets the unit of credit requirements for a modified diploma specified by the district or school when the student entered 9th grade.

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.451

Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 22-2009, f. & cert. ef. 12-10-09; ODE 4-2012, f. 2-1-12, cert. ef. 2-3-12

Rule Caption: Modifies alternative certificate requirements related to transition services and consent, implementing HB 2283 (2011).

Adm. Order No.: ODE 5-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 10-1-2011

Rules Amended: 581-022-1135

Subject: Modifies rule relating to alternative certificates awarded by school districts and schools to students, implementing HB 2283 (2011).

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1135

Alternative Certificate

(1) Definitions.

(a) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A School district or public charter school shall award an alternative certificate to a student who does not satisfy the requirements for a high school diploma, a modified diploma or an extended diploma.

(3)(a) Each district school board or public charter school governing board with jurisdiction over high school programs shall define criteria for an alternative certificate and shall award an alternative certificate to those students who have met the criteria requirements as described in district school board policies.

(4) A student shall have the opportunity to meet the requirements of an alternative certificate by the later of:

(a) Four years after starting grade nine; or

(b) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for an alternative certificate in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an alternative certificate.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an alternative certificate in less than three years.

(5) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an alternative certificate at each high school in the school district or at the public charter school.

(b) Beginning grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an alternative certificate and the requirements for the certificate.

(6) Each student receiving an alternative certificate shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(7)(a) A student who receives an alternative certificate shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services or other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.451

Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 23-2009, f. & cert. ef. 12-10-09; ODE 5-2012, f. 2-1-12, cert. ef. 2-3-12

Rule Caption: Private School Registration.

Adm. Order No.: ODE 6-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 12-1-2011

Rules Repealed: 581-045-0500, 581-045-0505, 581-045-0510, 581-045-0515, 581-045-0520, 581-045-0522, 581-045-0525, 581-045-0530, 581-045-0535, 581-045-0538, 581-045-0540, 581-045-0545, 581-045-0550, 581-045-0555, 581-045-0560, 581-045-0565, 581-045-0570, 581-045-0580

ADMINISTRATIVE RULES

Subject: Repeal of rules relating to registration of private schools implements SB 26 (2011). Private schools still must follow certain laws such as student records and child abuse reporting policies.

Rules Coordinator: Cindy Hunt—(503) 947-5651

Rule Caption: Modifies rule relating to criminal background checks of private school employees, implementing legislation from 2011.

Adm. Order No.: ODE 7-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 12-1-2011

Rules Amended: 581-045-0586

Subject: Implements legislation which amended list of crimes which prohibit person if committed from becoming school employee.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-045-0586

Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) A person employed by a Private School in a position not requiring licensure under ORS 342.223; and

(B) Any person newly hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) – \$28;

(B) Federal Bureau of Investigation (FBI) – \$24;

(C) Oregon Department of Education – \$10;

(D) TOTAL – \$62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-M.

(e) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Knowingly made a false statement" means that a subject individual has failed to disclose a crime on the Department of Education form #581-2283-M as part of the criminal background check process.

(h) "Private School" means a school that:

(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and

(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(2) A private school may request that Department of Education conduct a criminal records check of a subject individual. Upon receipt of the information, the Department shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of subject individual upon the private school's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has knowingly made a false statement as to conviction of a crime. A private school may choose to employ or contract

with a person who has knowingly made a false statement as to conviction of a crime.

(4) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. A private school may choose to employ or contract with a person who has been convicted of a crime listed in ORS 342.143 or the substantial equivalent. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 – Aggravated Murder;

(b) ORS 163.115 – Murder;

(c) ORS 163.185 – Assault in the First Degree;

(d) ORS 163.235 – Kidnapping in the First Degree;

(e) ORS 163.355 – Rape in the Third Degree;

(f) ORS 163.365 – Rape in the Second Degree;

(g) ORS 163.375 – Rape in the First Degree;

(h) ORS 163.385 – Sodomy in the Third Degree;

(i) ORS 163.395 – Sodomy in the Second Degree;

(j) ORS 163.405 – Sodomy in the First Degree;

(k) ORS 163.408 – Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 – Unlawful Sexual Penetration in the First Degree;

(m) ORS 163.415 – Sexual Abuse in the Third Degree;

(n) ORS 163.425 – Sexual Abuse in the Second Degree;

(o) ORS 163.427 – Sexual Abuse in the First Degree;

(p) ORS 163.432 – Online sexual corruption of a child in the second degree;

(q) ORS 163.433 – Online sexual corruption of a child in the first degree;

(r) ORS 163.435 – Contributing to the Sexual Delinquency of a Minor;

(s) ORS 163.445 – Sexual Misconduct;

(t) ORS 163.465 – Public Indecency;

(u) ORS 163.515 – Bigamy;

(v) ORS 163.525 – Incest;

(w) ORS 163.547 – Child Neglect in the First Degree;

(x) ORS 163.575 – Endangering the Welfare of a Minor;

(y) ORS 163.670 – Using Child in Display of Sexually Explicit Conduct;

(z) ORS 163.675 (1985 Replacement Part) – Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

(aa) ORS 163.680 (1993 Edition) – Paying for Viewing Sexual Conduct Involving a Child;

(bb) ORS 163.684 – Encouraging Child Sex Abuse in the First Degree;

(cc) ORS 163.686 – Encouraging Child Sex Abuse in the Second Degree;

(dd) ORS 163.687 – Encouraging Child Sex Abuse in the Third Degree;

(ee) ORS 163.688 – Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

(ff) ORS 163.689 – Possession of Materials Depicting Sexually Explicit Conduct of a child in the Second Degree;

(gg) ORS 164.325 – Arson in the First Degree;

(hh) ORS 164.415 – Robbery in the First Degree;

(ii) ORS 166.005 – Treason;

(jj) ORS 166.087 – Abuse of Corpse in the first Degree;

(kk) ORS 167.007 – Prostitution;

(ll) ORS 167.008 – Patronizing a Prostitute;

(mm) ORS 167.012 – Promoting Prostitution;

(nn) ORS 167.017 – Compelling Prostitution;

(oo) ORS 167.057 – Luring a minor;

(pp) ORS 167.062 – Sadoomasochistic Abuse or Sexual Conduct in Live Show;

(qq) ORS 167.075 – Exhibiting an Obscene Performance to a Minor;

(rr) ORS 167.080 – Displaying Obscene Materials to Minors;

(ss) ORS 167.090 – Publicly Displaying Nudity or Sex for Advertising Purposes;

ADMINISTRATIVE RULES

- (tt) ORS 475.808 – Unlawful manufacture of hydrocodone within 1,000 feet of school;
- (uu) ORS 475.810 – Unlawful delivery of hydrocodone;
- (vv) ORS 475.812 – Unlawful delivery of hydrocodone within 1,000 feet of school;
- (ww) ORS 457.818 – Unlawful manufacture of methadone within 1,000 feet of school;
- (xx) ORS 475.820 – Unlawful delivery of methadone; and
- (yy) ORS 475.822 – Unlawful delivery of methadone within 1,000 feet of school.
- (zz) ORS 475.828 – Unlawful manufacture of oxycodone within 1,000 feet of school;
- (aaa) ORS 475.830 – Unlawful delivery of oxycodone;
- (bbb) ORS 475.832 – Unlawful delivery of oxycodone within 1,000 feet of school;
- (ccc) ORS 475.848 – Unlawful manufacture of heroin within 1,000 feet of school;
- (ddd) ORS 475.852 – Unlawful delivery of heroin within 1,000 feet of school;
- (eee) ORS 475.858 – Unlawful manufacture of marijuana within 1,000 feet of school;
- (fff) ORS 475.860 – Unlawful delivery of marijuana;
- (ggg) ORS 475.862 – Unlawful delivery of marijuana within 1,000 feet of school;
- (hhh) ORS 475.864 – Unlawful possession of marijuana;
- (iii) ORS 475.868 – Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (jii) ORS 475.872 – Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (kkk) ORS 475.878 – Unlawful manufacture of cocaine within 1,000 feet of school;
- (lll) ORS 475.880 – Unlawful delivery of cocaine;
- (mmm) ORS 475.888 – Unlawful manufacture of methamphetamine within 1,000 feet of school;
- (nnn) ORS 475.890 – Unlawful delivery of methamphetamine;
- (ooo) ORS 475.892 – Unlawful delivery of methamphetamine within 1,000 feet of school;
- (ppp) ORS 475.904 – Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;
- (qqq) ORS 475.906 – Penalties for distribution to minors.
- (6) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action.
- (7) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:
- Card sequence number;
 - Name of Private School submitting the cards;
 - Date cards and Department form received;
 - Date incomplete card returned to the school (only if applicable);
 - Date completed card sent to Oregon State Police;
 - Date private school was notified of state police record or lack of record;
 - Date FBI card returned to Department;
 - Date private school was notified of FBI record or lack of record.
- Stat. Auth.: ORS 326.603
Stats. Implemented: ORS 326.603
Hist.: EB 16-1997, f. & cert. ef. 12-29-97; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; Administrative correction 8-2-04; ODE 9-2006, f. & cert. ef. 2-21-06; Renumbered from 581-022-1732, ODE 25-2008, f. & cert. ef. 9-26-08; ODE 27-2009, f. & cert. ef. 12-10-09; ODE 7-2012, f. 2-1-12, cert. ef. 2-3-12

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**Oregon Health Authority,
Addictions and Mental Health Division:
Addiction Services
Chapter 415**

Rule Caption: Substance Abuse and Problem Gambling Prevention Programs.

Adm. Order No.: ADS 1-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 2-9-12

Notice Publication Date: 1-1-2012

Rules Adopted: 415-056-0030, 415-056-0035, 415-056-0040, 415-056-0045, 415-056-0050

Rules Repealed: 415-056-0000, 415-056-0005, 415-056-0010, 415-056-0015, 415-056-0020, 415-056-0025

Subject: These rules prescribe standards and procedures for substance abuse and problem gambling prevention providers approved by the Addictions and Mental Health Division (AMH), and provide that a full continuum of services be available to Oregonians either directly or through written agreements or contracts.

Rules Coordinator: Nola Russell—(503) 945-7652

415-056-0030

Purpose and Scope

These rules prescribe standards and procedures for substance abuse and problem gambling prevention providers approved by the Addictions and Mental Health Division (AMH). These rules establish standards for community substance abuse and problem gambling prevention and provide that a full continuum of services be available to Oregonians either directly or through written agreements or contracts.

Stat. Auth.: ORS 409.410 & 413.042

Stats. Implemented: ORS 430.240 - 430.415

Hist.: ADS 1-2012, f. & cert. ef. 2-9-12

415-056-0035

Definitions

(1) "Approval" means the Letter of Approval issued by the Division to indicate that the substance abuse prevention and/or problem gambling program has been found in compliance with all relevant federal and Oregon laws and Oregon Administrative Rules (OAR).

(2) "Community Mental Health Program (CMHP)" means an entity that is responsible for planning and delivery of services for individuals with substance use disorders or a mental health diagnosis, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(3) "Coordinator" means the designated county or tribal program coordinator hired to oversee prevention services.

(4) "Cultural Competence" means the process by which individuals and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientation and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(5) "Deputy Director" means the Deputy Director of AMH.

(6) "Division" means the AMH Division of the Oregon Health Authority.

(7) "Evidenced-Based Practices" (EBP) means practices for which there is consistent scientific evidence that produce positive outcomes. An EBP must meet the criteria set forth by the Division.

(8) "Gender-Specific Services" means services which comprehensively address the needs of a gender group and foster positive gender identity development.

(9) "Letter of Approval" means the "Approval" as defined in 415-056-0035.

(10) "Institute of Medicine Model" means the framework that defines the target groups and activities addressed by various prevention efforts and includes the following:

(a) Promotion: Strategies that typically address the entire population. Strategies are aimed to enhance individuals' ability to achieve developmentally appropriate tasks (competence) and a positive sense of self-esteem, mastery, well-being and social inclusion, and strengthen their ability to cope with adversity;

(b) Universal Prevention: Universal strategies address the entire population with messages and programs aimed at preventing or delaying the substance abuse and/or problem gambling.

(c) Selective Prevention: Selective prevention strategies target subsets of the total population that are deemed to be at-risk for substance abuse or problem gambling by virtue of the membership in a particular population segment; and

(d) Indicated Prevention: Indicated prevention strategies are designed to prevent the onset of substance abuse or problem gambling in individuals who do not meet criteria for addiction but who are showing early danger signs.

(11) "Local Alcohol and Drug Planning Committee" (LADPC), means a committee appointed or designated by a board of county commis-

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sioners. The committee identifies needs and establishes priorities for substance abuse prevention, treatment and recovery services in the county. Members of the committee must be representative of the geographic area and include a number of minority members to reasonably reflect the proportion of need for minority services in the community.

(12) "Minority" means a participant whose cultural, ethnic or racial characteristics constitute a distinct demographic population including but not limited to members of differing cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders or sexual orientations.

(13) "Minority Program" means a program that is designed to meet the unique prevention needs of a minority group and that provides services to individuals belonging to a minority population as defined in these rules.

(14) "Participant" means an individual who receives services under these rules.

(15) "Prevention Provider" means a governmental entity, an organization or federally recognized tribe that undertakes to establish, operate or contract for prevention services.

(16) "Prevention Service" means an integrated combination of strategies designed to prevent substance abuse and/or problem gambling and associated effects regardless of the age of participants.

(17) "Strategy" means activities targeted to a specific population or the larger community that are designed to be implemented before the onset of problems as a means to prevent substance abuse and problem gambling or detrimental effects from occurring. The Center for Substance Abuse Prevention's strategies are defined below:

(a) Information Dissemination: This strategy provides knowledge and increases awareness of the nature and extent of alcohol and other drug use, abuse and addiction, as well as their effects on individuals, families and communities. It also provides knowledge and increases awareness of available prevention and treatment programs and services. It is characterized by one-way communication from the source to the audience with limited contact between the two;

(b) Education: This strategy builds skills through structured learning processes. Critical life and social skills include decision making, peer resistance, coping with stress, problem solving, interpersonal communication and systematic and judgmental abilities. There is more interaction between facilitators and participants than in the information dissemination strategy;

(c) Alternatives: This strategy provides participation in activities that exclude alcohol and other drugs and gambling. The purpose is to identify and offer healthy activities and to discourage the use of gambling, alcohol and drugs through these activities;

(d) Problem Identification and Referral: This strategy aims at identification of individuals who have indulged in illegal or age-inappropriate use of tobacco or alcohol or gambling and those individuals who have indulged in the first use of illicit drugs in order to assess if the individual's behavior can be reversed through education;

(e) Community Based Processes: This strategy provides ongoing networking activities and technical assistance to community groups or agencies. It encompasses neighborhood-based or industry led, grassroots, empowerment models using action planning and collaborative systems planning; and

(f) Environmental: This strategy establishes or changes written and unwritten community standards, codes and attitudes, thereby influencing alcohol and other drug use and gambling by the general population.

(18) "Tribal Authority" means an individual or group identified by the tribe that approves the prevention plan. Examples include a Tribal Council, Health Director or Prevention Supervisor.

Stat. Auth.: ORS 409.410 & 413.042
Stats. Implemented: ORS 430.240 - 430.415
Hist.: ADS 1-2012, f. & cert. ef. 2-9-12

415-056-0040

Administrative Requirements

(1) A prevention provider that contracts directly or indirectly with the Division must comply with all related administrative rules.

(2) Subcontracted agencies must be administered by staff in accordance with standards set forth in OAR 309-014-0000 through 0025 and 309-014-0030(3) through 0040.

(3) A fee schedule may be established that approximates actual cost of service delivery. The fee schedule must assess the cost to the participant for the service in accordance with the participant's ability to pay.

(4) A prevention provider must establish comprehensive written policies and procedures which describe program operations and compliance with these rules, and shall at minimum address the following:

(a) A mission, vision and values statement;

(b) An organizational management chart;

(c) The prevention framework that guides the program's prevention efforts;

(d) An anti-discrimination policy;

(e) A cultural competency plan;

(f) Gender specific services;

(g) The use of substances by program participants and staff during program activities;

(h) Gambling by program participants and staff during program activities;

(i) The protection and safety of service recipients and

(j) A process for referring individuals who are not appropriate for prevention services to more applicable resources such as emergency and crisis services, detoxification, mental health treatment and other services within the continuum of care.

(5) A request for certification will be considered by the Division after the CMHP or tribal authority, and the LADPC or other applicable committee has reviewed and commented on the request.

(6) Prevention providers must provide services that incorporate evidence based practices as defined in OAR 415-056-0035.

(7) Printed materials utilized by the program must be:

(a) Written with consideration to the demographic make-up of the program and in cultural competent language;

(b) In the participant's native language; and

(c) Reflective of current substance abuse and gambling prevention research and practice.

(8) The provider must report to the Division on approved standardized forms. All reporting must be done in accordance with Federal Confidentiality Regulations (42 CFR Part 2).

(9) The provider must ensure the privacy and safety of participants where appropriate and necessary.

(10) Providers must document coordination of activities with related community partners.

Stat. Auth.: ORS 409.410 & 413.042
Stats. Implemented: ORS 430.240 - 430.415
Hist.: ADS 1-2012, f. & cert. ef. 2-9-12

415-056-0045

Staff Requirements

(1) The substance abuse and/or problem gambling prevention program must be administered by staff in accordance with standards set forth in these rules.

(2) The Coordinator is qualified by virtue of knowledge, training, experience and skills. The Coordinator must be certified by the Addiction Counselor Certification Board of Oregon (ACCBO) as a Certified Prevention Specialist (CPS), or must acquire certification within two years from the date of hire.

(3) The Coordinator shall be employed greater than .50 FTE to carry out their responsibilities.

(4) Roles and authorities of the Coordinator include:

(a) Development, monitoring and oversight of the Prevention Implementation Plan, which shall be in compliance with the requirements set forth by the Division.

(b) Implementation of the defined strategies;

(c) Management of the program staff;

(d) Administration of funds;

(e) Accountability for the oversight and quality of prevention services; and

(f) Supervision of other staff related to their skill level with the goal of achieving the objectives of the prevention program and assisting staff to increase their knowledge, skills and abilities.

(5) Program staff providing more than .5 FTE hours of direct prevention services must:

(a) Have a CPS certification, or must acquire the certification within two years of hire;

(b) Have a workforce development plan utilized to assure compliance with these rules and to ensure each staff has opportunities to advance their prevention knowledge and skills; and

(c) Be culturally competent to serve the identified populations. Agencies who contract for the delivery of direct prevention services must assure that the contractors meet the requirements for prevention staff described in these rules.

(6) The number and responsibilities of the prevention staff must be sufficient to provide the services required under these rules, for the number of participants the program intends to serve.

Stat. Auth.: ORS 409.410 & 413.042
Stats. Implemented: ORS 430.240 - 430.415
Hist.: ADS 1-2012, f. & cert. ef. 2-9-12

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415-056-0050

Variations

Requirements and standards for requesting and granting variations or exceptions are found in OAR 415-012-0090.

Stat. Auth.: ORS 409.410 & 413.042

Stats. Implemented: ORS 430.240 - 430.415

Hist.: ADS 1-2012, f. & cert. ef. 2-9-12

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Subject: This rule activity changes the definition of "vendor" to "contractor" and clarifies several existing statements and requirements.

Rules Coordinator: Nola Russell—(503) 945-7652

415-065-0010

Definitions

The following terms mean:

(1) "Admitted to the hospital for mental illness" for purposes of ORS 676.190 means admitted to the hospital for treatment of a mental health disorder that gives rise to concerns about the licensee's ability or willingness to participate in the program. Admission for evaluation or diagnosis does not constitute being admitted to the hospital for mental illness.

(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) "Authority" means the Oregon Health Authority.

(4) "Board" means a health professional regulatory board as defined in ORS 676.160 or the Oregon Health Licensing Agency for a board, council or program listed in 676.606.

(5) "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, except legal holidays as defined in ORS 187.010 or 187.020.

(6) "Comply Continuously" means to have been:

(a) Enrolled in the program for at least two uninterrupted years without any reports of substantial noncompliance involving significant violations of the monitoring agreement and

(b) Deemed by the contractor if self-referred, or by the licensee's board if board referred, to have otherwise successfully complied with all terms of the monitoring agreement.

(7) "Contractor" means the entity that has contracted with the Division to conduct the program.

(8) "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.

(9) "Division" means the Oregon Health Authority, Addictions and Mental Health Division.

(10) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders-IV-R, published by the American Psychiatric Association.

(11) "Family" means any natural, formal, or informal support persons identified as important by the licensee.

(12) "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) for the substances listed there.

(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 49 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 49 CFR § 199.105(c)(7)(2009).

(13) "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.

(14) "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.

(15) "Individual service record" means the official permanent program documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the program to demonstrate compliance with these rules

(16) "Licensee" means a health professional who is licensed or certified by or registered with a board and the professional is receiving services in the program under these rules.

(17) "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.

(18) "Monitoring agreement" means an individualized agreement between a licensee and the contractor that meets the requirements for a diversion agreement set by ORS 676.190.

(19) "Monitoring Entity" means an independent third-party that monitors licensees' program enrollment status and monitoring agreement compliance.

(20) "Non-treatment compliance monitoring" means the non-medical, non-therapeutic services employed by the contractor to track and report the licensee's compliance with the monitoring agreement.

(21) "Peer" means another licensee currently enrolled in the program.

(22) "Provisional enrollment" means temporary enrollment, pending verification that a self-referred licensee meets all program eligibility criteria.

(23) "Self-referred licensee" means a licensee who seeks to participate in the program without a referral from the board.

(24) "Substance Use Disorders" means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder and other disorders, as defined in DSM criteria.

(25) "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 program. 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.

(26) "Successful completion" means that for the period of service deemed necessary by the contractor or by the licensee's board by rule, the licensee has complied with the licensee's monitoring agreement to the satisfaction of the program, and has met the terms of the fee agreement between the program and the licensee.

(27) "Toxicology testing" means urine testing or alternative chemical monitoring including but not limited to blood, saliva, hair or breath.

(28) "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.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 3-2011, f. & cert. ef. 8-16-11; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0015

Clinical Council

(1) The Division, in collaboration with the boards, may establish a Clinical Council that provides clinical guidance and advice to the contractor, in light of evidenced-based research and data about substance use disorders, mental health disorders or both types of disorders.

(2) The Clinical Council shall consist of eight members. The Division shall appoint one member and the boards, in consultation with the Division, shall appoint seven members.

(3) The Clinical Council shall select a chairperson from among its members.

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(4) To be eligible for appointment to the Clinical Council, an individual must be a resident of Oregon and must have expertise in the recognition, intervention, assessment and treatment of persons who have a substance use disorders, mental health disorders or both types of disorders.

(5) In recruiting and selecting members for the Clinical Council, the Division and the boards shall seek members who have expertise with a range of culturally appropriate treatment options for people with substance use disorders, mental health disorders or both types of disorders.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 3-2011, f. & cert. ef. 8-16-11; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0025

Record Maintenance and Disposition

(1) If the contractor discontinues operations, the contractor shall transfer the individual service records and the program service records to the Division.

(2) The Division shall identify a records administrator, who is responsible for:

(a) Assuring compliance with 42 CFR § 2.19 and other applicable state and federal regulations;

(b) Keeping the transferred individual service records consistent with the applicable records retention schedule; and

(c) With a licensee's written consent, transferring individual service records to another contractor.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0030

Administration Fee

(1) Each board that participates in the program shall pay the Division a fee for participating in the program.

(2) The Division shall calculate the total fee based on all the contractor costs and administration expenses, including but not limited to, Division personnel costs and ancillary expenses, and fees paid to the contractor, the monitoring entity, and the auditor.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0035

Board Referrals

(1) A board that refers a licensee to the program must make the referral in writing. The referral must include:

(a) A copy of a report from an independent third-party evaluator who diagnosed the licensee with a substance use disorder, a mental health disorder or both types of disorder, stating the diagnosis and the applicable diagnostic code from the DSM;

(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 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 imposed by the board or recommended by the board on the licensee's professional practice;

(e) 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; and

(f) A written statement from the licensee agreeing to enter the program and agreeing to abide by all terms and conditions established by the contractor.

(2) A board-referred licensee is enrolled in the program effective on the date the contractor receives the licensee's signed consents and the monitoring agreement including payment of fees as required by ORS 676.190.

(3) Upon the licensee's enrollment in the program, the contractor shall send to the monitoring entity a copy of the licensee's monitoring agreement and the consents required by ORS 676.190.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0040

Self-Referrals

(1) 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 contractor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers;

(b) Sign a written consent allowing disclosure and exchange of information between the contractor, the board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the contractor determines the licensee to be in substantial noncompliance with his or her monitoring agreement. The purpose of the disclosure is to permit the contractor and the monitoring entity to notify the board if the contractor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;

(c) Sign a written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the contractor within three business days after the licensee is arrested or convicted;

(d) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her board; and

(e) Agree to and sign a monitoring agreement.

(2) Upon provisional enrollment, the contractor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section (1) of this rule.

(3) Enrollment: To move from provisional enrollment to enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the contractor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the contractor'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 contractor.

(4) Once a contractor provisionally enrolls a self-referred licensee in the program, failure to complete enrollment may constitute substantial non-compliance and may be reported to the board.

(5) Upon enrollment of a self-referred licensee, the contractor 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 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0045

Licensee Responsibilities

(1) Board-referred licensees must:

(a) 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; and

(b) Be responsible for the cost of evaluations, toxicology testing and treatment.

(2) Self-referred licensees must:

(a) Provide to the contractor a copy of a report of the licensee's criminal history periodically, as required by the contractor;

(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; and

(c) Be responsible for the cost of evaluations, toxicology testing and treatment.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0050

Unique Identification Number

(1) The contractor shall assign a unique licensee identification number to each licensee the contractor enrolls in the program:

(a) The contractor, the monitoring entity, and the Division shall use the same number and shall include the number in any communications or data exchanges involving the licensee;

(b) The contractor shall not assign the identification number to any other licensee enrolled in the program;

(c) The contractor shall retire the number when the licensee is no longer enrolled in the program; and

(d) The contractor shall reassign the number to the licensee if the contractor reenrolls the licensee at a later date.

(2) The contractor may not use all or a portion of a licensee's social security number as the unique identification number.

Stat. Auth.: ORS 413.042 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

ADMINISTRATIVE RULES

415-065-0055

Program Requirements

The contractor shall:

(1) Inform the licensee about the program services, requirements, benefits, risks, and confidentiality limitations and ensure that the licensee has signed a consent for services. The consent for services explains:

(a) Information the contractor will give to the board or to the monitoring entity and under what circumstances;

(b) Information the monitoring entity will give to the board and under what circumstances; and

(c) That the board may take action to suspend, restrict, modify, or revoke the licensee's license or end the licensee's participation in the program based on information from the contractor or the monitoring entity.

(2) Enter into a monitoring agreement with the licensee;

(3) Assess the licensee's compliance with his or her monitoring agreement;

(4) Assess the ability of the licensee's employer, when an employer exists to supervise the licensee, and require the employer to establish minimum training requirements for the licensee's supervisor;

(5) Report the licensee's substantial noncompliance with his or her monitoring agreement to the monitoring entity within one business day after the contractor learns of any substantial noncompliance; and

(6) At least weekly, submit a list to the monitoring entity of licensees who are enrolled in the program and a list of licensees who successfully completed the program.

(7) Seek a court order authorizing the contractor to release identifying information to a licensee's board, including a report of substantial noncompliance as is described in OAR 415-065-0060, if a self-referred licensee enrolled in the program, or a provisionally enrolled licensee with a qualifying diagnosis, revokes his or her consent to report substantial noncompliance to the licensee's board.

(a) The contractor shall file documents with the court seeking a court order as soon as possible but no later than three business days from the date it was notified that the licensee revoked consent to report substantial noncompliance.

(b) The contractor shall comply with 42 USC & 290dd-2(b)(2); 42 CFR Part 2; the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, 45 CFR Parts 160, 162 and 164 and ORS 179.505, ORS 192.518–192.524 in seeking such a court order.

(c) The contractor shall disclose to the licensee's board, within one (1) business day, any information the court authorizes it to disclose.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 1-2011(Temp), f. & cert. ef. 2-11-11 thru 8-5-11; ADS 3-2011, f. & cert. ef. 8-16-11; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0060

Reports of Substantial Noncompliance

(1) Unless otherwise prohibited by law, when the contractor reports a licensee's substantial noncompliance to the monitoring entity, the report shall include:

(a) A description of the noncompliance;

(b) A copy of the report from the independent third-party evaluator who diagnosed the licensee stating the licensee's diagnosis;

(c) A copy of the licensee's monitoring agreement; and

(d) The licensee's practice or employment status.

(2) In addition to reporting substantial noncompliance to the monitoring entity, the contractor may report substantial noncompliance directly to the licensee's board.

(3) The contractor and the licensee's board may also exchange information in the absence of substantial noncompliance, consistent with the licensee's consent to disclose information.

(4) A positive toxicology result as determined by 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.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

415-065-0065

Program Services

The contractor shall provide the following services:

(1) Safe Practice Investigations of Self-referred Licensees:

(a) The contractor shall conduct a focused safe-practice investigation of a self-referred licensee to determine whether the licensee's practice while impaired presents or has presented a danger to the public. The inves-

tigation may include contractor interviews with the licensee's employer, supervisor, co-workers, family, or significant others.

(b) The contractor shall complete the safe-practice investigation within 15 business days of the contractor's receipt of the independent third party's evaluation with a qualifying diagnosis. The licensee remains provisionally enrolled in the program during this process.

(2) Monitoring Agreements:

(a) The contractor shall develop and the licensee shall sign an individualized, written monitoring agreement that is based on the contractor's comprehensive review of the independent third-party's evaluation and treatment recommendations and any other relevant and appropriate information, which may include information from employers, supervisors, co-workers, family, and significant others.

(b) The contractor shall amend the monitoring agreement as necessary to respond to changes in the licensee's situation, with the goal of protecting the public.

(c) The contractor shall give the licensee and their employer, when an employer exists, a copy of the licensee's monitoring agreement, including any amendments, and shall immediately place a copy of the monitoring agreement, including any amendments, in the licensee's individual service record.

(d) The monitoring agreement shall:

(A) Require the licensee to participate in the program for at least two years or longer, as specified by board rule or order;

(B) Require the licensee to participate in a treatment provider's treatment plan;

(C) Outline the limits on the licensee's health profession practice by the contractor and the board;

(D) Notify the licensee that the program, in its discretion, may require the licensee to obtain an evaluation of the licensee's fitness to practice before the program removes limits on the licensee's health profession practice;

(E) Outline methods for the licensee's employer to monitor and report on the licensee's safe practice;

(F) Based on the independent third-party evaluator's evaluation, require the licensee to abstain from all mind-altering or intoxicating substances or potentially addictive drugs, unless the program approves the licensee to use a particular drug prescribed for the licensee by a person authorized by law to prescribe for the licensee's documented medical condition;

(G) Require the licensee to report to the program the licensee's use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours of the licensee's use of the substances or drugs;

(H) Require the licensee to submit to random toxicology testing, per an individualized schedule;

(I) Require the licensee to report his or her arrest for or conviction of a misdemeanor or felony crime to the contractor within three business days if the licensee is arrested or convicted;

(J) Require the licensee to report to the contractor any of the licensee's applications for licensure in other states, changes in employment, changes in practice setting, and changes in residence;

(K) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement; and

(L) Require the licensee to attend compliance consultation group meetings on an individualized schedule based on the contractor's assessment of the licensee's need for additional accountability and structure and based on board's monitoring requirements.

(e) Boards may provide other requirements by rule, including allowing for practice supervision of sole practice licensees or other licensees not in an employment setting.

(3) Compliance Consultation Group Meetings. If required by a board's rules, a licensee identified by the board must attend compliance consultation group meetings. Any board-referred or self-referred licensee may elect to attend the meetings. There may be a fee for the meetings.

(a) The contractor shall conduct or arrange for non-treatment compliance consultation group meetings in which a monitoring consultant meets face-to-face, either directly or by tele-video, with licensees identified by a board to determine the licensee's overall compliance with his or her monitoring agreement and for the licensee to gain peer support for his or her compliance efforts.

(b) A monitoring consultant shall conduct each compliance consultation group meeting.

(c) The monitoring consultants shall assess the licensee's progress with his or her monitoring agreement and provide holistic progress reports

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to the contractor regarding the licensee's status in relation to, but not limited to, his or her: compliance with the monitoring agreement, compliance with the treatment provider's treatment plan, recovery activities, emotional and physical health, work-place dynamics, and relationship and boundary concerns.

(d) The licensee's board may elect to pay for the licensee's participation in the compliance consultation group meetings or the board may require the licensee to pay for the service.

(4) Toxicology Testing. The contractor shall ensure that:

(a) The licensee receives a baseline toxicology test within five business days of the date the contractor enrolls the licensee in the program;

(b) The licensee receives a final toxicology test before the licensee is deemed to successfully complete the program;

(c) All monitoring agreements contain provisions requiring three types of toxicology testing:

(A) Testing customized to the licensee's circumstances, including where appropriate requiring expanded toxicology testing drug panels and long-acting alcohol consumption toxicology testing;

(B) Random testing; and

(C) Testing that is required when the contractor has reason to believe that the licensee may have used alcohol or other drugs in violation of the licensee's monitoring agreement.

(d) The contractor's toxicology testing laboratory is certified by the Substance Abuse and Mental Health Services Administration and accredited through the College of American Pathologists Forensic Drug Testing Accreditation Program.

(e) In addition, the laboratory shall perform testing in compliance with OAR 333-024-0305 through 333-024-0350.

(f) Urinalysis specimens are collected in a way that preserves the integrity of the specimen. Unless otherwise provided by the licensee's board by rule, the person collecting the sample must be able to see the licensee void.

(g) If the contractor suspects that the licensee has used alcohol or other drugs in violation of the licensee's monitoring agreement or suspects that the licensee has attempted to provide a false or dilute urine sample, the licensee may be required to provide a directly observed urine specimen under the procedures described in 49 CFR 40.67(g) through (k), including:

(A) A person of the same gender as the licensee must ask the licensee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist, and lower clothing and underpants to demonstrate, by turning around, that the licensee does not have a prosthetic device to dispense urine; and

(B) A person of the same gender as the licensee must watch the urine go from the licensee's body into the specimen collection container.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12

**Oregon Health Authority,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309**

Rule Caption: Handling Patient Mail In State Institutions.

Adm. Order No.: MHS 1-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 2-9-12

Notice Publication Date: 1-1-2012

Rules Adopted: 309-102-0100, 309-102-0110, 309-102-0120, 309-102-0130, 309-102-0140, 309-102-0150

Rules Repealed: 309-102-0100(T), 309-102-0110(T), 309-102-0120(T), 309-102-0130(T), 309-102-0140(T), 309-102-0150(T)

Subject: The verbiage in OAR 309-102(3)(b) must be corrected in order to accurately reflect the need to protect patients' confidentiality. AMH is also correcting the Statutory Authority for each rule.

Rules Coordinator: Nola Russell—(503) 945-7652

309-102-0100

Purpose and Scope

(1) Purpose. These rules prescribe the standards for handling mail belonging to patients in state institutions, including mail arriving for patients and mail patients are sending from the state institution.

(2) Scope. These rules apply to all individuals residing in a state institution as defined in OAR 309-102- 0005.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

309-102-0110

Definitions

(1) "Contraband" means any controlled substance, drug paraphernalia, unauthorized currency or any other article which by statute, rule, order or the state institution's policies, is prohibited from being in a patient's possession, and the use of which could endanger the safety or security of the institution.

(2) "Controlled Substance" means a drug or its immediate precursor classified under the federal Controlled Substances Act and as modified under ORS 475.035.

(3) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(4) "Drug Paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Oregon Revised Statute (ORS) 475.840 to 475.980 (ORS 475.525(2)).

(5) "Electronic Mail" means digital messages transmitted electronically.

(6) "Journalist Mail" means any mail sent to news media organizations such as, but not limited to newspapers, magazines and television station news departments.

(7) "Legal Mail" means any mail received from or addressed to, any attorney, court, tribal official, elected official, disability rights organizations or advocacy group that is part of the system outlined in ORS 192.517.

(8) "Limited Item" means any food, non-prescribed medicine, vitamins, supplements or other article which is allowed for patient use, but which must be held or kept in a specific area for reasons of maintaining public health standards to ensure proper dosage or to limit its ingestion, viewing or other use to the owner of the item.

(9) "Mail" means any letter, post card, periodical or any other type of envelope or package, except for legal mail and journalist mail.

(10) "Patient" means a person who is residing in a state institution.

(11) "Prohibited Item" means:

(a) Alcohol, controlled substances or drug paraphernalia;

(b) Any item that reasonably could be used as or turned into a weapon or instrument of escape;

(c) Any item the possession of which is considered detrimental to the treatment of a specific patient and which is recorded as prohibited with the rationale in the patient's chart by the treating physician; or

(d) Any item the possession of which is disallowed to a clearly defined portion of the patient population or to the entire patient population pursuant to the institution's policies.

(12) "Reasonable Cause" means a person has knowledge or notice of facts or circumstances which would lead a person of ordinary care and prudence to have a strong suspicion that a specific piece of mail contains a prohibited or limited item.

(13) "Safety" means the institution and all patients and others persons within and around it are free from injury, threats, harassment, identity theft or other dangers.

(14) "Security" means prevention of any patient's potential escape from a state institution or the prevention of damage to institutional or personal property within the grounds of the state institution.

(15) "State Institution" means all Oregon State Hospital campuses including the Blue Mountain Recovery Center.

(16) "Superintendent" means the executive head of any state institution or that person's designee.

(17) "Treatment Care Plan" means an individualized and comprehensive written plan of therapeutic interventions designed, in collaboration between the patient and his or her treatment team, to facilitate rehabilitation of psychiatric symptoms and eventual independence.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

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309-102-0120

Patient Rights Related to Mail

(1) Except as outlined in OAR 309-102-0130 through 309-102-0140, all patients in state institutions shall have the right to communicate freely by sending and receiving sealed mail.

(2) All journalist, legal or other mail may be sent or delivered by hand or via any parcel delivery service.

(3) Except as provided in ORS 309-102-0130 through 309-102-0140, no employee or any person acting through or on behalf of the Division shall:

(a) Open, read, censor, inspect or otherwise examine any patient's incoming or outgoing mail without the expressed permission of the patient who is the sender or the receiver of the mail;

(b) Prevent, obstruct or delay any patient's outgoing mail from being promptly mailed; or

(c) Prevent, obstruct or delay any patient's incoming mail from being promptly delivered to the patient.

(4) Except as required for treatment reasons, employees having read or examined a patient's mail shall protect the patient's confidentiality by refraining from discussions related to the mail.

(5) A patient shall be promptly informed, verbally and in writing, of:

(a) Any limitation to the right to send or receive sealed mail;

(b) Any item having been opened by staff; and

(c) Any item being held pursuant to these rules.

(6) At the request of a patient with a need, an employee may assist in reading or sending mail. Need for this assistance shall first be documented in the patient's Treatment Care Plan by the physician.

(7) Patients shall be provided a reasonable amount of writing material by the state institution, as defined in policy. Stamps shall be available for purchase by patients with funds. Patients without funds will be provided a reasonable number of stamps by the state institution, as defined in policy.

(8) The exchange of electronic mail is an earned privilege and is related to the patient's recent behaviors, current level of care and other privileges.

(9) The application of these rules may be contested by way of the state institution's grievance procedures.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

309-102-0130

Mail Suspected To Contain Contraband, Limited Items or Evidence of a Crime

(1) The superintendent may designate in writing, certain areas of the state institution as locked high security areas that require additional precautions to protect the safety and security of the facility.

(2) In designated areas, employees of the state institutions may open all except legal mail in the presence of the patient as prescribed in this rule, even though there may not be reasonable cause to believe that a specific piece of mail contains a prohibited or limited item.

(3) In order to ensure the health or safety of individuals or the safety or security of the institution, the superintendent may additionally order:

(a) Incoming and outgoing mail be scanned with non-invasive technology including but not limited to x-rays or metal detectors;

(b) Mailed electronic equipment or other items which may have had contraband placed within, be given additional scrutiny such as, but not limited to turning the item on to ensure it's basic functionality or opening up the item to look inside.

(4) When there is reasonable cause to suspect mail contains a limited item, the superintendent may order the item be opened by staff in the presence of the patient.

(a) If a limited item is found within the mail, the item will be stored and made available to the patient pursuant to the state institution's related policies and procedures.

(b) If there is no limited or prohibited item within, the patient may retain possession of the limited item.

(5) When there is reasonable cause to suspect mail contains evidence of a real or potential crime, the following steps shall occur:

(a) If the real or potential crime may immediately threaten the health or safety of individuals or the safety or security of the institution or the health or safety of any affiliated person, the superintendent may hold, open or otherwise inspect the mail.

(b) If the real or potential crime does not appear to immediately threaten the health or safety of individuals or the safety or security of the institution, the superintendent is authorized to:

(A) Contact a law enforcement agency and request a judicial warrant to open the mail and

(B) Hold the mail until either the judicial warrant is denied or the warrant is received and the item is confiscated by the law enforcement agency.

(c) If the judicial warrant is denied the item must promptly be delivered to the patient.

(d) If the item is confiscated, opened and examined and found to be permissible the item must promptly be delivered to the patient.

(e) If the item is found to contain evidence of a real or potential crime, it will remain in possession of the law enforcement agency for further action.

(6) The intended recipient of any mail withheld pursuant to this rule will be promptly informed of the action unless there is reasonable cause to believe that doing so may:

(a) Increase the potential threat to the health or safety of individuals or the safety or security of the institution or

(b) Destroy or adversely alter the suspected evidence of a real or potential crime.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

309-102-0140

Disposition of Mail Retained or Delivered To Patient

(1) Once opened under staff supervision for inspection, permissible items shall not be read or otherwise further inspected and shall be delivered without undue delay to the patient.

(2) Any item retained from a patient's mail shall be clearly marked to identify, at minimum the date of the inspection and retention, the patient's name, the name and address of the sender, a description of the held items and both the printed name and the signature of the employee conducting the process. The item shall then be handled as provided in the Division's rules related to the handling of personal property of patients in state institutions.

(3) When any item is confiscated by a law enforcement agency, each part of the process shall be documented in the patient's chart with, at minimum, the date of inspection and confiscation, the patient's name, the name and address of the sender, a description of the confiscated item or items and both the printed name and the signature of the employee who witnessed the law enforcement's confiscation.

(4) All documentation related to any held item shall be in writing and kept in the patient's chart. The patient shall receive a legible copy of each document.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

309-102-0150

Notice to Patients and Employees

(1) Upon admission to the state institution, patients shall be informed of these rules and the institution's related policies and procedures, all their legal rights as detailed in ORS 426.385 and instructions on how to obtain a copy of these rules.

(2) The superintendent of the state institution shall ensure these rules and any related policies and procedures are thoroughly explained to each employee upon the commencement of their employment and annually thereafter.

(3) Violation of these rules and any related institutional policies or procedures by an employee of the Division shall constitute cause for disciplinary action.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.360 & 426.385

Hist.: MHS 5-2011, f. & cert. ef. 8-3-11; MHS 8-2011(Temp), f. & cert. ef. 10-27-11 thru 4-20-12; MHS 1-2012, f. & cert. ef. 2-9-12

Rule Caption: Mental Health Services For Homeless Individuals.

Adm. Order No.: MHS 2-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 2-9-12

Notice Publication Date: 1-1-2012

Rules Adopted: 309-032-0301, 309-032-0311, 309-032-0321, 309-032-0331, 309-032-0341, 309-032-0351

Rules Repealed: 309-032-0301(T), 309-032-0311(T), 309-032-0321(T), 309-032-0331(T), 309-032-0341(T), 309-032-0351(T)

ADMINISTRATIVE RULES

Subject: The Addictions and Mental Health (AMH) Division is revising these rules to correct a technical mistake.

Rules Coordinator: Nola Russell—(503) 945-7652

309-032-0301

Purpose and Scope

These rules prescribe the standards for community-based programs that serve individuals with a serious mental illness experiencing homelessness under the Projects for Assistance in Transition from Homelessness (PATH) program.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

309-032-0311

Definitions

(1) “Co-Occurring Disorders” (COD) means the existence of at least one diagnosis of a substance use disorder and one diagnosis of a serious mental illness.

(2) “Community Mental Health Program” (CMHP) means an entity that is responsible for planning and delivery of services for individuals with substance use or mental illness diagnoses, operated in a specific geographic area of the state under an intergovernmental agreement or a direct contract with the Addictions and Mental Health Division (AMH).

(3) “Division” means the Addictions and Mental Health Division of the Oregon Health Authority (OHA).

(4) “Eligible Individual” means an individual who, as defined in these rules:

- (a) Is homeless or at imminent risk of becoming homeless and
- (b) Who has, or is reasonably assumed to have, a serious mental illness.
- (c) The individual may also have a co-occurring substance use disorder.

(5) “Enrolled” means an eligible individual who:

- (a) Receives services supported at least partially with PATH funds and
- (b) Has an individual service record that indicates enrollment in the

PATH program.

(6) “Homeless Individual” means an individual who:

- (a) Lacks housing without regard to whether the individual is a member of a family and whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations; or
- (b) Is a resident in transitional housing that carries time limits.

(7) “Individual” means an individual potentially eligible for or who has been enrolled to receive services described in these rules.

(8) “Individual Service and Support Plan” (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an eligible individual that is reflective of the intended outcomes of service.

(9) “Imminent Risk of Homelessness” means that an individual is:

- (a) Living in a doubled-up living arrangement where the individual’s name is not on the lease;
- (b) Living in a condemned building without a place to move;
- (c) In arrears in their rent or utility payments;
- (d) Subject to a potential eviction notice without a place to move; or
- (e) Being discharged from a health care or criminal justice institution without a place to live.

(10) “Individual Service Record” means the written or electronic documentation regarding an enrolled individual that summarizes the services and supports provided from point of entry to service conclusion.

(11) “Literally Homeless Individual” means an individual who lacks housing without regard to whether the individual is a member of a family, including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations.

(12) “Local Mental Health Authority” (LMHA) means one of the following entities:

(a) The Board of County Commissioners of one or more counties that establishes or operates a CMHP;

(b) The tribal council of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services or

(c) A regional LMHA comprised of two or more boards of county commissioners.

(13) “Outreach” means the process of bringing individuals into treatment who do not access traditional services.

(14) “Projects for Assistance in Transition from Homelessness” (PATH) means the Formula Grants, 42 U.S.C. 290cc-21 to 290-cc-35.

(15) “Qualified Mental Health Professional” (QMHP) means any person who meets one of the following minimum qualifications as authorized by the LMHA or designee:

- (a) A Licensed Medical Practitioner;
- (b) A graduate degree in psychology, social work, or recreational, art or music therapy;

(c) A graduate degree in a behavioral science field;

(d) A bachelor’s degree in occupational therapy and licensed by the State or Oregon; or

(e) A bachelor’s degree in nursing and licensed by the State of Oregon.

(16) “Secretary” means the Secretary of the U.S. Department of Health and Human Services.

(17) “Serious Mental Illness” means a psychiatric condition experienced by an individual who is 18 years of age or older and who is:

(a) Diagnosed by a QMHP as suffering from a serious mental disorder as defined in Oregon Revised Statutes (ORS) 426.495 which includes, but is not limited to conditions such as schizophrenia, affective disorder, paranoid disorder, and other disorders which manifest psychotic symptoms that are not solely a result of a developmental disability, epilepsy, drug abuse or alcoholism; and which continue for more than one year, or

(b) Is impaired to an extent which substantially limits the individual’s consistent ability to function in one or more of the following areas:

(A) Independent attendance to the home environment including shelter needs, personal hygiene, nutritional needs and home maintenance;

(B) Independent and appropriate negotiation within the community such as utilizing community resources for shopping, recreation, transportation and other needs;

(C) Establishment and maintenance of supportive relationships; or

(D) Maintained employment sufficient to meet personal living expenses or engagement in other age appropriate activities.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

309-032-0321

Eligible Services

(1) Effective outreach to engage people in the following array of services:

- (a) Identification of individuals in need;
- (b) Screening for symptoms of serious mental illness;
- (c) Development of rapport with the individual;
- (d) Offering support while assisting with immediate and basic needs;
- (e) Referral to appropriate resources; or
- (f) Distribution of information including but not limited to:
 - (A) Flyers and other written information;
 - (B) Public service announcements; or
 - (C) Other indirect methods of contact.

(2) Methods of active outreach including but not limited to face-to-face interaction with literally homeless people in streets, shelters, under bridges and in other non-traditional settings, in order to seek out eligible individuals.

(3) Methods of in-reach, including but not limited to placing outreach staff in a service site frequented by homeless people, such as a shelter or community resource center, where direct, face to face interactions occur, in order to allow homeless individuals to seek out outreach workers.

(4) Screening and diagnosis.

(5) Habilitation and rehabilitation services.

(6) Community mental health services.

(7) Alcohol or drug treatment services.

(8) Staff training, including the training of those who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services.

(9) Case management including the following.

(a) Preparing a plan for the provision of community mental health services to the eligible individual and reviewing the plan not less than once every three months;

(b) Assistance in obtaining and coordinating social and maintenance services for the eligible individual, including services related to daily living activities, personal financial planning, transportation, and housing services;

(c) Assistance to the eligible individual in obtaining income support services including housing assistance, food stamps and supplemental security income benefits;

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(d) Referring the eligible individual for such other services as may be appropriate and

(e) Providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act [42 U.S.C. 1383(a)(2)] if the eligible individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq.] and if the applicant is designated by the Secretary to provide such services;

(10) Supportive and supervisory services in residential settings;

(11) Housing services, which shall not exceed twenty percent of all total PATH expenses and which may include:

(a) Minor renovation, expansion and repair of housing;

(b) Planning of housing;

(c) Technical assistance in applying for housing assistance;

(d) Improving the coordination of housing services;

(e) Security deposits;

(f) The costs associated with matching eligible individuals with appropriate housing situations; or

(g) One time rental payments to prevent eviction; and

(12) Referrals to other appropriate services or agencies, for those determined ineligible for other PATH services.

(13) Other appropriate services as determined by the Secretary.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

309-032-0331

Staff Qualifications and Training Standards

(1) Staff delivering case management and outreach services to individuals shall have demonstrated ability to:

(a) Identify individuals who appear to be seriously mentally ill;

(b) Identify service goals and objectives and incorporate them into an ISSP; and

(b) Refer the individuals for services offered by other agencies.

(2) All staff delivering PATH services shall have training, knowledge and skills suitable to provide the services described in these rules.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

309-032-0341

Rights of Eligible Individuals

(1) In addition to all applicable statutory and constitutional rights, every eligible individual receiving services has the right to:

(a) Choose from available services and supports;

(b) Be treated with dignity and respect;

(c) Have all services explained, including expected outcomes and possible risks;

(d) Confidentiality and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 192.515 and 42 CFR Part 2 and 45 CFR Part 205.50;

(e) Give informed consent to services in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law;

(f) Inspect their Individual Service Record in accordance with ORS 179.505;

(g) Not participate in experimentation;

(h) Receive medications specific to the individual's diagnosed clinical needs;

(i) Receive prior notice of service conclusion or transfer, unless the circumstances necessitating service conclusion or transfer pose a threat to health or safety;

(j) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(k) Have religious freedom;

(l) Be informed at the start of services and periodically thereafter of the rights guaranteed by these rules;

(m) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian or representative assist with understanding any information presented;

(n) Have family involvement in service planning and delivery;

(o) Make a declaration for mental health treatment, when legally an adult;

(p) File grievances, including appealing decisions resulting from the grievance; and

(q) Exercise all rights described in this rule without any form of reprisal or punishment.

(2) The provider will give to the individual and if applicable, to the guardian, a document that describes the preceding individual rights.

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need;

(b) The rights and how to exercise them will be explained and

(c) Individual rights will be posted in writing in a common area.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

309-032-0351

Enrollment and Record Requirements

(1) An individual's eligibility shall be determined and documented at the earliest possible date.

(2) A record shall be maintained for each enrolled individual receiving services under this rule. The record shall contain the following:

(a) An enrollment form which includes:

(A) The individual's name and PATH enrollment date;

(B) A list or description of the criteria determining the individual's PATH eligibility; and

(C) The individual's PATH services discharge date.

(b) A plan defining the enrolled individual's goals and service objectives including one or more of the following:

(A) Accessing community mental health services for the eligible individual, which includes reviewing the plan not less than once every three months;

(B) Accessing and coordinating needed services for the eligible individual, as detailed in these rules.

(C) Accessing income and income support services, including housing assistance, food stamps, and supplemental security income; and

(D) Referral to other appropriate services.

(c) Progress notes that provide an on-going account of contacts with enrolled individual, a description of services delivered, and progress toward the enrolled individual's service plan goals; and

(d) A termination summary describing reasons for the enrolled individual no longer being involved in service.

(3) A record shall be maintained for individuals served but not yet enrolled under the provisions of these rules. The record shall contain:

(a) A description of the potentially eligible individual, which may include but not be limited to:

(A) A physical description of the individual;

(B) The location where the individual was served; and

(C) A description of the individual's personal belongings.

(b) A preliminary assessment of the potentially eligible individual's needs based on available information; and

(c) A record of where and when contacts with the potentially eligible individual were made and the outcome of those contacts.

(4) Records shall be confidential in accordance with ORS 179.505, 45 CFR Part 2 and OAR 032-1535 pertaining to individuals' records.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 430.610 – 430.695

Hist.: MHS 7-2011, f. & cert. ef. 9-26-11; MHS 9-2011(Temp), f. & cert. ef. 11-22-11 thru 5-18-12; MHS 2-2012, f. & cert. ef. 2-9-12

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules.

Adm. Order No.: DMAP 2-2012(Temp)

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 1-26-12 thru 7-10-12

Notice Publication Date:

Rules Amended: 410-120-0006

Rules Suspended: 410-120-0006(T)

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461 the Division is temporarily amended OAR 410-120-0006 to

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assure that the Division's medical eligibility rule aligns with and reflects information found in Department's medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in conjunction. The Division intends to file this rule permanently on or before July 10, 2012.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461, and in effect January 25, 2012, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to "the Administrator" in division 25 of chapter 461 or "the Department" are hereby incorporated as references to the" Authority."

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules.

Adm. Order No.: DMAP 3-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 1-31-12 thru 2-1-12

Notice Publication Date:

Rules Amended: 410-120-0006

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461, the Division is temporarily amended OAR 410-120-0006 to assure that the Division's medical eligibility rule aligns with and reflects information found in Department's medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in conjunction. The Division intends to file this rule permanently on or before July 10, 2012.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance

eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461, and in effect January 31, 2012, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to "the Administrator" in division 25 of chapter 461 or "the Department" are hereby incorporated as references to the" Authority."

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12

Rule Caption: Align with OAR chapter 461, division 155 medical eligibility rules.

Adm. Order No.: DMAP 4-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 2-1-12 thru 7-10-12

Notice Publication Date:

Rules Amended: 410-120-0006

Subject: The General Rules Program administrative rules govern the Division's payments for services provided to clients, and medical assistance eligibility determinations made by the Oregon Health Authority. In coordination with the Department of Human Services' (Department) temporary revision of medical eligibility rules in chapter 461, the Division is temporarily amended OAR 410-120-0006 to assure that the Division's medical eligibility rule aligns with and reflects information found in Department's medical eligibility rules. In OAR 410-120-0006, the Division adopts in rule by reference Department eligibility rules and must update OAR 410-120-0006 in conjunction. The Division intends to file this rule permanently on or before July 10, 2012.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedure consistent with applicable law. As outlined in 943-001-0020, the Authority, and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR Chapter 461, and in effect February 1, 2012, for all medical eligibility requirements for medical assistance when the Authority conducts eligibility determinations.

(2) Any reference to OAR Chapter 461 in Oregon Administrative Rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

(4) Effective on or after July 1, 2011 the Authority shall conduct medical eligibility determinations using the OAR chapter 461 rules which are in effect on the date the Authority makes the medical eligibility determination.

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(5) A request for a hearing resulting from a determination under this rule, made by the Authority shall be handled pursuant to the hearing procedures set out in division 25 of OAR Chapter 461. References to “the Administrator” in division 25 of chapter 461 or “the Department” are hereby incorporated as references to the” Authority.”

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12; DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12

Rule Caption: Adoption of rules governing the Rural Medical Practitioners Insurance Subsidy Program.

Adm. Order No.: DMAP 5-2012(Temp)

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 1-31-12 thru 7-28-12

Notice Publication Date:

Rules Adopted: 410-500-0000, 410-500-0010, 410-500-0020, 410-500-0030, 410-500-0040, 410-500-0050, 410-500-0060

Subject: The Rural Medical Practitioners Insurance Subsidy Program administrative rules govern Division payments to medical professional liability insurance carriers from the Rural Medical Liability Subsidy Fund. Payments from the fund will subsidize the cost of premiums charged by carriers to qualified practitioners for policies issued, in force or renewed on or after January 1, 2012. The rules identify medical practitioner criteria for participation in the program, as well as insurance carrier requirements for submitting requests for subsidy payments.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-500-0000

Purpose

(1) Effective retroactive to January 1, 2012, the Rural Medical Practitioners Insurance Subsidy Program (Program) has been established in the Oregon Health Authority (Authority).

(2) The purpose of the Program is to provide payments from the Rural Medical Liability Subsidy Fund to authorized medical professional liability insurance carriers to subsidize the cost of premiums charged by carriers to qualified practitioners for policies issued, in force or renewed on or after January 1, 2012, in the manner provided in these rules.

(3) Payment of premium subsidies in accordance with these rules is the sole purpose of the Authority’s responsibility under this Program. The Authority does not accept or assume any liability for claims involving a carrier or a practitioner, or disputes between them.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0010

Definitions

For the purposes of OAR 410-500-0000 through 410-500-0060, the following definitions shall apply:

(1) Carrier means a medical professional liability insurer holding a valid certificate of authority from the Director of the Department of Consumer and Business Services (DCBS) that authorizes the transaction of insurance as defined in ORS 731.066(1) and 731.072(1), and does not include DCBS listed insurers pursuant to 735.300 to 735.365 and 735.400 to 735.495.

(2) Medical assistance has the same meaning given that term in ORS 414.025.

(3) Medicare means medical coverage provided under Title XVIII of the Social Security Act.

(4) Office of Rural Health (Office) has the meaning established in ORS 442.475.

(5) Practitioner means a physician licensed under ORS chapter 677 or a nurse practitioner certified under ORS 678.375 who has a rural practice that meets criteria established by the Office of Rural Health that applied as of January 1, 2004, for the purposes of ORS 315.613. Practitioner does not include a physician or nurse practitioner who is located in an urbanized area of Jackson County, as defined by the United States Census Bureau according to the most recent federal decennial census taken pursuant to the author-

ity of the United States Department of Commerce under 13 U.S.C. 141(a), unless the practitioner is:

(a) A physician who specializes in obstetrics or who specializes in family or general practice and provides obstetrical services; or

(b) A nurse practitioner who is certified for obstetric care.

(6) Rural Medical Liability Subsidy Fund means a fund established in Section 3 of 2011 Oregon Laws chapter 560 to provide payments to medical professional liability insurance carriers to subsidize the cost of premiums charged by the carriers to qualifying practitioners.

(7) Rural Medical Practitioner Insurance Fund Program (Program) is the program established by the Authority to provide payments to authorized medical professional liability insurance carriers to subsidize the cost of premiums charged by the carriers to qualified practitioners from the Rural Medical Liability Subsidy Fund established in Section 3 of 2011 Oregon Laws chapter 560.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0020

Eligibility Criteria for Rural Practitioners

(1) A practitioner who has a rural practice that meets the criteria established by the Office for the purposes of ORS 315.613 is eligible for a subsidy under this program if the practitioner:

(a) Holds an active, unrestricted license or certification;

(b) Is covered by a medical professional liability insurance policy issued by an authorized carrier with minimum limits of coverage of \$1 million per occurrence and \$1 million annual aggregate; and

(c) Is willing to serve patients with Medicare coverage and patients receiving medical assistance in at least the same proportion to the practitioner’s total number of patients as the Medicare and medical assistance populations represent of the total number of individuals determined by the Office to be in need of care in the areas served by the practice.

(2) A nurse practitioner who is employed by a licensed physician is eligible for a subsidy if they are covered by a medical professional liability insurance policy that names the nurse practitioner and separately calculates the premium for the nurse practitioner.

(3) A practitioner whose medical professional liability insurance coverage is provided through a health care facility, as defined in ORS 442.400, and who otherwise meets the requirements of section (4) of this section is eligible for a premium subsidy if the Office determines that practitioner:

(a) Is not an employee of the health care facility;

(b) Is covered by a medical professional liability insurance policy that names the practitioner and separately calculates the premium for the practitioner; and

(c) Fully reimburses the health care facility for the premium calculated for the practitioner.

(4) Eligibility by individual practitioners to participate in the Program must be requested each year using an annual attestation administered by the Office. Consistent with the requirements of this rule, the Office shall establish criteria and procedures for making the eligibility determinations and for an annual attestation procedure that must be used by practitioners.

(5) The Office shall determine the eligibility of practitioners to participate in the Program in accordance with this rule, and shall provide its eligibility determination to the Authority and the practitioner.

(a) If a practitioner disagrees with a determination about whether a particular practitioner qualifies for the Program, the Office shall conduct an informal review and issue its recommendation to the Authority.

(b) The Authority shall make the final determination of eligibility to participate in the Program. Appeals shall be handled in accordance with the procedure for administrative review described in OAR 410-500-0060.

(6) The Authority shall forward to each of the authorized carriers participating in this Program, the list of eligible practitioners that it receives from the Office. The list shall include the practitioner’s name, mailing address, specialty, and applicable professional license or certification number issued by either the Board of Medical Examiners or the Board of Nursing.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0030

Determination of Subsidy Amount

(1) Beginning with the first calendar quarter in 2012, premium subsidy payments may be made to authorized carriers to subsidize the cost of premiums charged by the carrier to eligible practitioners, in accordance with these rules.

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(a) Premium subsidies are paid as a percentage of the actual premium charged for medical professional liability insurance with limits of coverage of \$1 million per occurrence and up to \$3 million annual aggregate.

(b) Notwithstanding section (1)(a) of this rule, the premium subsidy for a practitioner referred to in 410-500-0030(3)(c) or (d) shall be the lesser of the percentage of the premium due or paid for the current calendar year and the premium paid in the previous calendar year. When determining the lesser amount, any step increases in the premium owing to the claims-made nature of the policy may not be considered.

(2) Within 30 days after the end of each billing period (monthly or quarterly), each authorized carrier must electronically submit a report to the Authority showing the following information for each eligible practitioner who has been determined eligible for a premium subsidy by the Office in accordance with OAR 410-500-0020, as of the end of the billing quarter under this Program.

(a) The information required to be submitted electronically (using Microsoft Excel or similar spreadsheet application) must include the following:

- (A) Carrier's name;
- (B) Practitioner's name and, for each practitioner:
 - (i) Oregon Board of Medical Examiners license number or Oregon State Board of Nursing certification number;
 - (ii) Practitioner's specialty and specialty class;
 - (iii) ISO code;
 - (iv) Policy number;
 - (v) Policy effective date;
 - (vi) Billing period coverage start date;
 - (vii) Billing period coverage end date;
 - (viii) Billing frequency (annually, quarterly, monthly);
 - (ix) Current in-force annual premium for limits of coverage of \$1 million per occurrence and up to \$3 million annual aggregate;
 - (x) Premium subsidy percentage, calculated in accordance with section (3) of this rule;
 - (xi) Dollar amount of premium subsidy, calculated in accordance with these rules;
 - (xii) Explanation of any adjustments under this Program from previous reports;
 - (xiii) Policy coverage limits;
 - (xiv) Identification of practitioners who were not on the eligible list at the beginning of the quarter, including all of the foregoing information for eligible practitioners;
 - (xv) Claims-made step of practitioner, if applicable.

(b) In January of each calendar year, each authorized carrier must provide the Authority with a copy of its base rates and increased limits factors table; and the authorized carrier must inform the Authority of the base rates and increased limits factors table from their current rate filing for Oregon within 30 days of any change to those rates and table.

(c) When a carrier submits its report or rates, the submission is deemed to be a certification that the information included in the report is true, accurate and complete.

(d) Failure to make a timely submission may result in delay in processing the payment request. The payment of premium subsidies from the Rural Medical Liability Subsidy Fund is calculated by the Authority based on the funds available for the applicable billing period. In the event of insufficient funds, the risk of carrier delay in submission of a request for subsidy payment is on the carrier, because payments shall be based on the subsidy requests timely received for each applicable billing period.

(3) Subject to section (4) of this rule, the amount of the premium subsidy paid under this Program shall be calculated for eligible practitioners, as follows:

(a) Eighty percent of the actual premium charged for physicians specializing in obstetrics and nurse practitioners certified for obstetric care;

(b) Sixty percent of the actual premium charged for physicians specializing in family or general practice who provide obstetrical services;

(c) Forty percent of the actual premium charged for physicians and nurse practitioners engaging in one or more of the following practices:

- (A) Family practice without obstetrical services;
- (B) General practice without obstetrical services;
- (C) Internal medicine;
- (D) Geriatrics;
- (E) Pulmonary medicine;
- (F) Pediatrics;
- (G) General surgery; or
- (H) Anesthesiology;

(d) Fifteen percent of the actual premium charged for physicians and nurse practitioners other than those included in sections (3)(a) through (c).

(e) Using the information timely provided by carriers provided pursuant to section (2) of this rule, the information provided by the Office about eligible practitioners, and the provisions of this rule describing the calculation of the premium subsidy amounts, the Authority shall review the report for accuracy, and make the appropriate premium subsidy payments to the authorized carriers under this Program for undisputed items to the authorized carrier within 30 days of receipt.

(4) All payments authorized to be made by the Authority under this Program must be made from the Rural Medical Liability Subsidy Fund. No other funds have been established by the Legislative Assembly to make any premium subsidy payments under this Program.

(a) If the funds available for the Program in the Rural Medical Liability Subsidy Fund are insufficient to provide the maximum premium subsidy for all practitioners who qualify for the Program, the Authority shall reduce or eliminate subsidies for practitioners described in section (3)(d).

(b) If, after eliminating subsidies for practitioners described in section (3)(d), the funds in the Rural Medical Liability Subsidy Fund are insufficient to provide the maximum premium subsidies for the remaining practitioners, the Authority shall also reduce or eliminate the subsidies for practitioners described in section (3)(c).

(c) If the funds available for the Program in the Rural Medical Liability Subsidy Fund are insufficient to provide the subsidies for the remaining practitioners, the Program may not make payments that exceed the amounts remaining in the Fund.

(d) If the Authority is required to take any of the actions described in this rule due to insufficient funds to pay a premium subsidy, the Authority shall inform the affected participants and carriers about the action.

(5) An authorized carrier shall reduce the premium charged to a practitioner by the amount of any premium subsidy paid or to be paid under this Program. Each authorized carrier must provide its participating practitioners with the following information each quarter this Program is in effect:

- (a) The quarterly premium due before the premium subsidy is applied;
- (b) The amount of the premium subsidy; and
- (c) The premium after the premium subsidy is applied.

(6) The authorized carrier shall display these three figures on each billing statement of a participating practitioner.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0040

Authorized Carriers

(1) Carriers seeking to participate in the Program must provide written notice and certification to the Authority in writing not less than 30 days prior to the beginning date of a calendar quarter. However, for the first quarter of 2012, that notification may occur up to and including, but not later than January 31, 2012, for subsidy payments applicable to the first calendar quarter of 2012. The initial carrier written notification and certification required in this rule must be signed by an individual authorized to represent the carrier and delivered to the Authority at the following address: Oregon Health Authority, 500 Summer St NE, E-44, Salem, OR 97301, Attention: Rural Medical Practitioners Insurance Subsidy Program.

(a) The written notification must certify to the Administrator of the Program the following:

(A) That the carrier is a medical professional liability insurer holding a valid certificate of authority from the Director of DCBS that authorizes the transaction of insurance as defined in ORS 731.066(1) and 731.072(1), and does not include DCBS listed insurers pursuant to 735.300 to 735.365 and 735.400 to 735.495;

(B) That the carrier understands that the Authority may confirm the representations in paragraph (A) with DCBS, and that DCBS' determination about whether the carrier holds a valid certificate of authority to engage in professional liability insurance in the state of Oregon and the other criteria in paragraph (A) shall be relied upon by the Authority in determining whether an insurer is an authorized carrier under this Program; and

(C) That the carrier agrees to comply with the terms and conditions of the rules applicable to this Program in effect at the time of initial certification and those rules in effect when any request for subsidy payment is submitted to the Authority for payment.

(D) The Authority shall confirm in writing that the carrier meets the criteria as an authorized carrier for purposes of this Program. If the Authority determines that an entity is not eligible to participate as a carrier in this Program, the Authority shall provide notice to the entity of its deter-

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mination and shall deny participation in the Program. A request to appeal that determination shall be handled by the Authority in accordance with the procedure for administrative review described in OAR 410-500-0060.

(b) An insurer's failure to provide the notice and certification to the Authority within the time established in this rule means that the insurer is not authorized to submit a request for premium subsidy payment for the next calendar quarter and also means that the insurer's otherwise eligible practitioners shall be ineligible to receive a premium subsidy for that quarter.

(c) An authorized carrier must provide, and continue to provide, to the Authority accurate, complete and truthful information concerning their qualification for participation in the Program. A carrier must notify the Authority in writing of a material change in any status or condition that relates to their eligibility to participate in the Program.

(2) An authorized carrier choosing not to continue to participate in the Program shall notify the Authority at least 90 days prior to the beginning date of the next calendar quarter. The carrier shall notify its insured practitioners participating in the Program of its intent to not participate at least 60 days prior to the date of the next calendar quarter.

(3) Authorized carriers understand and agree that the Authority may determine that funds available for the Program are insufficient to provide maximum premium subsidy for all qualified practitioners, and that the Authority may reduce or eliminate subsidies. There is no guarantee of any amount of premium subsidy that may be provided to any carrier.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0050

Program Integrity

(1) The Authority shall analyze and monitor the operation of the Program and audit and verify the accuracy and appropriateness of subsidy payments, or other program integrity actions. To promote the integrity of the administration of the program, the carrier shall:

(a) Develop and maintain adequate financial and other documentation which supports the actual premium payments and coverage records for which payment has been requested. Payment shall be made only for services that are adequately documented. Documentation must be completed before the service is billed to the Authority. The records must be accurate and in sufficient detail to substantiate the data reported in relation to a request for premium subsidy payment;

(b) Have policies and procedures to ensure the maintenance of the applicable records;

(c) Upon written request from the Authority, the Oregon Secretary of State (Secretary), other federal or state oversight agency or their authorized representatives, furnish requested documentation immediately or within the time-frame specified in the written request. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Authority or Secretary or other oversight agency, may review and copy the original documentation in the carrier's place of business. Upon the written request of the carrier, the Program or the Secretary or other oversight agency may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of the Program or the Secretary or other oversight agency good cause for such extension is shown;

(d) Failure to comply with requests for documents and within the specified time-frames means that the records subject to the request may be deemed by the Authority not to exist for purposes of verifying appropriateness of payment, and accordingly subjects the carrier to possible denial or recovery of payments made by the Authority or to other actions;

(e) The Authority may communicate with and coordinate any program integrity actions with the federal and state oversight authorities, including but not limited to DCBS if documentation is missing or is inconsistent with claims made for payment of subsidies.

(2) When the Authority determines that an overpayment has been made to a carrier, the amount of overpayment is subject to recovery. The Authority may take appropriate action to redress payment errors or false claims for payment under the Program.

(a) If an authorized carrier determines that a subsidy payment request is incorrect, the carrier shall submit a correction within 30 calendar days of the discovery of the error and refund the amount of any overpayment at that time.

(b) If the Authority determines that an authorized carrier received a premium subsidy for an insured eligible practitioner that exceeded the amount that should have been paid, the Authority shall notify the authorized carrier and require the carrier to remit the overpayment to the Authority

within 30 days of the date of the notification. Overpayment collection repayment from a carrier does not prevent the authorized carrier from collecting the appropriate premium from the insured; however, the Authority's ability to recover an overpayment from a carrier is not limited by whether the carrier recovers any amount from its insured.

(c) The Authority may recover overpayments made to a carrier by direct reimbursement, offset, civil action, or other actions authorized by law:

(A) The carrier must make a direct reimbursement to the Authority within 30 calendar days from the date of the notice of the overpayment;

(B) The Authority may grant the carrier an additional period of time to reimburse the Authority upon written request made within 30 calendar days from the date of the notice of overpayment if the carrier provides a statement of facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because there is a reason to believe that the overpayment is not correct or is less than the amount in the notice, and the carrier has timely filed a request for administrative review of the overpayment determination, or that carrier accepts the amount of the overpayment but is authorized in writing by the Authority to make repayment over a period of time;

(3) Appeals of overpayment determinations are handled by the Authority in accordance with the procedure for administrative review described in OAR 410-500-0060.

(4) If the carrier does not timely request an administrative review, the overpayment is final and the amount of the overpayment shall be due and payable to the Authority.

(5) The Authority may withhold payment on pending premium subsidy payment requests and on subsequently received premium subsidy payment requests for the amount of the overpayment when overpayments are not paid in accordance with the requirements of this rule;

(6) The Authority may file a civil action in the appropriate court and exercise all other civil remedies available to the Authority in order to recover the amount of an overpayment.

(7) A noncompliant carrier may be terminated from participation in the Program.

(8) An authorized carrier's failure to reduce the premium charged to a qualified practitioner by the amount of the premium subsidy paid under this Program or other noncompliance with Program requirements may result in termination of the carrier from the Program and recovery of any premium payments made to the carrier that were not expended in accordance with the requirements of this Program, if the authorized carrier fails to cure the deficiency within the time and in the manner prescribed by the Authority.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

410-500-0060

Appeals: Administrative Review

(1) Administrative review, for purposes of these rules, shall be the process for any appeals made to the Authority under this Program. An administrative review is an appeal process that allows an opportunity for the Administrator of the Program or designee to review a decision. Administrative review is not a contested case.

(2) A request for administrative review must be received by the Authority not later than 30 calendar days after the date of the Authority's notice.

(3) If administrative review is timely requested, the practitioner or the carrier must provide the Authority with a copy of all relevant records and other materials relevant to the appeal, not later than 10 days before the review is scheduled.

(4) If the Administrator or designee decides that a preliminary meeting between the practitioner or carrier and Authority staff may assist the review, the Administrator or designee shall notify the individual requesting the review of the date, time, and place the meeting is scheduled.

(5) The administrative review meeting shall be conducted as follows:

(a) It will be conducted by the Administrator, or designee;

(b) No minutes or transcript of the review shall be made;

(c) The individual requesting the review does not have to be represented by counsel during an administrative review meeting and shall be given ample opportunity to present relevant information;

(d) Authority staff shall not be available for cross-examination, but Authority staff may attend and participate in the review meeting;

(e) Failure to appear without good cause constitutes acceptance of the Authority's determination;

(f) The Administrator may combine similar administrative review proceedings involving the same individual or similar facts, including the meet-

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ing, if the Administrator determines that joint proceedings may facilitate the review;

(g) The Administrator or designee may request the practitioner or carrier making the appeal to submit, in writing, new information that has been presented orally. In such an instance, a specific date for receiving such information shall be established.

(6) The results of the administrative review shall be sent to the participants involved in the review, within 30 calendar days of the conclusion of the administrative review meeting, or such time as may be agreed to by the participants or designated by the Authority.

(7) The Authority's final decision on administrative review is the final decision on appeal and binding on the parties. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 to 137-004-0092 apply to the Authority's final decision on administrative review.

(8) These rules shall be construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. The courts of the State of Oregon are empowered to resolve any disputes, with venue in Marion County.

Stat. Auth.: ORS 413.022 & 2011 OL Ch. 560

Stats. Implemented: ORS 413.022

Hist.: DMAP 5-2012(Temp), f. & cert. ef. 1-31-12 thru 7-28-12

Rule Caption: Adopts Attorney General's model rules with the exception to the postmark date.

Adm. Order No.: DMAP 6-2012(Temp)

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12 thru 7-4-12

Notice Publication Date:

Rules Amended: 410-120-1860

Subject: The General Rules program administrative rules govern Division payments for services to clients. The Division needs to amend OAR 410-120-1860 because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Authority receives it, not the date of the postmark.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-120-1860

Contested Case Hearing Procedures

(1) These rules apply to all contested case hearings provided by the Division of Medical Assistance Programs (Division) involving a client's medical or dental benefits, except as otherwise provided in OAR 410-141-0263. The hearings are conducted in accordance with the Attorney General's model rules at 137-003-0501 and following. When the term "agency" is used in the Attorney General's model rules, it shall refer to the Division for purposes of this rule. Except for 137-003-0528(1)(a), the method described in 137-003-0520(8)-(10) is used in computing any period of time prescribed in this division of rules (OAR 410 division 120) applicable to timely filing of client requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Division contested cases.

(2) Medical provider appeals and administrative reviews involving the Division are governed by OAR 410-120-1560 through 410-120-1700

(3) Complaints and appeals for clients requesting or receiving medical assistance from a Prepaid Health Plan (PHP) shall be governed exclusively by the procedures in OAR 410-141-0260. This rule describes the procedures applicable when those clients request and are eligible for a Division contested case hearing.

(4) Contested Case Hearing Requests:

(a) A client has the right to a contested case hearing in the following situations upon the timely completion of a request for a hearing:

(A) The Authority acts to deny client services, payment of a claim, or to terminate, discontinue or reduce a course of treatment, or issues related to disenrollment in a Fully Capitated Health Plan (FCHP), Physician Care Organization (PCO), Dental Care Organization (DCO) or Chemical Dependency Organization (CDO); or

(B) The right of a client to request a contested case hearing is otherwise provided by statute or rule, including OAR 410-141-0264(10) describing when a client of a PHP may request a state hearing.

(b) To be timely, a request for a hearing is complete when the Division receives the Authority's Administrative Hearing request form (DMAP 443) not later than the 45th day following the date of the decision notice;

(c) In the event a request for hearing is not timely, the Division will determine whether the failure to timely file the hearing request was caused by circumstances beyond the control of the client and enter an order accordingly. In determining whether to accept a late hearing request, the Division requires the request to be supported by a written statement that explains why the request for hearing is late. The Division may conduct such further inquiry as the Division deems appropriate. In determining timeliness of filing a hearing request, the amount of time that the Division determines accounts for circumstances beyond the control of the client is not counted. The Division may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness;

(d) In the event the claimant has no right to a contested case hearing on an issue, the Division may enter an order accordingly. The Division may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has a right to a contested case hearing;

(e) A client who requests a hearing shall be referred to as a claimant. The parties to a contested case hearing are the claimant and, if the claimant has requested a hearing about a decision of a PHP, the claimant's PHP;

(f) A client may be represented by any of the persons identified in ORS 183.458. A PHP that is a corporation may be represented by any of the persons identified in 410.190.

(5) Expedited hearings:

(a) A claimant who feels his or her medical or dental problem cannot wait for the normal review process may be entitled to an expedited hearing;

(b) Expedited hearings are requested using Authority Form 443;

(c) Division staff will request all relevant medical documentation and present the documentation obtained in response to that request to the Division Medical Director or the Medical Director's designee for review. The Division Medical Director or the Medical Director's designee will decide if the claimant is entitled to an expedited hearing within, as nearly as possible, two working days from the date of receiving the documentation applicable to the request;

(d) An expedited hearing will be allowed, if the Division Medical Director or the Medical Director's designee, determines that the claimant has a medical condition which is an immediate, serious threat to claimant's life or health and claimant has been denied a medical service.

(6) Informal conference:

(a) The Division hearing representative and the claimant, and their legal representative if any, may have an informal conference, without the presence of the Administrative law Judge (ALJ), 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 Division and the claimant to settle the matter;

(B) Provide an opportunity to make sure the claimant understands the reason for the action that is subject of the hearing request;

(C) Give the claimant and the Division an opportunity to review the information that is the basis for that action;

(D) Inform the claimant of the rules that serve as the basis for the contested action;

(E) Give the claimant and the Division the chance to correct any misunderstanding of the facts;

(F) Determine if the claimant wishes to have any witness subpoenas issued for the hearing; and

(G) Give the Division an opportunity to review its action.

(b) The claimant may, at any time prior to the hearing date, request an additional informal conference with the Authority representative, which may be granted if the Authority representative finds, in his or her sole discretion, that the additional informal discussion will facilitate the hearing process or resolution of disputed issues;

(c) The Division may provide to the claimant the relief sought at any time before the Final Order is served;

(d) Any agreement reached in an informal conference shall be submitted to the ALJ in writing or presented orally on the record at the hearing.

(7) A claimant may withdraw a hearing request at any time. The withdrawal is effective on the date it is received by the Division or the ALJ, whichever is first. The ALJ will send a Final Order confirming the with-

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drawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth calendar day following the date such an order is effective.

(8) Contested case hearings are closed to non-participants in the hearing.

(9) Proposed and Final Orders:

(a) In a contested case, an ALJ assigned by the Office of Administrative Hearings will serve a proposed order on all parties and the Division, unless, prior to the hearing, the Division notifies the ALJ that a final order may be served. The proposed order issued by the ALJ will become a final order if no exceptions are filed within the time specified in subsection (b) unless the Division notifies the parties and the ALJ that the Division will issue the final order;

(b) If the ALJ issues a proposed order, and a party adversely affected by the proposed order may file exceptions to the proposed order or present argument for the Division's consideration:

(A) The exceptions must be in writing and reach the Division not later than 10 working days after date the proposed order is issued by the ALJ;

(B) After receiving the exceptions, if any, the Division may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Authority will issue an amended proposed order.

(10) A hearing request is dismissed by order when neither the party nor the party's legal representative, if any, appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Division will cancel the dismissal order on request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.

(11) The final order is effective immediately upon being signed or as otherwise provided in the order. A final order resulting from the claimant's withdrawal of the hearing request is effective the date the claimant withdraws. When claimant fails to appear for the hearing and the hearing request is dismissed by final order, the effective date of the order is the date of the scheduled hearing.

(12) All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals.

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

Stat. Auth.: ORS 183.341 & 413.042

Stats. Implemented: ORS 183.411 - 183.470, 414.025, 414.055 & 414.065

Hist.: AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0053; HR 19-1990, f. & cert. ef. 7-9-90; HR 35-1990(Temp), f. & cert. ef. 10-15-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1990, f. & cert. ef. 11-26-90; HR 11-1991(Temp), f. & cert. ef. 3-1-91; HR 34-1991, f. & cert. ef. 8-26-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0760; HR 7-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 6-2012(Temp), f. & cert. ef. 2-1-12 thru 7-4-12

Rule Caption: Adopts Attorney General's model rules with the exception to the postmark date.

Adm. Order No.: DMAP 7-2012(Temp)

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12 thru 8-4-12

Notice Publication Date:

Rules Amended: 410-141-0264

Subject: The Managed Care Rules Program administrative rules govern the Division payments for services provided to clients. The Division temporarily amended OAR 410-141-0264 effective to February 1, 2012. This rule needs to be amended because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Division receives it, not the date of the postmark. The Division intends to permanently amend this rule.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-141-0264

Administrative Hearings

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) An individual who is or was a Division member (see definition) at the time of the Notice of Action is entitled to an administrative hearing by the Division if a Prepaid Health Plan (PHP) has denied requested services, payment of a claim, or terminates, discontinues or reduces a course of treatment, or any other "action."

(a) If the Division member initiates an administrative hearing directly with the Division, the decision in the Notice of Action is the document that will trigger the right to request a state administrative hearing:

(b) If the Division member requests an administrative hearing after receiving a Notice of Appeal Resolution, the decision in the Notice of Appeal Resolution is the document that will trigger the right to request a state administrative hearing:

(c) Client (see definition) administrative hearings are governed by OAR 410-120-1860, 410-120-1865, and this rule.

(2) A written hearing request must be received by the Hearings Unit at the Division not later than the 45th day following the date of the Notice of Action, or if the hearing request was initiated after an appeal, not later than the 45th day following the Notice of Appeal Resolution.

(3) Effective, February 1, 2012, the method described in OAR 137-003-0520(8)-(10) is used in computing any period of time prescribed in the division of rules in OAR 410 division 120 and 141 applicable to timely filing of requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, 137-003-0520(9) and 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Division hearing requests.

(4) If, at the Division member's request, the PHP continued or reinstated services while an appeal was pending, the benefits must be continued pending the administrative hearing until one of the following occurs:

(a) The Division member withdraws the request for an administrative hearing;

(b) Ten calendar days pass after the PHP mails the Notice of Appeal Resolution, providing the resolution of the appeal against the Division member, unless the Division member within the 10-day timeframe, has requested a Division administrative hearing with continuation of benefits until the Division administrative hearing decision is reached;

(c) A final order is issued in a Division administrative hearing adverse to the Division member; or

(d) The time period or service limits of a previously authorized service have been met.

(5) The Division representative (see definition) shall review the administrative hearing request, documentation related to the administrative hearing issue, and computer records to determine whether the claimant or the person for whom the request is being made is or was a Division member at the time the action was taken, and whether the hearing request was timely.

(6) PHPs shall immediately transmit to the Division any administrative hearing request submitted on behalf of a Division member, including a copy of the Division member's Notice of Action and, if applicable, Notice of Appeal Resolution.

(7) If the Division member files a request for an administrative hearing with the Division, the Division will send a copy of the hearing request to the PHP.

(8) PHPs shall review an administrative hearing request, which has not been previously received or reviewed as an appeal, using the PHP's appeal process as follows:

(a) The appeal shall be reviewed immediately and shall be resolved, if possible, within 16 calendar days, pursuant to OAR 410-141-0262;

(b) The PHP's Notice of Appeal Resolution shall be in writing and shall be provided to the Division member.

(9) When an administrative hearing is requested by a Division member, the PHP shall cooperate with providing relevant information required for the hearing process to the Division, as well as the results of the review by the PHP of the appeal and the administrative hearing request, and any attempts at resolution by the PHP.

(10) Information about Division members used for administrative hearings is handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The Division will safeguard the Division member's right to confidentiality of information used in the administrative hearing as follows:

(a) The Division, the Division member and their representative, the PHP and any practitioner (see definition) whose authorization, treatment, services, items, or request for payment is involved in the administrative hearing have a right to use this information for purposes of resolving the

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administrative hearing without a signed release from the Division member. The Division may also use this information, pursuant to OAR 410-120-1360(4), for health oversight purposes, and for other purposes authorized or required by law. The information may also be disclosed to the Office of administrative hearings and the Administrative Law Judge assigned to the administrative hearing, and to the Court of Appeals if the Division member seeks judicial review of the final order;

(b) Except as provided in subsection (a), the Division will ask the Division member to authorize a release of information regarding the administrative hearing to other individuals. Before any information related to the administrative hearing is disclosed under this subsection, the Division must have an authorization for release of information documented in the administrative hearing file.

(11) The hearings request (DHS 443), along with the Notice of Appeal Resolution, shall be referred to the Office of Administrative Hearings and the hearing will be scheduled.

(a) The parties to the administrative hearing shall include the PHP, as well as the Division member and his or her representative, or the representative of a deceased Division member's estate;

(b) The procedures applicable to the administrative hearing shall be conducted consistent with OAR 410-120-1860 and 410-120-1865;

(c) A final order should be issued or the case otherwise resolved by Division ordinarily within 90 calendar days from the earlier of the following: the date the Division member requested a PHP appeal (not including the number of days the Division member took to subsequently file for a Division administrative hearing) or the date the Division member filed for direct access to a Division administrative hearing. The final order is the final decision of the Division.

(12) If the final resolution of the administrative hearing is adverse to the Division member, that is, if the final order upholds the PHP's action, the PHP may recover the cost of the services furnished to the Division member while the administrative hearing is pending, to the extent that they were furnished solely because of the requirements of this section and in accordance with the policy set forth in 42 CFR 438.420.

(13) The PHP must promptly correct the action taken up to the limit of the original request or authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the Division member, or Division and/or the PHP decides in the Division member's favor before the hearing even if the Division member has lost eligibility after the date the action was taken:

(a) If the PHP, or a Division hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the administrative hearing was pending, the PHP must authorize or provide the disputed services promptly and as expeditiously as the Division member's health condition requires;

(b) If the PHP, or the Division hearing decision reverses a decision to deny authorization of services and the Division member received the disputed services while the administrative hearing was pending, the PHP must pay for the services in accordance with Division policy and regulations in effect when the request for services was made by the Division member.

Stat. Auth.: ORS 409.110 & 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 7-2012(Temp), f. & cert. ef. 2-7-12 thru 8-4-12

Oregon Health Authority, Oregon Medical Insurance Pool Chapter 443

Rule Caption: Updates rule to be consistent to the current year's benefits and benefit provisions.

Adm. Order No.: OMIP 1-2012

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 2-6-12

Notice Publication Date: 1-1-2012

Rules Amended: 443-002-0070

Subject: Updates this administrative rule to be consistent with the 2011 benefits, benefit limitations, benefit exclusions, and claims administration, based on the terms of the OMIP enrollee contract, Member Handbook, Application, and Benefit and Rate instructions.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0070

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration

Effective January 1, 2012, Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration for the OMIP program are set forth in the OMIP individual benefit plan contracts as of January 1, 2012, the OMIP application as of January 1, 2012, the OMIP handbook as of January 1, 2012, the OMIP Premium Rates and Instructions pamphlet as of January 1, 2012, the OMIP Benefit Summary pamphlet as of January 1, 2012 and any applicable endorsements. These documents are hereby incorporated into this rule by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 735.610(6) & 735.625

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-5-08; OMIPB 1-2008, f. & cert. ef. 1-2-08; OMIPB 1-2008(Temp), f. & cert. ef. 2-12-09 thru 8-10-09; OMIPB 2-2009, f. 3-30-09, cert. ef. 4-15-09; OMIPB 1-2010, f. & cert. ef. 2-9-10; OMIP 1-2011, f. & cert. ef. 1-26-11; OMIP 1-2012, f. 1-26-12, cert. ef. 2-6-12

Rule Caption: Updates language to mirror enrollee's contract/policy and aligns with current processing procedures and administration.

Adm. Order No.: OMIP 2-2012

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 2-6-12

Notice Publication Date: 1-1-2012

Rules Amended: 443-002-0190

Subject: This rule filing updates language to mirror current contract language and administration. The current language uses the terms "member" and "enrolled dependent", which OMIP does not define. OMIP is replacing all of these terms with the term "enrollee". Furthermore, in 2009, OMIP updated the number of days by which an enrollee has to file for an appeal in the benefit contracts with the enrollee. The purpose of this rule filing, updates this rule which inadvertently when updated, was not filed in a timely manner with Legislative Counsel.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0190

Grievance, Appeals, External Review

If an enrollee believes that a contract, action, or decision of OMIP is incorrect, the enrollee may file a written grievance.

(1) To file a grievance the enrollee must submit a written statement to the Administering Insurer within 180 days from the adverse contract, action, or decision, outlining the issue and any other supporting documentation.

(a) The Administering Insurer will respond to the enrollee within five business days from the date the grievance was received, to acknowledge receipt of the grievance.

(b) The Administering Insurer will send a written decision to the enrollee within 30 calendar days after receiving the grievance. In the event more extensive review is needed, the Administering Insurer will notify the enrollee of the delay and will send a written response to the enrollee within 45 calendar days after receiving the grievance.

(2) If, after filing a grievance, the enrollee is dissatisfied with the Administering Insurer's response to the grievance, the enrollee may then file an appeal.

(a) The enrollee must file an appeal in writing to the Administering Insurer within 30 calendar days from the date of the written decision of the grievance.

(b) The Administering Insurer will respond to the enrollee within five business days to acknowledge receipt of the appeal.

(c) The Administering Insurer will mail a written decision to the enrollee within 30 calendar days after receiving the appeal.

(3) If the enrollee is dissatisfied with the outcome of the appeal determination, the enrollee may file a second appeal directly to OMIP.

(a) The enrollee must file an appeal in writing directly to OMIP within 30 days from the date of the determination letter regarding the first appeal decision (not grievance) made by the administering insurer.

(b)(A) OMIP will review the appeal; however, if the dispute is regarding medical necessity, experimental or investigational procedures, or need for continuity of care, OMIP will request an External Review from and Independent Review Organization (I.R.O.) on your behalf.

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(B) If OMIP chooses to send an appeal to External Review, it will be considered the final level of appeal. The I.R.O. will make its review and report its decision within 30 calendar years (3 days for expedited reviews).

(c) If the appeal is not regarding medical necessity, experimental or investigational procedures, or need for continuity, OMIP will mail a written decision to the enrollee within 30 calendar days after receiving the appeal.

Stat. Auth.: ORS 735.610(6)

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2010(Temp), f. & cert. ef. 9-29-10 thru 3-27-11; OMIP 2-2011, f. & cert. ef. 1-26-11; OMIP 2-2012, f. 1-26-12, cert. ef. 2-6-12

**Oregon Health Authority,
Public Health Division
Chapter 333**

Rule Caption: Revisions to the Breast and Cervical Cancer Program (BCCP) eligibility and presumptive treatment enrollment rules.

Adm. Order No.: PH 1-2012

Filed with Sec. of State: 1-17-2012

Certified to be Effective: 1-17-12

Notice Publication Date: 12-1-2011

Rules Adopted: 333-010-0197

Rules Amended: 333-010-0100, 333-010-0105, 333-010-0110, 333-010-0115, 333-010-0130

Subject: The Oregon Health Authority, Public Health Division, Office of Family Health is permanently amending and adopting administrative rules in chapter 333, division 10 pertaining to the Breast and Cervical Cancer Program (BCCP). These rule changes reflect two changes to the BCCP OARs:

(1) Women age 39 or under displaying cervical cancer symptoms can now access screening and diagnostic services through the program.

(2) Women who have received qualified breast and/or cervical cancer diagnoses, including certain pre-cancerous conditions, outside of BCCP but meet BCCP eligibility criteria can now receive medical assistance through the Breast and Cervical Cancer Treatment Program.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-010-0100

Description of the Breast and Cervical Cancer Program

The Breast and Cervical Cancer Program (BCCP) is a federal screening and early detection program administered by the Oregon Health Authority to provide screening and diagnostic services to eligible Oregonians statewide. The Breast and Cervical Cancer Program provides coverage for screening and diagnostic services to Oregonians with family incomes up to 250 percent of the Federal Poverty Level through a contract network of qualified providers. OAR 333-010-0100 through 333-010-0195 apply only to providers who have an approved medical services agreement to provide screening and diagnostic services through this program. The program is limited to a finite source of funds which may restrict availability of services on an annual basis.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 1-2012, f. & cert. ef. 1-17-12

333-010-0105

Definitions

(1) "Ancillary provider" means a provider that performs services beyond the scope of an enrolling provider. Ancillary providers may include laboratories, imaging centers, surgeons and surgical facilities, and hospitals.

(2) "Agency number" means the administrative number assigned to the service provider by the Office of Family Health (OFH) for identification as a BCCP provider.

(3) "Approved medical services agreement" means the completed Breast and Cervical Cancer Program agreement, submitted to and approved by the Office of Family Health.

(4) "Authority" means the Oregon Health Authority.

(5) "BCCP" means the Oregon Breast and Cervical Cancer Program.

(6) "BCCP Provider Network" means the combination of all contracted BCCP providers, including enrolling and ancillary providers.

(7) "BCCTP" means the Breast and Cervical Cancer Treatment Program. ORS 414.534, 414.536.

(8) "Breast and Cervical Cancer Program" means the program that provides statewide breast and cervical cancer screening and diagnostic services to eligible clients, that is administered by the Office of Family Health within the Oregon Health Authority.

(9) "Care coordination or case management" means that a client is provided with services, results, follow-up recommendations, and active tracking of progress towards follow-up recommendations.

(10) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988, establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results, and allows for certification of clinical laboratories operating in accordance with these federal amendments.

(11) "Client" means a person of any age or gender who is enrolled in and receives screening or diagnostic services from the Breast and Cervical Cancer Program.

(12) "Enrolling provider" means a provider that enrolls a client into the Breast and Cervical Cancer Program, provides care coordination for the BCCP client and timely data submission to the BCCP.

(13) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for BCCP and other federally funded programs.

(14) "HIPAA" means the Health Insurance Portability and Accountability Act.

(15) "OFH" means the Office of Family Health, the office within the Oregon Health Authority that administers the Breast and Cervical Cancer Program.

(16) "Service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by OFH to bill for breast and cervical cancer screening and diagnostic services for eligible BCCP clients.

(17) "Site number" means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each BCCP provider.

(18) "Underinsured" means that insurance does not pay for preventive health exams that provide breast or cervical screening or diagnostic services, such as a mammogram or Pap smear, or that the deductible is \$500 or more.

Stat. Auth.: ORS 413.042

Stats. Implemented: 413.042

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 1-2012, f. & cert. ef. 1-17-12

333-010-0110

Client Eligibility

(1) In order to be eligible for the BCCP a client must meet the following BCCP eligibility criteria:

(a) Have an income based on family size that is at or below 250 percent of the Federal Poverty Level at the time of enrollment; and

(b) Reside or declare an intent to reside in Oregon; and

(c) Have no health insurance or be underinsured; and

(d) Meet one of the following criteria:

(A) Be a woman age 40 or over;

(B) Be a woman age 39 or under who is displaying symptoms that may indicate breast or cervical cancer; or

(C) Be a man of any age who is displaying symptoms that may indicate breast cancer.

(2) For a client to be eligible under paragraphs (1)(d)(B) and (C) of this rule, the BCCP program must provide authorization for services to be rendered.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 1-2012, f. & cert. ef. 1-17-12

333-010-0115

Client Enrollment

(1) Clients are determined eligible on a self-declared basis, when they submit a completed and signed BCCP enrollment form at the clinic site at the time of service, except as required by Client Eligibility, OAR 333-010-0110(2).

(2) Eligibility is effective for one year unless a client justifiably needs to begin a second breast or cervical cycle, as defined in the program manual, before the end of one year. Justifications include:

(a) The presence of new symptoms; or

(b) The necessity of short-term follow-up, as defined in the program manual.

ADMINISTRATIVE RULES

(3) If breast or cervical services are justifiably initiated again before the end of one year, then eligibility will automatically extend through the end of that cycle, even if the cycle lasts into a new year.

(4) BCCP providers must keep a signed enrollment form on file at the clinic for a minimum of four years. Clients enrolled into the program who are found ineligible will be disenrolled.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 1-2012, f. & cert. ef. 1-17-12

333-010-0130

Standards of Care for Breast and Cervical Cancer Screening and Diagnostic Services

Participating BCCP providers must agree to provide screening and diagnostic services according to the following standards:

(1) Informed Consent. The client's decision to participate in and consent to receive breast and cervical cancer screening and diagnostic services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands.

(b) Consent must be obtained from the individual client receiving screening and diagnostic services.

(2) Confidentiality. Services must be provided in a manner that respects the privacy and dignity of the individual.

(a) Providers must inform clients that services and medical records will be kept confidential.

(b) Records cannot be released without written client consent, except as required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of the individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program.

(a) All persons providing interpretation services must adhere to confidentiality guidelines.

(b) The provider must make interpretation services available to all clients needing or requesting such assistance at no cost to the client. The provider must notify clients in need of interpretation services of the availability of such services in accordance with the Civil Rights Act of 1964.

(c) The provider must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services, unless requested by the client.

(d) Provider shall make available easily understood client related materials and post signage in the languages of groups commonly encountered in the service area.

(e) All print, electronic, and audiovisual materials must be appropriate according to the client's language and literacy level. Providers must accommodate a client's request for alternate formats.

(4) Access to Care. Services covered by BCCP must be provided without cost to eligible clients. Providers must inform clients of the scope of services available through the program.

(a) Although not covered by BCCP, treatment and supplies for pre-cancerous, cancerous conditions, and sexually transmitted infections must be available at the site, or by referral.

(b) Clients in need of additional medical services beyond the scope of the BCCP provider network must be provided with information about available local resources.

(c) Clients with a qualifying breast or cervical cancer diagnosis, including specific pre-cancerous conditions, shall be screened to determine presumptive eligibility for the BCCTP and enrolling providers shall facilitate the application process.

(d) All services must be provided to eligible clients without regard to marital status, race, parity, disability, or sexual orientation.

(5) Clinical and Preventive Services. The scope of breast and cervical cancer screening and diagnostic services offered to clients must include:

(a) A health history, including health risk facts and personal and family medical history as it pertains to breast and cervical cancer screening.

(b) An initial physical examination that includes a breast and pelvic exam with a Pap smear.

(c) Follow-up recommendations.

(d) Care coordination to ensure that appropriate follow-up screening, diagnostic testing and care is provided, including:

(A) An explanation of the results of the physical examination and the laboratory tests; and

(B) The opportunity for questions concerning procedures, methods and results.

(6) An enrolling provider must enroll and attempt to initiate breast screening services in addition to cervical services when a client is enrolled due to cervical symptoms as described in OAR 333-010-0110. All data must be submitted to the BCCP by the enrolling provider including required information about client history, original pelvic exam and Pap smear.

(7) An enrolling provider must enroll and attempt to initiate cervical screening services in addition to breast services when a client is enrolled due to breast symptoms as described in OAR 333-010-0110 except when the client is a man. Enrolling providers must submit all data to the BCCP including required information about client history, initial clinical breast exam and mammogram.

Stat. Auth.: ORS 413.042, 414.540

Stats. Implemented: ORS 413.042, 414.534, 414.536

Hist.: PH 9-2008, f. & cert. ef. 6-16-08; PH 1-2012, f. & cert. ef. 1-17-12

333-010-0197

Presumptive Eligibility for BCCTP

(1) Any licensed health care provider who can diagnose breast or cervical cancer may presumptively enroll a client into BCCTP and refer the client to the Oregon Health Plan if she meets the presumptive eligibility criteria as described in section (2) of this rule.

(2) In order to be presumptively enrolled into BCCTP a client must meet the eligibility criteria in OAR 333-010-0110(1) and OAR 461-135-1060.

Stat. Auth.: ORS 413.042, 414.540

Stats. Implemented: ORS 414.534, 414.536

Hist.: PH 1-2012, f. & cert. ef. 1-17-12

Rule Caption: Implementing changes to the Oregon Indoor Clean Air Act.

Adm. Order No.: PH 2-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 1-1-2012

Rules Amended: 333-015-0025, 333-015-0030, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0064, 333-015-0066, 333-015-0068, 333-015-0069, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0082, 333-015-0085

Rules Repealed: 333-015-0090

Subject: The Oregon Health Authority, Public Health Division, is permanently amending chapter 333, division 15, pertaining to the Oregon Indoor Clean Air Act (ICAA). The rulemaking:

(1) Amends and adds definitions to bring the rules into line with the amended ICAA, better effect the purpose of the statute, and/or add clarity to the rules;

(2) Strikes sections of the rules deemed unnecessary;

(3) Clarifies that the 10-foot rule applies consistently to accessibility ramps;

(4) Revises procedures relating to cigar-bar and smoke-shop certification;

(5) Closes gaps in complaint-response procedures; and

(6) Brings the maximum penalty amount in line with the ICAA, as amended by HB 2726, passed in 2011.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-015-0025

Authority and Purpose

(1) These rules are adopted pursuant to the authority granted to the Oregon Health Authority, Public Health Division, in ORS 433.835 through 433.875 and 433.990(5) concerning smokefree places of employment and public places.

(2) The purpose of the Oregon Indoor Clean Air Act is to reduce the health hazard caused to persons by inhaling smoke from tobacco products.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 -433.875, 433.990(5)

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02;

OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04;

PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. &

cert. ef. 2-1-12

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333-015-0030

Definitions

For purposes of OAR chapter 333, division 15, the following definitions shall apply:

(1) "Accessibility ramp" means a ramp intended to provide access for people with disabilities to and from an entrance or exit.

(2) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990(5).

(3) "Authority" means the Oregon Health Authority.

(4) "Certificate holder" means the individual or entity on record with the Oregon Health Authority as the owner of a certified cigar bar or smoke shop.

(5) "Cigar bar" means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidor on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco products in any form, including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010, and cigarillos as defined by OAR 333-015-0030(6);

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that exhausts smoke from the business, and is designed and terminated in accordance with the state building code standards for the occupancy classification in use; and

(i) Requires all employees to read and sign a form approved and published by the Public Health Division that explains the dangers of exposure to secondhand smoke.

(6) "Cigarillos" means a smoking device wrapped in tobacco leaf, rather than paper, that contains less than three grams of tobacco and measures less than 100 mm in length.

(7) "Employer" means any entity or individual who engages an individual to perform work or services in an enclosed area under the employer's control.

(8) "Enclosed area" means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.

(9) "Entity in charge of a public place" means any person or organization that has responsibility because of ownership, proprietorship, management, or oversight over a place that is open to the public. Entity in charge of a public place is used to refer only to a person or organization in charge that is not also an employer.

(10) "Entrance" means any point of ingress to an enclosed area from a non-enclosed area.

(11) "Exit" means any point of egress from an enclosed area to a non-enclosed area.

(12) "Gross revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds, or credits.

(13) "Humidor" means a storage container designed to allow controlled airflow and equipped with a device that maintains the internal humidity in the range of 68 percent to 75 percent and an internal temperature in the range of 68 degrees to 70 degrees Fahrenheit.

(14) "Local Public Health Authority" or "LPHA" means the county government, unless a health district has been formed under ORS 431.414, the county has contracted with a person or agency to act as the public health authority, or the county has relinquished its authority to the state.

(15) "Maximum seating capacity" means the total number of seats available to patrons, including, but not limited to, bar stools, seating at cocktail tables, seats at buddy-bar tables, banquet seating, dining seating, couch space, and floor pillows intended as seating; as well as the total number of patrons a business permits inside the business at the same time.

(16) "Noncommercial tobacco products" means unprocessed tobacco plants or tobacco by-products used for ceremonial or spiritual purposes by American Indians.

(17) "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators, stairways, and work vehicles that are not operated exclusively by one employee. Place of employment does not include a

private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in 410.490.

(18) "Private residence" means a residence or part of a residence that is not operated as a place of business where clients or customers use the premises. A residence that is considered a place of employment or public place is subject to ORS 433.835 through 433.875 during its hours of operation. Only that part of a residence used as a place of business is subject to ORS 433.835 through 433.875.

(19) "Public Health Director" means the director of the Public Health Division of the Oregon Health Authority.

(20) "Public Health Division" means the Public Health Division of the Oregon Health Authority.

(21) "Public place" means any enclosed area open to the public.

(22) "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" means sleeping rooms or suites in that hotel or motel.

(23) "Smoking instrument" means any cigar, cigarette, pipe, or other smoking equipment.

(24) "Smoke shop" means a business that is certified with the Authority as a smoke shop under OAR 333-015-0068.

(25) "Stand-alone business" means a business that is not attached to, does not use or occupy the same space as, is not located within, and does not share a common entryway or area with another business, another place of employment, or residential property.

(26) "Tobacco Prevention and Education Program" means the Tobacco Prevention and Education Program in the Public Health Division of the Oregon Health Authority.

(27) "Wall" means any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure. Walls include, but are not limited to, partitions constructed of plastic, mesh or other screening materials, slats, louvered blinds, fabric, or blankets, and partitions with latticing or other open frameworks.

(28) "10 feet" means 10 linear feet, measured in a straight line between the points in question.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0035

General Provision

(1) No person shall smoke or carry any lighted smoking instrument in a public place except in those areas that are not required to be smokefree under ORS 433.850(2) and OAR 333-015-0035(5) and (6).

(2) Employers shall provide a place of employment that is free of tobacco smoke for all employees, except in those areas listed in ORS 433.850(2) and in OAR 333-015-0035(4), (5) and (6).

(3) No person shall smoke or carry any lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

(a) Entrances;

(b) Exits;

(c) Windows that open;

(d) Ventilation intakes that serve an enclosed area;

(e) Any portion of an accessibility ramp.

(4) The owner or entity in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

(a) If the owner or entity in charge of a hotel or motel chooses to designate up to 25 percent of sleeping rooms as smoking permitted, all smoking rooms on the same floor must be contiguous. The status of the rooms may not be changed, except to add more non-smoking rooms.

(b) The owner or entity in charge of a hotel or motel shall provide written notice to patrons upon check-in as to the smoking status of the sleeping rooms.

(c) The owner or entity in charge of a hotel or motel shall post signs at each entrance and exit in accordance with OAR 333-015-0040, with the exception of sleeping room entrances and exits. Signs shall notify all patrons that smoking is limited to certain sleeping rooms.

(d) The owner or entity in charge of a hotel or motel shall provide written information to patrons upon check-in, describing how patrons may notify management of smoking occurring in non-smoking areas or rooms.

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(e) Nothing in these rules shall prevent the owner or entity in charge of a hotel or motel from prohibiting smoking on the entire premises.

(5) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(6) The following areas are not required to be smokefree:

(a) Smoke shops that are certified by the Authority under OAR 333-015-0068;

(b) Cigar bars if:

(A) The cigar bar generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006; and

(B) The cigar bar has provided the Public Health Division with proper documentation as required by OAR 333-015-0066.

(c) Up to 25 percent of the sleeping rooms of a hotel or motel, as designated by the owner or entity in charge. The hotel or motel must be in compliance with the rules set forth in OAR 333-015-0035(4).

(7) Nothing in these rules shall prevent an employer in charge of a place of employment or an entity in charge of a public place from designating the entire place of employment or public place as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0040

Signs

(1) An employer or entity in charge, except in those places described in OAR 333-015-0035(5) and (6), shall post signs prohibiting smoking. Signs shall use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle) and the words "within 10 feet," or the words "No Smoking within 10 feet," or both. Nothing in these rules shall prevent an employer from increasing the amount of property where smoking is prohibited beyond the 10-foot requirement or from designating the entire premises as smokefree. Signs may be used without specifically including the words "within 10 feet" if the signs specify a restriction greater than 10 feet or designate the entire premises as smokefree. Signs shall be posted prominently at each entrance and exit to the place of employment or public place.

(2) In addition to requirements under this rule, an owner or entity in charge of a hotel or motel shall comply with signage requirements as described in OAR 333-015-0035(4).

(3) An owner or entity in charge of tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of a public place or workplace, or any portion of an accessibility ramp shall clearly mark the tables or outdoor seating or dining areas as non-smoking with signs that use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle), the words "No Smoking," or both.

(4) In a cigar bar where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises; and

(b) Anyone under the age of 21 is prohibited from entering the premises.

(5) In a smoke shop where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises;

(b) Anyone under the age of 18 is prohibited from entering the premises; and

(c) Cigarette smoking is prohibited on the premises, in smoke shops where cigarette smoking is not allowed under OAR 333-015-0068(7)(d).

(6) All signs used to describe whether smoking is prohibited or allowed in a place of employment or public place shall be placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0045

Ashtrays

(1) Ashtrays and any receptacles to be used for smoking or depositing cigarette debris are prohibited within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of a public place or workplace, and any portion of an accessibility ramp.

(2) Except for those areas described in OAR 333-015-0035(6), ashtrays and any receptacles to be used for smoking or depositing cigarette debris are prohibited inside public places and places of employment.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0064

Outdoor Smoking Areas

(1) The owner or entity in charge of a place of business may establish an outdoor smoking area if that area is:

(a) Not within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or workplace, or any portion of an accessibility ramp;

(b) Not, at any time, an enclosed area as defined in OAR 333-015-0030(8); and

(c) In compliance with all other state, city, and county codes.

(2) Nothing in these rules shall prevent an employer from increasing the amount of property where smoking is prohibited beyond the 10-foot requirement or from designating the entire premises as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0066

Cigar Bars

(1) A business must apply to the Authority for certification before allowing cigar smoking on its premises.

(2) A business must apply for certification on a form prescribed by the Authority and include the following information or documentation:

(a) A copy of the business's full on-premises liquor sales license issued by the Oregon Liquor Control Commission under ORS 471.175;

(b) A site map of the premises that denotes maximum seating capacity and includes a detailed seating chart;

(c) A copy of the business's certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;

(d) Using the official form provided by the Public Health Division, Tobacco Prevention and Education Program, proof that all employees have read and signed a document explaining the dangers of exposure to second-hand smoke (this form is available at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program); and

(e) Documentation demonstrating to the satisfaction of the Public Health Director that the cigar bar generated on-site retail sales of cigars of at least \$5,000 in the calendar year 2006.

(3) Application Review:

(a) The Authority shall review application materials within 30 days of receipt and determine whether the application is complete.

(b) Within 10 days of declaring an application complete, the Authority shall deny or grant the application. The Authority shall grant a business certification if, upon review of the application materials, the Authority finds that sufficient documentation has been provided to demonstrate compliance with section (2) of this rule. In lieu of denying an application, the Authority may request additional information from the applicant to determine compliance with section (2) of this rule.

(c) The Authority may deny an application for cigar bar certification if the Authority issued a civil penalty against an applicant for any violation of the Act or these rules within 12 months prior to application.

(d) The Authority may deny an application for cigar bar certification and prohibit an applicant from reapplying for up to two years if the applicant provides information that is false or deliberately misleading.

(4) Ongoing Requirements for Certification:

(a) If a cigar bar was certified before February 1, 2012, and has not provided the information or documentation required under section (2) of this rule, the cigar bar must furnish the missing information or documentation upon request by the Authority to remain certified.

(b) A certified cigar bar must meet the definition of a cigar bar, as defined in ORS 433.835 and OAR 333-015-0030, at all times. The

ADMINISTRATIVE RULES

Authority may revoke certification if the business no longer meets the definition of a cigar bar.

(c) A cigar bar must submit a completed form, as described in subsection (2)(d) of this rule, to the Authority by December 31 of each calendar year for every new employee hired during that year.

(5) Cigar bar certification is only valid for the business location authorized by the Authority.

(6) Certification may be revoked if a cigar bar ceases operation because it has gone out of business. The certificate holder must notify the Authority that the cigar bar is no longer in operation within 30 days of closing the business.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0068

Smoke Shops

(1) A business must apply to the Authority for certification prior to allowing smoking on the premises.

(2) A business must apply for smoke shop certification on a form prescribed by the Authority (this form is available at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program).

(3) To obtain certification as a smoke shop under any part of this rule, a business must agree to allow the Authority or LPHA to make unannounced inspections of the business to determine compliance with the Act.

(4) Smoke shop certification is only valid for the business location authorized by the Authority.

(5) Certification Criteria:

(a) A business may apply for smoke shop certification by submitting the following documentation to the Authority, along with a completed application form:

(A) A notarized, sworn statement attesting that the business:

(i) Is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derives at least 75 percent of its gross revenue from such sales;

(ii) Prohibits persons under 18 years of age from entering the premises;

(iii) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

(iv) Does not sell, offer or allow on-premises consumption of food or beverages, including alcoholic beverages;

(v) Has a maximum seating capacity of no more than four persons; and

(vi) Allows smoking only for the purpose of sampling tobacco products for making retail purchase decisions, in a manner that complies with ORS 180.486 and 431.840;

(B) Documentation of the business's sales, broken down by category of product;

(C) Evidence, such as photographs, of signs prohibiting:

(i) Persons under 18 years of age from entering the premises, and

(ii) On-premises consumption of food and beverages;

(D) A building map and photographs of the premises demonstrating that the business is a stand-alone business;

(E) A site map of the premises that denotes maximum seating capacity and includes a detailed seating chart; and

(F) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(b) A business existing on December 31, 2008, may apply for certification as a smoke shop by submitting the following documentation to the Authority, along with a completed application form:

(A) Proof of registration with the Oregon Secretary of State, Corporation Division, since 2008 or, if not required to be registered, tax documentation proving that the business has been in operation since 2008;

(B) A notarized, sworn statement attesting that:

(i) On December 31, 2008, the business:

(I) Was primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derived at least 75 percent of its gross revenue from such sales;

(II) Prohibited persons under 18 years of age from entering the premises;

(III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises; and

(IV) Did not sell, offer or allow on-premises consumption of food or beverages, including alcoholic beverages; and

(ii) Presently, the business meets the criteria listed under subparagraph (5)(b)(B)(i) of this rule;

(C) Documentation of the business's sales, broken down by category of product;

(D) Either of the following:

(i) Documentation, such as a building map or photographs, demonstrating that on December 31, 2008, the business was a stand-alone business with no other businesses or residential property attached; or

(ii) Documentation demonstrating that on December 31, 2008, it had a ventilation system that exhausted smoke from the business and was designed and terminated in accordance with the state building code standards for the occupancy classification in use. Such documentation must include either:

(I) A certificate of occupancy that was current on December 31, 2008, and official documentation from the building authority with jurisdiction of the occupancy classification for which the business was approved; or

(II) If the documentation described in (5)(b)(C)(ii)(I) of this rule is unavailable, a current certificate of occupancy, proof that the business's ventilation system was installed in 2008 or earlier, and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;

(E) Either of the following:

(i) Documentation, such as a building map or photographs, demonstrating that the business presently is a stand-alone business with no other businesses or residential property attached; or

(ii) A current certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;

(F) Evidence, such as photographs, of signs prohibiting:

(i) Persons under 18 years of age from entering the premises, and

(ii) On-premises consumption of food and beverages; and

(G) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(c) A business that filed an application with the Authority for certification as a smoke shop prior to June 30, 2011, may be certified by the Authority on or before December 31, 2012, according to the requirements of the Act as it was in effect on June 29, 2011. To achieve certification under these criteria, the business must submit the following documentation to the Authority:

(A) A notarized, sworn statement attesting that:

(i) At the time of application, the business:

(I) Was primarily engaged in the sale of tobacco products and smoking instruments, and derived at least 75 percent of its gross revenue from such sales;

(II) Prohibited persons under 18 years of age from entering the premises;

(III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

(IV) Did not sell or offer on-premises consumption of alcoholic beverages; and

(V) Was a stand-alone business with no other businesses or residential property attached to the premises; and

(ii) Presently, the business meets the criteria listed under subparagraph (5)(c)(A)(i) of this rule;

(B) Documentation of the business's sales, broken down by category of product, including cigarette sales; and

(C) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(6) Application Review:

(a) The Authority shall review application materials within 45 days of receipt and determine whether the application is complete.

(b) Within 15 days of declaring an application complete, the Authority shall deny or grant the application. The Authority shall grant a business certification if, upon review of the application materials, the Authority finds that sufficient documentation has been provided to demonstrate the business's compliance with this rule. In lieu of denying an application, the Authority may request additional information from the business for the purpose of assessing compliance with this rule.

(c) The Authority may deny an application for smoke shop certification if the Authority issued a civil penalty against an applicant for any violation of the Act or these rules within 12 months prior to application.

(d) The Authority may deny an application for smoke shop certification and prohibit an applicant from reapplying for up to two years if the applicant provides information that is false or deliberately misleading.

(7) Ongoing Requirements for Certification:

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(a) A smoke shop certified under this rule must continue to meet the criteria for certification once certified. The Authority may revoke certification if the smoke shop ceases to meet the criteria for certification.

(b) Every year, within 30 days of the calendar date on which certification was originally granted, a smoke shop must provide the Authority with documentation demonstrating that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments. Such documentation must include:

(A) A notarized, sworn statement attesting that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments; and

(B) Documentation of the smoke shop's sales broken down by category of product, including cigarette sales if the business is certified under subsection (5)(b) or (5)(c) of this rule and permits cigarette smoking on the premises.

(c) The Authority may inspect a business's financial records to determine compliance with the Act and these rules. The Authority shall attempt to contact the business and provide at least 48 hours' notice prior to conducting such an inspection.

(d) A smoke shop must maintain up-to-date contact information with the Authority. If the Authority is unable, despite a good-faith effort, to contact the smoke shop because the smoke shop's mailing address, phone number, and other contact information are out of date, then the Authority may suspend the smoke shop's certification until up-to-date contact information is provided.

(e) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule may not allow cigarette smoking unless at least 75 percent of its gross revenue, as reflected in the documentation described in paragraph (7)(b)(B) of this rule, is derived from the sale of cigarettes.

(8) Renewal of Certification:

(a) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule must renew its certification every five years within 30 days of the calendar date on which certification was originally granted.

(b) To renew certification, a smoke shop certified under subsection (5)(b) or (5)(c) of this rule must submit:

(A) Updated versions of the documentation required for initial certification under subsection (5)(b) or (5)(c) of this rule, respectively; and

(B) If the smoke shop allows cigarette smoking, documentation demonstrating that the smoke shop derives at least 75 percent of its gross revenue from the sale of cigarettes.

(9) Transfer of Certification with Ownership:

(a) Smoking is not permitted on the premises of a smoke shop operating under new ownership until certification is effectively transferred from the certificate holder to the new owner in accordance with this section.

(b) If a smoke shop certified under subsection (5)(a) of this rule changes ownership, the following steps must be completed before the Authority will transfer certification to the new owner:

(A) The certificate holder must notify the Authority of the intent to transfer ownership and certification;

(B) The new owner must submit a notarized, sworn statement to the Authority attesting that the smoke shop will continue to meet the certification requirements under the new ownership; and

(C) The certificate holder or the new owner must update the business's certification documentation with the Authority.

(c) If a smoke shop certified under subsection (5)(b) or (5)(c) of this rule changes ownership, the certificate holder or new owner of the smoke shop must submit the following documentation to the Authority to transfer certification to the new owner:

(A) Proof of transfer of ownership of the smoke shop, including, where applicable, updated registration with the Oregon Secretary of State, Corporation Division;

(B) A notarized, sworn statement attesting that the business will continue to meet the requirements for certification under the new ownership; and

(C) A completed application for transfer of certification (available on the Internet at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program).

(d) After certification is transferred, the new certificate holder must submit financial documentation, including, but not limited to, sales receipts, demonstrating that at least 75 percent of the smoke shop's gross revenue during the first 90 days of operation under new ownership was derived from the sale of tobacco products or smoking instruments.

(10) Change of Location:

(a) A smoke shop certified under subsection (5)(a) of this rule that seeks to operate the business at a different location must reapply for certification in the new location.

(b) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule that seeks to operate the business at a different location must submit the following documentation to the Authority, along with a completed application for transfer of certification, at least 30 days prior to permitting smoking at the new location:

(A) A copy of the deed or rental lease for the new location, indicating that the business does not occupy more than 3,500 square feet unless the original location exceeded 3,500 square feet;

(B) If the new location occupies more than 3,500 square feet, documentation demonstrating that the square footage of the new location is no more than 110 percent of the square footage of the location at which the smoke shop was originally certified;

(C) A notarized, sworn statement attesting that the smoke shop will cease to operate in the old location; and

(D) Documentation demonstrating that the smoke shop, as operated in the new location:

(i) Meets the original requirements for certification set forth in subsection (5)(b) or (5)(c), respectively;

(ii) Does not allow cigarette smoking unless at least 75 percent of the gross revenue of the business is derived from the sale of cigarettes.

(c) Smoking is not permitted on the premises of the new location until the Authority certifies the new location pursuant to subsection (10)(a) or (10)(b) of this rule.

(11) Certification may be revoked if a smoke shop ceases operation because it has gone out of business. The certificate holder must notify the Authority that the smoke shop is no longer in operation within 30 days of closing the business.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0069

Revocation of Cigar Bar and Smoke Shop Certification

The Authority may revoke the certification of a cigar bar or smoke shop and prohibit the business from reapplying for up to two years if the business violates the Act or these rules.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0070

Enforcement

(1) The Authority shall maintain a system for receiving complaints, providing educational materials, conducting site visits, and issuing notices of violation.

(2) The Authority shall:

(a) Provide signs and posters at no cost to businesses and the public;

(b) Upon request and satisfactory review, provide certification to cigar bars and smoke shops verifying that they have met the definitions and standards for allowing smoking as set forth in ORS 433.835(1) and ORS 433.850(2)(d) and these rules;

(c) Provide education and assistance to employers and entities in charge of public places to help them comply with the Act;

(d) Receive, respond to, and investigate complaints of non-compliance with the Act and these rules;

(e) Prepare and follow up on remediation plans with sites found to be out of compliance with the Act or these rules; and

(f) Issue citations to violators of the Act or these rules, and conduct contested cases under ORS chapter 183 as necessary.

(3) On written agreement with the Authority, a county or LPHA may assume any or all of the responsibilities outlined in section (2) of this rule. In such cases, the Authority will, upon request of the LPHA, be available for consultation and technical assistance with enforcement procedures.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0075

Complaint Response

The Authority or the LPHA shall respond to complaints as follows:

(1) Initial Complaint:

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(a) The Authority or the LPHA shall assess whether the site in question is required to be smokefree under the provisions of ORS 433.835 through 433.850.

(b) If the Authority or the LPHA determines that the place of employment (or some portion thereof) or public place is required to be smokefree, the Authority or the LPHA shall send a letter ("initial response letter") to the place of employment or public place named in the complaint within 10 business days after receipt of the complaint of violation. The letter shall contain notification that the employer or public place was reported as being in violation of the Act or these rules, educational materials on how to comply with the Act and these rules, and information on whom to contact for further information and assistance with compliance.

(c) The Authority or the LPHA shall send a form letter to the complainant, if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and is being investigated or that the workplace is not required to be smokefree under ORS 433.835 through 433.850.

(2) Second or Subsequent Complaint:

(a) If the Authority or the LPHA receives additional complaint(s) about the site within five business days after the "initial response letter" was sent, the Authority or the LPHA shall send a form letter to the complainant if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and the investigation process begun.

(b) If the Authority or the LPHA receives a second or subsequent complaint about the site more than five business days after the "initial response letter" was sent, a representative of the Authority or the LPHA shall make an unannounced site visit within 30 days of complaint receipt to determine whether the employer or public place is in violation of the Act or these rules.

(c) Failure of an employer or entity in charge to permit the Authority or the LPHA access to the place of employment or public place is a violation and may result in the imposition of civil penalties or other action under sections (5) and (6) of this rule. If an employer or entity in charge does not permit access for a site visit, the Authority or the LPHA shall notify the Public Health Director or designee for further enforcement activity.

(3) Finding of Violation:

(a) A violation of indoor smoking prohibitions is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint, the Authority or LPHA representative:

(A) Observes any person smoking or carrying a lighted smoking instrument in an area where smoking is prohibited;

(B) Observes cigar or cigarette butts in an area where smoking is prohibited;

(C) Observes ashtrays intended for use in an area where smoking is prohibited;

(D) Observes the absence or insufficiency of signs that are required under these rules;

(E) Determines that a cigar bar does not have proper certification from the Authority;

(F) Determines that a business operating as a smoke shop does not have proper certification from the Authority;

(G) Observes the smoking of non-cigar tobacco products in a cigar bar;

(H) Observes smoking instruments intended for use in an area where smoking is prohibited;

(I) Obtains signed written statements from at least two individuals who have personally witnessed smoking, the carrying of a lighted smoking instrument, or the smoking of a prohibited tobacco product at a time and in an area where smoking is prohibited; or

(J) Observes non-compliance with any of the cigar bar or smoke shop certification requirements set forth in the Act or these rules.

(b) A violation of outdoor smoking prohibitions is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint, the Authority or the LPHA representative:

(A) Observes any person smoking or carrying a lighted smoking instrument within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or workplace, or any portion of an accessibility ramp;

(B) Observes ashtrays intended to be used for smoking within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or workplace, or any portion of an accessibility ramp; or

(C) Observes tables or outdoor seating or dining areas that are not clearly marked as non-smoking, and that are within 10 feet of entrances,

exits, windows that open, ventilation intakes that serve an enclosed area of any public place or workplace, or any portion of an accessibility ramp.

(4) Remediation Plan:

(a) After a finding of violation, the Authority or the LPHA representative and the employer or entity in charge will jointly develop a remediation plan. All remediation plans must be completed within 15 days of the site visit.

(b) In special circumstances, an employer or entity in charge may request in writing an extension of time in which to complete the remediation plan. An extension may be granted only by the Public Health Director or designee.

(c) A representative of the Authority or the LPHA shall make a follow-up visit within 30 days of the remediation plan completion date to confirm completion.

(d) If an employer or entity in charge does not cooperate in developing, implementing, or completing a remediation plan, the Authority or the LPHA shall notify the Public Health Director or designee for further enforcement activity.

(e) If an additional complaint is received within three years after the date the Authority or the LPHA confirmed completion of the remediation plan or resolution of the matter under subsection (4)(d) of this rule, a representative of the Authority or the LPHA shall make an unannounced post-remediation-plan visit within 21 days of complaint receipt to determine whether the employer or entity in charge is in violation of the Act or these rules. If a violation is found, the matter will be referred for enforcement under section (5) of this rule.

(f) If an additional complaint is received more than three years from the date the Authority or the LPHA confirmed completion of the remediation plan or resolution of the matter under subsection (4)(d) of this rule, and no other violations were observed in that three-year period, a representative of the Authority or the LPHA shall make an unannounced site visit within 30 days of complaint receipt to determine whether the employer or entity in charge is in violation of the Act or these rules. If a violation is found, a remediation plan will be developed under section (4) of this rule.

(5) Notice of Violation:

(a) If, during the follow-up visit or the post-remediation-plan visit, the Authority or the LPHA representative finds that the remediation plan has not been completed or finds additional evidence of violations, the Authority or the LPHA shall notify the Public Health Director or designee for further enforcement activity.

(b) Once notified under subsection (2)(c), (4)(d), (4)(e) or (5)(a) of this rule, the Public Health Director or designee shall issue a notice of violation and, if applicable, notice of intent to impose civil penalties to the employer or entity in charge of a public place. Such notices shall comply with the notice and civil penalty provision in ORS chapter 183 and OAR 333-015-0085.

(c) The notice of violation and notice of intent to impose civil penalties forms shall be provided by the Authority. This form shall be used for all citations.

(d) The citation shall be personally delivered to the employer or entity in charge of a public place or mailed to the place of employment or the address of the entity in charge of a public place by both first class mail and certified mail with return receipt requested.

(e) Payment of civil penalties shall be made by mail to the Public Health Director and credited to the Tobacco Use Reduction Account, as required by ORS 433.855(1)(c).

(6) Failure to Cooperate: In addition to assessing fines under section (5) of this rule, the Public Health Director may initiate further legal action against an employer or entity in charge of a public place, including, but not limited to, requesting a court to enjoin operation of the business or public place if the employer or entity in charge of a public place has:

(a) Refused to allow an on-site visit to assess status of compliance;

(b) Refused to cooperate in the development of a remediation plan; or

(c) Incurred repeated or multiple violations of the Act or these rules.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0080

Public Places which the Oregon Health Authority, Public Health Authority Regularly Inspects

If, in public places that the Authority regularly inspects and that are required to be smokefree under these rules, the Authority's inspector, during a regular inspection, notes a possible violation of ORS 433.835 through

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433.875 or these rules, the inspector shall report the violation to the Authority.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0082

Public Places Regulated by Other State Agencies or Local Governments

If, during the course of an inspection of a public place that is regulated by the State of Oregon or a local government, an inspector notes a possible violation of ORS 433.835 through 433.875 or these rules, the inspector may report the possible violation to the Authority.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12

333-015-0085

Penalties

Each violation of the Act or these rules shall be punishable by a fine up to \$500 each day the workplace or public place is found to be out of compliance, not to exceed \$4,000 in any 30-day period, according to the following schedule:

(1) Violations described in OAR 333-015-0075(3)(a)(A), (C), (E), (F), (G), and (J) shall be punishable by a fine of \$500 for the first violation and for each subsequent violation.

(2) Violations described in OAR 333-015-0075(3)(a)(B), (D), (H), (I) and (3)(b)(A), (B), and (C) shall be punishable by a fine of \$300 for the first violation, \$400 for the second violation, and \$500 for the third and any subsequent violations.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12

Oregon Medical Board Chapter 847

Rule Caption: Incorporates changes in the Attorney General's Model Rules of Procedure for Office of Administrative Hearings.

Adm. Order No.: OMB 1-2012(Temp)

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-7-12 thru 8-5-12

Notice Publication Date:

Rules Amended: 847-001-0000, 847-001-0005, 847-001-0010, 847-001-0015, 847-001-0020, 847-001-0022, 847-001-0025, 847-001-0030

Subject: The proposed rule amendments incorporate the changes in the Attorney General's Model Rules of Procedure for the Office of Administrative Hearings, which became effective 1/31/2012. A late request for a hearing will be considered using a "good cause" standard; agency review of certain legal actions has been omitted; the agency may consider a request for a delay of hearing on emergency suspension; discovery rules have been reorganized and now include requests for admission and written interrogatories and provides a method of denying a discovery request.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-001-0000

Notice of Proposed Rule

Prior to adoption, amendment or repeal of any permanent rule, the Oregon Medical Board must give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action.

(2) Mail a copy of the notice to persons on the Oregon Medical Board's mailing list established pursuant to ORS 183.335 (8) at least 28 days before the effective date of the rule;

(3) In regard to rules adopted on or after January 1, 2006, at least 49 days before the effective date of the rule, the Board must provide notice to the persons specified in ORS 183.335(15); and

(4) Mail or furnish a copy of the notice to:

(a) The Associated Press; and

(b) The Capitol Press Room.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: ME 1-1988, f. & cert. ef. 1-29-88; ME 20-1994, f. & cert. ef. 10-26-94; BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0005

Model Rules for Contested Cases

The Oregon Medical Board adopts the Attorney General's Uniform and Model Rules for Contested Cases of the Attorney General in effect on January 1, (2008), and all amendments thereto are hereby adopted by reference as rules of the Oregon Medical Board.

[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 Medical Board.]

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: ME 4, f. 11-3-71, ef. 11-15-71; ME 26, f. 3-15-72, ef. 4-1-72; ME 27, f. 3-27-72, ef. 4-15-72; ME 30, f. 3-5-74, ef. 3-25-74; ME 32, f. & ef. 5-11-76; Renumbered from 847-060-0005; ME 2-1978, f. & ef. 7-31-78; ME 3-1980, f. & ef. 5-14-80; ME 6-1980, f. & ef. 8-13-80; ME 1-1982, f. & ef. 1-28-82; ME 5-1983, f. & ef. 11-3-83; ME 2-1986, f. & ef. 4-23-86; ME 14-1987, f. & ef. 8-3-87; ME 1-1988, f. & cert. ef. 1-29-88; ME 13-1988, f. & cert. ef. 10-20-88; ME 13-1988, f. & cert. ef. 10-20-88; ME 10-1990, f. & cert. ef. 8-7-90; ME 13-1990, f. & cert. ef. 8-16-90; ME 2-1992, f. & cert. ef. 4-17-92; ME 20-1994, f. & cert. ef. 10-26-94; BME 13-2000, f. & cert. ef. 10-30-00; BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 6-2011, f. & cert. ef. 4-25-11; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0010

Public Attendance

Contested case hearings are closed to members of the public.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.341
Hist.: BME 13-2000, f. & cert. ef. 10-30-00; BME 2-2003, f. & cert. ef. 1-27-03; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0015

Delegation of Authority

(1) The Oregon Medical Board (Board) has delegated to the Executive Director the authority to make certain procedural determinations on its behalf on matters arising under the Attorney General's Model Rules for Contested Cases in OAR 137-003-0001 to 137-003-0700. The procedural functions include, but are not limited to:

(a) For discovery requests before the Board, to authorize or deny requested discovery in a contested case, to include specifying the methods, timing and extent of discovery;

(b) To review all requests to take a deposition of a witness and to authorize or deny any request for deposition. If a request to take a deposition is authorized, the Executive Director may specify the terms on which the deposition is taken, to include, but not limited to the location, the manner of recording, the time of day, the persons permitted to be present, and the duration of the deposition;

(c) Whether a request for hearing filed after the prescribed time will be accepted, based upon a finding of good cause. In making this determination, the Executive Director may require the request to be supported by an affidavit or other writing to explain why the request is late and may conduct such further inquiry as deemed appropriate. The Executive Director may authorize a hearing on whether the late filing should be accepted. If any party disputes the facts contained in the explanation as to why the request was late or the accuracy of the reason that the request was late, the requestor has a right to a hearing before an Administrative Law Judge (ALJ) on the reasons for that factual dispute;

(d) Whether the late filing of a document may be accepted based upon a finding of good cause;

(e) Whether to issue a subpoena for the attendance of witnesses or to produce documents at the hearing;

(f) Prior to the issuance of a proposed order issued by an ALJ, whether the Board will consider taking notice of judicially cognizable facts or of general, technical or scientific facts in writing which are within the specialized knowledge of the Board;

(g) Whether to submit to the Board prior to an ALJ's proposed final order the following issues:

(A) The Board's interpretation of its rules and applicable statutes;

(B) Which rules or statutes are applicable to a proceeding;

(C) Whether the Board will answer a question transmitted to it by the ALJ;

(h) In regard to a proposed order issued by an ALJ, whether the Board's legal representative will file exceptions and present argument to the Board; and

(i) Whether a request for delay of hearing on emergency suspension will be accepted.

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(2) All actions taken under this delegation must be reported to the Board at the regularly scheduled meeting in which the Board deliberates on the proposed order in the case.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: BME 13-2000, f. & cert. ef. 10-30-00; BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 6-2011, f. & cert. ef. 4-25-11; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0020

Discovery

(1) Before the hearing, upon request by the Board or by a licensee or applicant, the Board and the licensee or applicant must provide:

- (a) The names, telephone numbers, and addresses of witnesses expected to testify at the hearing, except rebuttal witnesses;
- (b) Documents expected to be offered as evidence;
- (c) Objects for inspection, if expected to be offered as evidence;
- (d) Responses to no more than 20 requests for admission (each subpart to count as a separate request) unless otherwise authorized, limited, or prohibited by the administrative law judge; and
- (e) Responses to no more than 20 written interrogatories (each subpart to count as a separate interrogatory), unless otherwise authorized, limited, or prohibited by the administrative law judge.

(2) The Board may deny any discovery request under this section if:

(a) The request would unduly complicate or interfere with the hearing process, and

(b) Alternative procedures for sharing relevant information exist.

(3) Parties must provide the list of witnesses and documents no later than ten working days prior to the beginning of the contested case hearing.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0022

Confidentiality in the Investigative Process

(1) Information pertaining to an ongoing investigation or Board action that has been disclosed to a licensee or applicant by the Board pursuant to ORS 676.175(3) is confidential and may be further disclosed by the licensee or applicant only to the extent necessary to prepare for a contested case hearing related to a Complaint and Notice of Proposed Disciplinary Action, a Notice of Denial of Licensure or an Order of Emergency Suspension issued against the licensee or applicant.

(2) All licensees and applicants under Board investigation or facing Board disciplinary action or license denial, to include consultants for a licensee, an applicant or the Board, have an obligation to protect the confidentiality of information obtained by the Board in an investigation.

(3) Violation of this rule is grounds for disciplinary action.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: OMB 6-2011, f. & cert. ef. 4-25-11; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0025

Motions for Summary Judgment

Motions for summary judgment are not available for contested cases.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

847-001-0030

Approval of Interim Stipulated Orders

(1) The Executive Director, via his/her signature, has the authority to grant approval of an Interim Stipulated Order that has been signed by a licensee of the Board.

(2) The Executive Director's or Medical Director's signature grants approval of the Interim Stipulated Order which allows the Order to become a public document. As a public document, the Interim Stipulated Order may be released to hospitals, clinics, and other practice locations.

(3) The Executive Director or Medical Director must forward Interim Stipulated Orders to the Board in a timely manner.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265 & 677.275
Hist.: BME 13-2008(Temp), f. & cert. ef. 5-16-08 thr 10-31-08; BME 22-2008, f. & cert. ef. 10-31-08; BME 7-2009, f. & cert. ef. 5-1-09; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12

Rule Caption: Authorizes a Board employee to represent the Board in civil penalty contested case hearings.

Adm. Order No.: OMB 2-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Adopted: 847-001-0007

Subject: The proposed rule authorizes an employee of the Oregon Medical Board to appear on behalf of the Board in civil penalty contested case hearings conducted due to violations of 847-008-0065, 847-012-0000, and 847-015-0025.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-001-0007

Agency Representation at Hearings

(1) Subject to the approval of the Attorney General, an employee of the Oregon Medical Board is authorized to appear on behalf of the Board in the following types of hearings conducted by this Board in order to impose a civil penalty:

- (a) Violations of OAR 847-008-0065.
- (b) Violations of OAR 847-012-0000.
- (c) Violations of OAR 847-015-0025.

(2) The agency representative may not make legal argument on behalf of the Board.

(a) "Legal argument" includes arguments on:

- (A) The jurisdiction of the Board to hear the contested case;
- (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; 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 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 Board 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;
- (E) The correctness of procedures being followed in the contested case hearing.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.452
Hist.: OMB 2-2012, f. & cert. ef. 2-10-12

Rule Caption: Fees added for supervising physician applications and criminal records checks.

Adm. Order No.: OMB 3-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Amended: 847-005-0005

Rules Repealed: 847-005-0005(T)

Subject: The proposed rule amendment adds a fee of \$225 for a supervising physician application and \$52 for a criminal records check.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-005-0005

Fees

(1) Fees to be effective upon adoption:

- (a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375.
- (b) MD/DO Registration: Active, Military/Public Health, and Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$232/year**.
- (c) MD/DO Emeritus Registration — \$50/year.
- (d) Limited License, SPEX/COMVEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185.
- (e) Physician Application to Supervise a Physician Assistant - \$225.
- (f) Acupuncture Initial License Application — \$245.
- (g) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$148/year**.

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(h) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75.

(i) Physician Assistant Initial License Application — \$245.

(j) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$175/year**.

(k) Physician Assistant Limited License, Special, Postgraduate — \$75.

(l) Podiatrist Initial Application — \$340.

(m) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$222/year**.

(n) Podiatrist Emeritus Registration — \$50/year.

(o) Podiatrist Limited License, Special, Postgraduate — \$185.

(p) Workforce Data Fee — \$5/license period.

(q) Criminal Records Check Fee — \$52

(r) Miscellaneous: All Fines and Late Fees:

(A) MD/DO Registration Renewal Late Fee — \$159.

(B) Acupuncture Registration Renewal Late Fee — \$80.

(C) Physician Assistant Registration Renewal Late Fee — \$80.

(D) Podiatrist Registration Renewal Late Fee — \$159.

(s) Electronic Prescription Monitoring Program — \$25/year per license***.

(t) Dispensing MD/DO/DPM Failure to Register — \$159.

(u) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs.

(v) Affidavit Processing Fee for Reactivation — \$50.

(w) Licensee Information Requests:

(A) Verification of Licensure — Individual Requests (1-4 Licenses) — \$10 per license.

(B) Verification of Licensure — Multiple (5 or more) — \$7.50 per license.

(C) Verification of MD/DO License Renewal — \$150 Biennially.

(D) Malpractice Report — Individual Requests — \$10 per license.

(E) Malpractice Report — Multiple (monthly report) — \$15 per report.

(F) Disciplinary — Individual Requests — \$10 per license.

(G) Disciplinary Report - Multiple (quarterly report) — \$15 per report.

(x) Base Service Charge for Copying — \$5 + .20/page.

(y) Record Search Fee (+ copy charges see section (v) of this rule):

(A) Clerical — \$20 per hour*.

(B) Administrative — \$40 per hour*.

(C) Executive — \$50 per hour*.

(D) Medical — \$75 per hour*.

(z) Data Order:

(A) Standard Data License Order — \$150 each.

(B) Custom Data License Order — \$150.00 + \$40.00 per hour Administrative time.

(C) Address Label Disk — \$100 each.

(D) Active and Locum Tenens MD/DO list — \$75 each.

(E) DPM, PA, or AC list — \$10 each.

(F) Quarterly new MD/DO, DPM, PA, or AC list — \$10 each.

(2) All Board fees and fines are non-refundable, and non-transferable.

*Plus photocopying charge above, if applicable.

**Collected biennially except where noted in the Administrative Rules. All active MD/DO registration fees include \$10.00 for the Oregon Health and Science University Library, and are collected biennially.

***Per SB 355 (2009), physician, podiatric physician and physician assistant licensees authorized to prescribe or dispense controlled substances in Oregon assessed \$25/year; funds transferred to the Department of Human Services, minus administrative costs, to support the Electronic Prescription Monitoring Program. Licensees with Active, Locum Tenens, Telemonitoring, Teleradiology, and Telemedicine status are included. Licensees with a limited license are not included.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & ef. 8-5-88; ME 14-1988, f. & ef. 10-20-88; ME 1-1989, f. & ef. 1-25-89; ME 5-1989 (Temp), f. & ef. 2-16-89; ME 6-1989, f. & ef. 4-27-89; ME 9-1989(Temp), f. & ef. 8-1-89; ME 17-1989, f. & ef. 10-20-89; ME 4-1990, f. & ef. 4-25-90; ME 9-1990, f. & ef. 8-2-90; ME 5-1991, f. & ef. 7-24-91; ME 11-1991(Temp), f. & ef. 10-21-91; ME 6-1992, f. & ef. 5-26-92; ME 1-1993, f. & ef. 1-29-93; ME 13-1993, f. & ef. 11-1-93; ME 14-1993(Temp), f. & ef. 11-1-93; ME 1-1994, f. & ef. 1-24-94; ME 6-1995, f. & ef. 7-28-95; ME 7-1996, f. & ef. 10-29-96; ME 3-1997, f. & ef. 11-3-97; BME 7-1998, f. & ef. 7-22-98; BME 7-1999, f. & ef. 4-22-99; BME 10-1999, f. & ef. 7-8-99, cert. ef. 8-3-99; BME 14-1999, f. & ef. 10-28-99; BME 4-2000, f. & ef. 2-22-00; BME 6-2001(Temp), f. & ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & ef. 10-30-01; BME 8-2003, f. & ef. 4-24-03; BME 16-2003, f. & ef. 10-23-03; BME 17-2004, f. & ef. 9-9-04; BME 6-2005, f. & ef. 7-20-05; BME 15-2006, f. & ef. 7-25-06; BME 1-2007, f. & ef. 1-24-07; BME 1-2008, f. & ef. 1-22-08; BME 15-2008, f. & ef. 7-21-08; BME 1-2009, f. & ef. 1-22-09; BME 15-

2009(Temp), f. & cert. ef. 9-11-09 thru 3-8-10; BME 1-2010, f. & cert. ef. 1-26-10; OMB 10-2011(Temp), f. & cert. ef. 7-13-11 thru 1-4-12; OMB 18-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 22-2011, f. & cert. ef. 10-18-11; OMB 33-2011(Temp), f. 12-28-11, cert. ef. 1-1-12 thru 6-29-12; OMB 3-2012, f. & cert. ef. 2-10-12

Rule Caption: Supervising physicians must verify existing practice agreements are updated during registration.

Adm. Order No.: OMB 4-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Amended: 847-008-0040

Rules Repealed: 847-008-0040(T)

Subject: SB 224, passed by the 2011 Legislature, requires practice agreements to be updated every 2 years. This rule amendment clarifies that a supervising physician must submit an update to the practice agreement or attest that the practice agreement is current.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-008-0040

Process of Registration

(1) The application for registration shall be made on a form provided by the Board.

(2) Except as provided in OAR 847-008-0015 and 847-008-0025, the application shall be accompanied by the appropriate fee as listed in 847-005-0005.

(3) If the licensee is the supervising physician of a physician assistant or the primary supervising physician of a supervising physician organization for a physician assistant, the application must include any updates to existing practice agreements for every physician assistant the licensee supervises.

(4) The satisfactorily complete application for registration shall be filed with the Board by the first day of the month in which the license or certification is due to expire.

(5) At its discretion, the Board may waive the fee for good and sufficient reason.

(6) If the licensee has been out of-practice for more than 12 consecutive months and/or there are other concerns regarding the licensee's medical competency or fitness to practice, the Board may renew licensee at Inactive status once the license renewal form has been completed satisfactorily.

(7) The Board shall mail to all licensees who have complied with this section a certificate of registration which shall remain in effect until the end of the last business day of the registration period.

(8) Such certificate shall be displayed in a prominent place in the holder's primary place of practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.265 & 677.510

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 14-2004, f. & cert. ef. 7-13-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 16-2008, f. & cert. ef. 7-21-08; BME 2-2009, f. & cert. ef. 1-22-09; OMB 19-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OMB 27-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 31-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 4-2012, f. & cert. ef. 2-10-12

Rule Caption: Requires applicants and licensees to pay a criminal records check fee.

Adm. Order No.: OMB 5-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Amended: 847-020-0155

Rules Repealed: 847-020-0155(T)

Subject: Rule adds the requirement that an applicant or licensee must pay a criminal records check fee.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-020-0155

State and Nationwide Criminal Records Checks, Fitness Determinations

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees in order to determine if they have a history of criminal behavior such that they are not fit to be granted or renewed a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based

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upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require fingerprints of all applicants for a medical (MD/DO), podiatric (DPM), physician assistant (PA), and acupuncturist (LAc) license, licensees reactivating their license, licensees renewing their license and licensees under investigation to determine the fitness of an applicant or licensee. These fingerprints will be provided on prescribed forms made available by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the Board will submit fingerprints to the Oregon Department of State Police to conduct a Criminal History Check and a National Criminal History Check. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police.

(4) The Board shall determine whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If the licensee is determined to be unfit, the licensee's license may not be reactivated or renewed. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board shall consider:

- (a) The nature of the crime;
- (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 applicant's or licensee's present or proposed license; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

- (A) The passage of time since the commission of the crime;
- (B) The age of the applicant or licensee at the time of the crime;
- (C) The likelihood of a repetition of offenses or of the commission of another crime;
- (D) The subsequent commission of another relevant crime;
- (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
- (F) A recommendation of an employer.

(6) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under HB 2157 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(9) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.414–183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

(13) The applicant or licensee must pay a criminal records check fee. Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265(9) & 181.534
Hist. BME 20-2006(Temp), f. & cert. ef. 9-14-06 thru 3-12-07; BME 4-2007, f. & cert. ef. 1-24-07; BME 4-2008, f. & cert. ef. 1-22-08; OMB 20-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 5-2012, f. & cert. ef. 2-10-12

Rule Caption: Adds requirements for EMS supervising physicians.
Adm. Order No.: OMB 6-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Amended: 847-035-0020

Subject: The proposed rule amendment adds initial requirements for qualification as an EMS supervising physician and adds requirements for ongoing education for an EMS supervising physician.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-035-0020

Application and Qualifications for a Supervising Physician and Agent

(1) A physician must receive approval from the Board in order to supervise one or more EMT or First Responder.

(2) Any physician who desires to function as a supervising physician or agent must apply and receive approval from the Board.

(3) Applications are to be submitted on forms provided by the Board.

(4) A supervising physician and agent must meet the following qualifications:

- (a) Be a medical or osteopathic physician currently licensed under ORS Chapter 677, actively registered and in good standing with the Board;
- (b) Be in current practice;
- (c) Be a resident of or actively practicing in the area in which the emergency service is located;
- (d) Possess thorough knowledge of skills assigned by standing order to EMTs and First Responders;
- (e) Possess thorough knowledge of laws and rules of the State of Oregon pertaining to EMTs and First Responders; and
- (f) Have completed or obtained one of the following no later than one calendar year after beginning the position as a supervising physician:

(A) Thirty-six months of experience as an EMS Medical Director;

(B) Completion of the one-day National Association of EMS Physicians (NAEMSP®) Medical Direction Overview Course, or an equivalent course as approved by the Authority;

(C) Completion of the three-day National Association of EMS Physicians (NAEMSP®) National EMS Medical Directors Course and Practicum®, or an equivalent course as approved by the Authority;

(D) Completion of an ACGME-approved Fellowship in EMS; or

(E) Subspecialty Board certification in EMS.

(5) A supervising physician must meet ongoing education standards by completing or obtaining one of the following every two calendar years:

(a) Attendance at one Oregon Health Authority EMS supervising physician's forum;

(b) Completion of an average of four hours of EMS-related continuing medical education per year; or

(c) Participation in maintenance of certification in the subspecialty of EMS.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 13-1984, f. & ef. 8-2-84; ME 2-1985(Temp), f. & ef. 1-21-85; ME 5-1985, f. & ef. 5-6-85; ME 7-1985, f. & ef. 8-5-85; ME 6-1991, f. & cert. ef. 7-24-91; ME 1-1996, f. & cert. ef. 2-15-96; OMB 6-2012, f. & cert. ef. 2-10-12

Rule Caption: Changes to physician assistant licensing and practice regulation per 2011 SB 224.

Adm. Order No.: OMB 7-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 12-1-2011

Rules Amended: 847-050-0005, 847-050-0010, 847-050-0015, 847-050-0020, 847-050-0023, 847-050-0025, 847-050-0026, 847-050-0027, 847-050-0029, 847-050-0035, 847-050-0037, 847-050-0038, 847-050-0040, 847-050-0041, 847-050-0042, 847-050-0043, 847-

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050-0046, 847-050-0050, 847-050-0055, 847-050-0060, 847-050-0063, 847-050-0065

Rules Repealed: 847-050-0005(T), 847-050-0010(T), 847-050-0015(T), 847-050-0020(T), 847-050-0023(T), 847-050-0025(T), 847-050-0026(T), 847-050-0027(T), 847-050-0029(T), 847-050-0035(T), 847-050-0037(T), 847-050-0038(T), 847-050-0040(T), 847-050-0041(T), 847-050-0042(T), 847-050-0043(T), 847-050-0046(T), 847-050-0050(T), 847-050-0055(T), 847-050-0060(T), 847-050-0063(T), 847-050-0065(T)

Subject: The proposed rule amendment clarifies the regulations for physician assistants and supervising physicians based on the statutory changes made by 2011 SB 224, which changed the licensing procedures and practice guidelines for physician assistants. These changes required changes to Division 050 of the Oregon Medical Board administrative rules governing physician assistants.

The new law separates physician assistant licensure from employment, and the Oregon Medical Board no longer approves the individual procedures or duties in a physician assistant's practice agreement with a supervising physician. The rule amendments establish the process for licensure, practice, and supervision of physician assistants, including Board-approval of supervising physicians, supervision requirements, physician assistant methods and requirements of practice, physician assistant prescription privileges and requirements, practice agreement contents and requirements, procedures for submitting, updating and terminating practice agreements, and the role of the Oregon Medical Board's Physician Assistant Advisory Committee.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-050-0005

Preamble

(1) A physician assistant is a person qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a physician licensed under ORS Chapter 677, in active practice and in good standing with the Board. The purpose of the physician assistant program is to enable physicians licensed under ORS 677 to extend high quality medical care to more people throughout the state.

(2) The licensed physician is in all cases regarded as the supervisor of the physician assistant.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.495 - 677.535

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 13-2003, f. & cert. ef. 7-15-03; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0010

Definitions

As used in OAR 847-050-0005 to 847-050-0065:

(1) "Agent" means a physician designated in writing and retained at the primary practice location by the supervising physician who provides direction and regular review of the medical services of the physician assistant when the supervising physician is unavailable for short periods of time, such as but not limited to when the supervising physician is on vacation.

(2) "Board" means the Oregon Medical Board for the State of Oregon.

(3) "Committee" means Physician Assistant Committee.

(4) "Grandfathered physician assistant" means the physician assistant registered prior to July 12, 1984 who does not possess the qualifications of OAR 847-050-0020. Grandfathered physician assistants may retain all practice privileges which have been granted prior to July 12, 1984.

(5) "Physician assistant" means a person who is licensed as such in accordance with ORS 677.265, 677.495, 677.505, 677.510, 677.515, 677.520, and 677.525.

(6) "Practice agreement" means a written agreement between a physician assistant and a supervising physician or supervising physician organization that describes the manner in which the services of the physician assistant will be used.

(7) "Practice description" means a written description of the duties and functions of the physician assistant in relation to the physician's practice, submitted by the supervising physician and the physician assistant to the Board and approved prior to January 1, 2012.

(8) "Supervising physician organization" means a group of supervising physicians who collectively supervises a physician assistant. One physician within the supervising physician organization must be designated as the primary supervising physician of the physician assistant.

(9) "Supervising physician" means a physician licensed under ORS Chapter 677, actively registered and in good standing with the Board as a Medical Doctor or Doctor of Osteopathic Medicine, and approved by the Board as a supervising physician, who provides direction and regular review of the medical services provided by the physician assistant.

(10) "Supervision" means the routine review by the supervising physician or designated agent, as described in the practice agreement or Board-approved practice description of the medical services provided by the physician assistant. The supervising physician or designated agent and the physician assistant must maintain direct communication, either in person, by telephone, or other electronic means. There are three categories of supervision:

(a) "General Supervision" means the supervising physician or designated agent is not on-site with the physician assistant, but must be available for direct communication, either in person, by telephone, or other electronic means.

(b) "Direct Supervision" means the supervising physician or designated agent must be in the facility when the physician assistant is practicing.

(c) "Personal Supervision" means the supervising physician or designated agent must be at the side of the physician assistant at all times, personally directing the action of the physician assistant.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.495

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 12-2006, f. & cert. ef. 5-8-06; BME 19-2010, f. & cert. ef. 10-25-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0015

Application

(1) Each application for the licensure of a physician assistant must meet the licensing requirements as set forth in ORS 677.512.

(2) No applicant is entitled to licensure who:

(a) Has failed an examination for licensure in the State of Oregon;

(b) Has had a license or certificate revoked or suspended in this or any other state unless the said license or certificate has been restored or reinstated and the applicant's license or certificate is in good standing in the state which had revoked the same;

(c) Has been refused a license or certificate in any other state on any grounds other than failure in a medical licensure examination; or

(d) Has been guilty of conduct similar to that which would be prohibited by or to which ORS 677.190 would apply.

(3) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period from date of receipt of the application must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.512

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2010(Temp), f. & cert. ef. 7-26-10 thru 1-10-11; BME 19-2010, f. & cert. ef. 10-25-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0020

Qualifications

On or after January 25, 2008, an applicant for licensure as a physician assistant in this state must possess the following qualifications:

(1) Have successfully completed a physician assistant education program which is approved by the American Medical Association Committee on Allied Health Education and Accreditation (C.A.H.E.A.), the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.).

(2) Have passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission on Certification of Physician Assistants (N.C.C.P.A.).

ADMINISTRATIVE RULES

(a) The applicant may take the PANCE once in a 90-day period or three times per calendar year, whichever is fewer.

(A) The applicant has no more than four attempts in six years to pass the PANCE. If the applicant does not pass the PANCE within four attempts, the applicant is not eligible for licensure.

(B) An applicant who has passed the NCCPA certification exam, but not within the four attempts required by this rule, may request a waiver of this requirement if he/she has current certification by the NCCPA.

(b) Those who have met the requirements of section (1) of this rule may make application for a Limited License, Postgraduate before passing the PANCE examination with the stipulation that if the examination is not passed within one year from the date of application, the Board withdraws its approval.

(3) Applicants **seeking** prescription privileges must meet the requirements specified in OAR 847-050-0041.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.512

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 17-1994, f. & cert. ef. 10-25-94; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 1-2001, f. & cert. ef. 1-25-01; BME 6-2003, f. & cert. ef. 1-27-03; BME 6-2008, f. & cert. ef. 1-22-08; BME 10-2010(Temp), f. & cert. ef. 4-26-10 thru 10-15-10; BME 14-2010, f. & cert. ef. 7-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0023

Limited License, Postgraduate

(1) An applicant for a Physician Assistant license who has successfully completed a physician assistant education program approved by the American Medical Association Council on Allied Health Education and Accreditation (C.A.H.E.A.), or the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.) but has not yet passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission for the Certification of Physician Assistants (N.C.C.P.A.) may be issued a Limited License, Postgraduate, if the following are met:

(a) The application file is complete with the exception of certification by the N.C.C.P.A.; and

(b) The applicant has submitted the appropriate form and fee prior to being issued a Limited License, Postgraduate.

(2) A Limited License, Postgraduate may include prescriptive privileges for Schedules III through V if the supervising physician specifies these prescription privileges for the physician assistant in the practice agreement;

(3) A Limited License, Postgraduate may be granted for one year, and may not be renewed.

(4) Upon receipt of verification that the applicant has passed the N.C.C.P.A. examination, and if their application file is otherwise satisfactorily complete, the applicant will be considered for a permanent license.

(5) The Limited License, Postgraduate will automatically expire if the applicant fails the N.C.C.P.A. examination.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.132 & 677.535

Hist.: ME 5-1993, f. & cert. ef. 4-22-93; ME 9-1995, f. & cert. ef. 7-28-95; BME 14-2002, f. & cert. ef. 10-25-02; BME 13-2003, f. & cert. ef. 7-15-03; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0025

Interview and Examination

(1) In addition to all other requirements, the Board may require prior to original licensure the applicant to appear for a personal interview if there are questions concerning the application.

(2) The applicant is required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR) chapter 847, division 050. If an applicant fails the open-book examination three times, the applicant's application will be reviewed by the Physician Assistant Committee of the Oregon Medical Board. An applicant who has failed the open-book examination three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the examination on the fourth attempt, the applicant may be denied licensure.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 23(Temp), f. & ef. 1-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 9-1995, f. & cert. ef. 7-28-95; BME 11-1998, f. & cert. ef. 7-22-98; BME 13-2003, f. & cert. ef. 7-15-03; BME 13-2006, f. & cert. ef. 5-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0026

Limited License, Special

(1) Under the authority of the Oregon Medical Board, the Physician Assistant Committee may grant a Limited License, Special to physician assistants not previously licensed in the state, subject to final Board approval.

(2) A Limited License, Special is valid until the approval of permanent licensure and may be granted only if the following criteria are met:

(a) The applicant meets the qualifications of OAR 857-050-0020(1) and (2);

(b) The application file is complete; and

(c) The applicant has submitted the appropriate form and fee for a Limited License, Special.

(3) Prescribing, administering and dispensing medications, and remote supervision in a medically disadvantaged, underserved, or health professional shortage area may be included with a Limited License, Special if specified in the practice agreement.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.535

Hist.: ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0027

Approval of Supervising Physician

(1) Prior to using the services of a physician assistant under a practice agreement, a supervising physician or primary supervising physician of a supervising physician organization must be approved as a supervising physician by the Board.

(2) The primary supervising physician of a supervising physician organization must apply as a supervising physician with the Board and must attest that each supervising physician in the supervising physician organization has reviewed statutes and rules relating to the practice of physician assistants and the role of a supervising physician.

(3) Physicians applying to be a supervising physician or the primary supervising physician of a supervising physician organization must:

(a) Submit a supervising physician application and application fee to the Board; and

(b) Take an online course and pass an open-book exam on the supervising physician requirements and responsibilities given by the Board. A passing score on the exam is 75%. If the supervising physician applicant fails the exam three times, the physician's application will be reviewed by the Board. A supervising physician applicant who has failed the exam three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the exam, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the exam on the fourth attempt, the physician's application may be denied.

(4) The physician may be subject to Board investigation prior to approval or may be limited or denied approval as a supervising physician for the following:

(a) There are restrictions upon or actions against the physician's license;

(b) Fraud or misrepresentation in applying to use the services of a physician assistant.

(5) The Board may defer taking action upon a request for approval as a supervising physician pending the outcome of the investigation of the physician for violations of ORS 677.010-677.990.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 5-1984, f. & ef. 1-20-84; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 13-2003, f. & cert. ef. 7-15-03; OMB 2-2011, f. & cert. ef. 2-11-11; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by

ADMINISTRATIVE RULES

OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0029

Locum Tenens Assignments

Locum tenens means a temporary absence by the physician assistant or supervising physician which is filled by a substitute physician assistant or supervising physician. The following is required for a locum tenens assignment:

(1) Within ten days of the start of the locum tenens assignment, the supervising physician of the practice which desires the substitute must submit a notification of locum tenens assignment to the Board.

(2) The notification of locum tenens assignment must include the name of the substitute physician assistant or supervising physician who is filling the locum tenens assignment, duration of the locum tenens assignment, a description of how supervision of the physician assistant will be maintained, and any changes in the practice agreement or Board-approved practice description for the practice during the locum tenens assignment.

(3) The substitute physician assistant or supervising physician who is filling the locum tenens assignment must be currently licensed in Oregon, with active, locum tenens, or emeritus registration status, and be in good standing with the Board.

(4) The physician assistant must be qualified to provide the same type of service as described in the current practice agreement or Board-approved practice description for the locum tenens.

(5) The supervising physician who is filling the locum tenens assignment must be approved as a supervising physician by the Board in accordance with OAR 847-050-0027 (Approval of Supervising Physician).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.510

Hist.: ME 1-1986, f. & ef. 1-21-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 7-1990, f. & cert. ef. 4-25-90; BME 6-2003, f. & cert. ef. 1-27-03; BME 11-2005, f. & cert. ef. 10-12-05; BME 14-2010, f. & cert. ef. 7-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0035

Grounds for Discipline

(1) The performance of unauthorized medical services by the physician assistant constitutes a violation of the Medical Practice Act. The supervising physician and/or agent is responsible for the acts of the physician assistant and may be subject to disciplinary action for such violations by the physician assistant. The physician assistant is also subject to disciplinary action for violations. Proceedings under these rules are conducted in the manner specified in ORS 677.200.

(2) In addition to any of the reasons cited in ORS 677.190, the Board may refuse to grant, or may suspend or revoke a license to practice as a physician assistant for any of the following reasons:

(a) The physician assistant has held himself/herself out, or permitted another to represent the physician assistant to be a licensed physician.

(b) The physician assistant has in fact performed medical services without the direction or under the supervision of a Board-approved supervising physician or agent.

(c) The physician assistant has performed a task or tasks beyond the physician assistant's competence or outside the scope of practice of the supervising physician or outside the practice agreement as stated in OAR 847-050-0040. This is not intended to limit the ability of a physician assistant to learn new procedures under personal supervision.

Stat. Auth.: ORS 677.190, 677.205 & 677.265

Stats. Implemented: ORS 677.190, 677.205, 677.265 & 677.505

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 23-2007, f. & cert. ef. 10-24-07; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0037

Supervision

(1) A physician may not use the services of a physician assistant without first obtaining Board approval as a supervising physician.

(2) The supervising physician, agent, or in the case of a supervising physician organization, the primary supervising physician and acting supervising physician, are personally responsible for the direction, supervision and regular review of the medical services provided by the physician assistant, in keeping with the practice agreement or Board-approved practice description.

(3) The type of supervision and maintenance of supervision provided for each physician assistant must be described in the practice agreement or Board-approved practice description. The supervising physician must provide for maintenance of verbal communication with the physician assistant at all times, whether the supervising physician and physician assistant practice in the same practice location or a practice location separate from each other, as described in the following:

(a) The practice setting is listed in the practice agreement or Board-approved practice description of the physician assistant.

(b) Practice locations, other than primary or secondary practice locations, such as schools, sporting events, health fairs and long term care facilities, are not required to be listed in the practice agreement or Board-approved practice description if the duties are the same as those listed in the practice agreement or Board-approved practice description. The medical records for the patients seen at these additional practice locations must be held either at the supervising physician's primary practice location or the additional practice locations. The supervision of the physician assistant at locations other than the primary or secondary practice location must be the same as for the primary or secondary practice location.

(c) The supervising physician or designated agent must provide a minimum of eight (8) hours of on-site supervision every month, or as approved by the Board.

(d) The supervising physician or designated agent must provide chart review of a number or a percentage of the patients the physician assistant has seen as stated in the practice agreement or Board-approved practice description.

(4) The supervising physician may limit the degree of independent judgment that the physician assistant uses but may not extend it beyond the limits of the practice agreement or Board-approved practice description.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510 & 677.515

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; BME 1-1998, f. & cert. ef. 1-30-98; BME 9-1999, f. & cert. ef. 4-22-99; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2005, f. & cert. ef. 4-21-05; BME 20-2008, f. & cert. ef. 7-21-08; BME 12-2009(Temp), f. & cert. ef. 7-14-09 thru 12-14-09; BME 19-2009, f. & cert. ef. 10-23-09; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0038

Agents

(1) The supervising physician who is not a member of a supervising physician organization may designate an agent or agents to direct and supervise the physician assistant when the supervising physician is unavailable for short periods of time. The agents must meet the following requirements:

(a) Be licensed as a medical or osteopathic physician under ORS 677, actively registered and in good standing with the Board;

(b) Practice in the same city or practice area as the supervising physician or physician assistant.

(c) Be qualified to supervise as designated in the practice agreement, and be competent to perform the duties delegated to the physician assistant.

(2) The supervising physician is responsible for informing the agent of the duties of an agent. Prior to such time as the physician assistant is acting under the direction of an agent, the supervising physician must determine that the agent understands and accepts supervisory responsibility. The agent must sign an acknowledgement of all practice agreements between the supervising physician and the physician assistant(s) the agent will supervise, and a copy must be kept at the primary practice location. Supervision by the agent will continue for a certain, predetermined, limited period of time, after which supervisory duties revert to the supervising physician.

(3) In the absence of the supervising physician, the agent assumes the same responsibilities as the supervising physician.

Stat. Auth.: ORS 183 & 677

Stats. Implemented: ORS 677.495 & 677.510

Hist.: ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; BME 4-2002, f. & cert. ef. 4-23-02; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0040

Method of Performance

(1) The physician assistant may perform at the direction of the supervising physician and/or agent only those medical services as included in the practice agreement or Board-approved practice description.

ADMINISTRATIVE RULES

(2) The physician assistant must be clearly identified as such when performing duties. The physician assistant must at all times when on duty wear a name tag with the designation of "physician assistant" thereon.

(3) The supervising physician must furnish reports, as required by the Board, on the performance of the physician assistant or student.

(4) The practice agreement must be submitted to the Board within ten days after the physician assistant begins practice with the supervising physician or supervising physician organization.

(5) The supervising physician must notify the Board of any changes to the practice agreement within ten days of the effective date of the change.

(6) Supervising physicians must update the practice agreement biennially during the supervising physician's license renewal process.

(7) A supervising physician and physician assistant who have a Board-approved practice description that was approved prior to January 1, 2012 and who wish to make changes to the practice description must enter into a practice agreement in accordance with ORS 677.510(6)(a).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0041

Prescription Privileges

(1) An Oregon grandfathered physician assistant may issue written, electronic or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description if the physician assistant has passed a specialty examination approved by the Board prior to July 12, 1984, and the following conditions are met:

(a) The Oregon grandfathered physician assistant has passed the Physician Assistant National Certifying Examination (PANCE); and

(b) The Oregon grandfathered physician assistant has documented adequate education or experience in pharmacology commensurate with the practice agreement or Board-approved practice description.

(2) A physician assistant may issue written, electronic or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice agreement or Board-approved practice description, if the physician assistant has met the requirements of OAR 847-050-0020(1).

(3) A physician assistant may issue written, electronic or oral prescriptions for medications, Schedule II if the requirements in (1) or (2) are fulfilled and if the following conditions are met:

(a) A statement regarding Schedule II controlled substances prescription privileges is included in the practice agreement or Board-approved practice description. The Schedule II controlled substances prescription privileges of a physician assistant are limited by the practice agreement or Board-approved practice description and may be restricted further by the supervising physician at any time.

(b) The physician assistant is currently certified by the National Commission for the Certification of Physician Assistants and must complete all required continuing medical education coursework.

(4) All prescriptions given whether written, electronic, or oral must include the name, office address, and telephone number of the supervising physician and the name of the physician assistant. The prescription must also bear the name of the patient and the date on which the prescription was written. The physician assistant must sign the prescription and the signature must be followed by the letters "P.A." Also the physician assistant's Federal Drug Enforcement Administration number must be shown on prescriptions for controlled substances.

(5) A licensed physician assistant may make application to the Board to dispense emergency medications.

(a) The application must be submitted to the Board by the supervising physician and must explain the need for the request, as follows:

(A) Location of the practice site;

(B) Accessibility to the nearest pharmacy; and

(C) Medical necessity for emergency dispensing.

(b) The dispensed medication must be pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689 and the physician assistant must maintain records of receipt and distribution.

(c) A supervising physician or primary supervising physician of a supervising physician organization for a physician assistant who is applying for emergency dispensing privileges must be registered with the Oregon Medical Board as a dispensing physician.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 409.560, 677.470, 677.515 & 677.545

Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 8-2004, f. & cert. ef. 4-22-04; BME 3-2005, f. & cert. ef. 1-27-05; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0042

Registration

(1) The registration renewal form and fee must be received in the Board office during regular business hours and must be satisfactorily complete on or before December 31 of each odd-numbered year in order for the physician assistant's registration to be renewed for the next 24 months. This application must also include submission of an updated practice agreement or validation of an existing practice agreement or Board-approved practice description.

(2) Upon failure to comply with section (1) of this rule, the license will automatically lapse as per ORS 677.228.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.512

Hist.: ME 1-1979, f. & ef. 1-2-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 7-1984, f. & ef. 1-26-84; ME 2-1990, f. & cert. ef. 1-29-90; ME 7-1990, f. & cert. ef. 4-25-90; ME 7-1991, f. & cert. ef. 7-24-91; ME 5-1994, f. & cert. ef. 1-24-94; BME 6-2003, f. & cert. ef. 1-27-03; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0043

Inactive Registration, Initial Licensure, and Re-Entry to Practice

(1) Any physician assistant licensed in this state who changes location to some other state or country, or who is not in a current supervisory relationship with a licensed physician for six months or more, will be listed by the Board as inactive.

(2) If the physician assistant wishes to resume active status to practice in Oregon, the physician assistant must submit the Affidavit of Reactivation and processing fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the physician assistant during the period of inactive registration to be such that the physician assistant would have been denied a license if applying for an initial license.

(4) If a physician assistant applicant has ceased practice for a period of 12 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification by the National Commission on the Certification of Physician Assistants (N.C.C.P.A.);

(b) Provide documentation of current N.C.C.P.A. certification;

(c) Complete 30 hours of Category I continuing medical education acceptable to the Board for every year the applicant has ceased practice;

(d) Agree to increased chart reviews upon re-entry to practice.

(5) The physician assistant applicant who has ceased practice for a period of 24 or more consecutive months may be required to complete a re-entry plan to the satisfaction of the Board. The Board must review and approve a re-entry plan prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section (4) of this rule and such additional requirements as determined by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.512

Hist.: ME 12-1986, f. & ef. 7-31-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1996, f. & cert. ef. 7-26-96; BME 11-1998, f. & cert. ef. 7-22-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 29-2011, f. & cert. ef. 10-27-11; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

ADMINISTRATIVE RULES

847-050-0046

Active Status for Temporary, Rotating Assignments

(1) A physician assistant, upon notification to the Board, may retire from active, permanent practice and change to Emeritus status which allows the physician assistant to practice temporary, volunteer assignments. A physician assistant with Emeritus status who wishes to volunteer at a medical facility must have a practice agreement or Board-approved practice description prior to starting practice at each assignment.

(2) A physician assistant, upon notification to the Board, may retire from active, permanent practice and maintain Active status by practicing at medical facilities for assignments on a rotating basis. A physician assistant who wishes to maintain active status and practice in rotating assignments at permanent locations must have a practice agreement or Board-approved practice description and must provide the Board with timely notification of the dates of each assignment prior to beginning each rotating assignment.

Stat. Auth.: ORS 677.265 & 677.545

Stats. Implemented: ORS 677.265, 677.510 & 677.515

Hist.: BME 9-2010, f. & cert. ef. 4-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0050

Termination of Supervision

Upon termination of a supervisory relationship both the supervising physician and the physician assistant must submit to the Board a written report concerning the reason(s) for termination of the relationship. Such report must be submitted to the Board within 15 days following termination of supervision.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 677.510

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0055

Professional Corporation or Partnership

Whenever the supervising physician is a member of a professional corporation or employee of a professional corporation or partnership, the primary supervising physician and any acting supervising physician are in all cases personally responsible for the direction and supervision of the physician assistant's work. Such responsibility for supervision cannot be transferred to the corporation or partnership even though such corporation or partnership may pay the supervising physician and the physician assistant's salaries or enter into an employment agreement with such physician assistant or supervising physician.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 58.185

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0060

Physician Assistant Student

(1) Where applicable, any person who is enrolled as a student in any school offering an accredited physician assistant education program must comply with OAR 847-050-0005 to 847-050-0065.

(2) Notwithstanding any other provisions of these rules, a physician assistant student may perform medical services when such services are rendered within the scope of an accredited physician assistant education program.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 677.515

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0063

Physician Assistant Committee

(1) There is created a Physician Assistant Committee consisting of five members. Members of the committee are appointed as follows:

(a) The Oregon Medical Board for the State of Oregon must appoint one of its members and one physician. The physician who is not a member of the Board must supervise a physician assistant.

(b) The Oregon Medical Board must appoint three physician assistants after considering persons nominated by the Oregon Society of Physician Assistants.

(2) The term of each member of the committee is three years. A member must serve until a successor is appointed. If a vacancy occurs, it must be filled for the unexpired term by a person with the same qualifications as the retiring member.

(3) If any vacancy under subsection (1) of this section is not filled within 45 days, the Governor must make the necessary appointment from the category which is vacant.

(4) The committee elects its own chairperson with such powers and duties as fixed by the committee.

(5) A quorum of the committee is three members. The committee must hold a meeting at least once quarterly and at such other times the committee considers advisable to review requests to use the services of physician assistants and for dispensing privileges and to review applications for licensure or renewal.

(6) The chairperson may call a special meeting of the Physician Assistant Committee upon at least 10 days' notice in writing to each member, to be held at any place designated by the chairperson.

(7) The committee members are entitled to compensation and expenses as provided in ORS 677.292-677.495.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.540

Hist.: BME 15-1999, f. & cert. ef. 10-28-99; BME 1-2001, f. & cert. ef. 1-25-01; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

847-050-0065

Duties of the Committee

(1) The Physician Assistant Committee must:

(a) Review applications for physician assistants' licensure and for renewal thereof.

(b) Review applications of physician assistants for dispensing privileges.

(c) Recommend approval or disapproval of applications submitted under subsection (1) or (2) of this section to the Oregon Medical Board for the State of Oregon.

(d) Recommend criteria to be used in granting dispensing privileges under ORS 677.515.

(e) Review requests to use the services of physician assistants.

(2) All actions of the physician assistant committee are subject to review and approval by the Board.

(3) Any other matters related to the physician assistant practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.540 & 677.545

Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 15-1999, f. & cert. ef. 10-28-99; BME 6-2006, f. & cert. ef. 2-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12]; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12

Rule Caption: Establishes requirements for re-entry to practice and includes language and grammar housekeeping changes.

Adm. Order No.: OMB 8-2012

Filed with Sec. of State: 2-10-2012

Certified to be Effective: 2-10-12

Notice Publication Date: 8-1-2011

Rules Amended: 847-070-0045

Subject: The proposed rule amendment establishes requirements for re-entry to practice for acupuncturists who have ceased practice for a period of 24 or more consecutive months immediately preceding the application for licensure or reactivation. The rule also includes general language and grammar housekeeping changes.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-070-0045

Inactive Registration and Re-Entry to Practice

(1) Any acupuncturist licensed in this state who changes location to some other state or country shall be listed by the Board as inactive.

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(2) If the acupuncturist wishes to resume active status, the acupuncturist must file an Affidavit of Reactivation and pay a processing fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the acupuncturist during the period of inactive registration to be such that the acupuncturist would have been denied a license if applying for an initial license.

(4) If an acupuncturist applicant has ceased practice for a period of 24 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification in Acupuncture or Oriental Medicine by the National Certification Commission for Acupuncture and Oriental Medicine (N.C.C.A.O.M.);

(b) Provide documentation of current N.C.C.A.O.M. Acupuncture or Oriental Medicine certification;

(c) Complete 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice;

(d) Complete a mentorship of at least 20 hours under a Board-approved clinical supervisor who must individually supervise the licensee. The clinical supervisor must report the successful completion of the mentorship to the Board.

(5) The acupuncturist applicant who has ceased practice for a period of five or more consecutive years may be required to complete a re-entry plan to the satisfaction of the Board. The Board must review and approve a re-entry plan prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section (4) of this rule and such additional requirements as determined by the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.759

Hist.: ME 24-1987, f. & ef. 10-29-87; ME 6-1993, f. & cert. ef. 4-22-93; ME 10-1996, f. & cert. ef. 10-29-96; BME 16-1999, f. & cert. ef. 10-28-99; BME 12-2005, f. & cert. ef. 10-12-05; BME 5-2009, f. & cert. ef. 1-22-09; OMB 8-2012, f. & cert. ef. 2-10-12

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Amend and adopt rules to implement 2011 legislation impacting PERS.

Adm. Order No.: PERS 1-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 11-1-2011

Rules Adopted: 459-005-0620

Rules Amended: 459-005-0001, 459-005-0525, 459-005-0545, 459-075-0060, 459-080-0010

Subject: The 2011 Oregon Legislative Assembly passed several bills which require rulemaking to implement. The first, House Bill 2113 (chapter 722, Oregon Laws 2011), became effective on August 5, 2011. The bill contains modifications to the retirement plan options available to legislators; clean-up of trustee to trustee transfer retirement credit purchases; and clarification of vesting standards for OPSRP Pension Program and IAP members. The bill also addressed the dual membership problem presented by members who withdraw from the IAP but are not eligible to withdraw from the OPSRP Pension Program.

House Bill 2252, which became effective on June 2, 2011, provides a state agency direct authority to write off uncollectible debts on its accounts under its own criteria (previously, the Secretary of State and Attorney General had to approve the criteria). The proposed new rule establishes the criteria which are mandated by HB 2252 for PERS. As the agency's criteria must still be approved by the Attorney General, the new rule adopts the model criteria that they provided.

Senate Bill 301 (Chapter 7, Oregon Laws 2011), became effective on September 29, 2011. The bill updates the connection date to the

federal Internal Revenue Code and other provisions of federal tax law.

Staff has reviewed the bills and determined that certain existing rules need modification to conform to these statutory provisions. One new rule is needed to implement HB 2252.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0001

Definitions, Generally

The words and phrases used in chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515, which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515, which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) "Casual worker" means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Differential wage payment" means a payment made on or after January 1, 2009:

(a) By an employer to a member with respect to any period during which the member is performing service in the uniformed services, as defined in USERRA, while on active duty for a period of more than 30 consecutive days; and

(b) That represents all or a portion of the wages the member would have received from the employer if the member were performing service for the employer.

(8) "Effective date of withdrawal" means the later of:

(a) The first day of the calendar month in which PERS receives the last completed document required from a member who requested a withdrawal; or

(b) The first day of the second calendar month following the calendar month in which the member terminated employment with all participating employers and all employers in a controlled group with a participating employer.

(9) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0001.

(10) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

(11) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(12) "Employee" has the same meaning as provided in ORS 238.005 and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

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(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(c) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(6).

(13) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS Chapter 238.

(14) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(15) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(16) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005 for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a local government as defined in ORS 174.116;

(c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local government as defined in ORS 174.116; or

(d) ORS 238.535(2) for judge members of PERS for service as a judge.

(17) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(18) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(19) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(20) "Judge member" has the same meaning as provided in ORS 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as provided in ORS 238.005.

(21) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS for their legislative service.

(22) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(23) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(24) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(25) "Qualifying position" has the same meaning as provided in ORS 238.005.

(26) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(27) "Salary" has the same meaning as provided in ORS 238.005.

(a) "Salary" includes a differential wage payment, as defined in this rule.

(b) For a Tier One member, a lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(c) For a Tier Two member, a lump sum payment for accrued vacation pay:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(28) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(29) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(30) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(31) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(32) "USERRA" means the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective date of this rule.

(33) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer must report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(34) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(35) "Variable Annuity Account" means the account established in ORS 238.260(2).

(36)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(37) "Year" means any period of 12 consecutive calendar months.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 4-2006, f. & cert. ef. 4-5-06; PERS 1-2009, f. & cert. ef. 2-12-09; PERS 3-2010, f. & cert. ef. 5-28-10; PERS 1-2012, f. & cert. ef. 2-1-12

459-005-0525

Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS Chapters 238 and 238A.

(2) Definitions:

(a) "Annual compensation" means "salary," as defined in ORS 238.005 and 238.205 with respect to Chapter 238 and in 238A.005 with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

(b) "Eligible participant" means a person who first becomes a member of PERS before January 1, 1996.

(c) "Employer" means a "public employer" as defined in ORS 238.005, for the purposes of this rule as it applies to Chapter 238. For the purposes of this rule as it applies to Chapter 238A, an "employer" means a "participating public employer" as defined in 238A.005.

(d) "Noneligible participant" means a person who first becomes a member of PERS after December 31, 1995.

(e) "Participant" means an active or inactive member of PERS.

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of

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employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$250,000 per calendar year beginning in 2012.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005 with respect to Chapter 238 and under 238A.130 with respect to Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005 with respect to Chapter 238 and as defined in 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17). With respect to Chapter 238A, retirement credit as determined in 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238, 238A

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12

459-005-0545

Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, a member's annual additions to PERS for any calendar year after 2011 may not exceed \$50,000 (as adjusted under IRC Section 415(d)).

(3) Annual Additions. For purposes of this rule, the term "annual additions" has the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member's after-tax contributions to purchase permissive service credit are included in the member's annual additions under section (3) of this rule, the member shall not be treated as exceeding the limitation under section (2) of this rule solely because of the inclusion of such contributions.

(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1997. As used in this subsection, the term "eligible participant" includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to 238.156(3)(c) or 238A.150 and the service is covered under Internal Revenue Code Section 414(u), the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member's average compensation from the participating employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the period of employment immediately preceding the period of service in the Armed Forces).

(6) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238.005 - 238.715, 238A.370

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12

459-005-0620

Uncollectible Debt Owed to PERS

Any debt, including interest, penalties, or any portion of the debt, may be considered to be uncollectible when the debtor has no money or other thing of value owing or held by PERS that has not been credited to the debt, and it is reasonable to conclude, after all reasonable efforts to collect the debt have been made, that one or more of the following is true:

(1) The debtor does not and will not for the foreseeable future own or have the right to own assets from which PERS could collect the debt.

(2) It is reasonably estimated that the cost of collecting the debt would equal or exceed the amount of the debt.

(3) The debtor is deceased, and there are no assets in the debtor's estate from which PERS could collect the debt.

(4) The debtor is a corporation or a limited liability company that is not and for the foreseeable future will not be engaged in any income-producing activity, and there are no assets from which PERS could collect the debt.

(5) The debt has previously been discharged in bankruptcy.

(6) The debtor's estate is subject to a pending bankruptcy proceeding in which it is reasonable to conclude that the debt will be discharged and that PERS will receive none or an insubstantial share of the assets of the bankruptcy estate.

(7) PERS is and will be for the foreseeable future unable to collect from the debtor or from anyone owing the debtor money or holding assets of or from the debtor.

(8) PERS is unable to locate the debtor despite having made reasonable efforts to do so.

(9) The debt has been liquidated by reduction to a court judgment, administrative order or distraint warrant, which has subsequently expired.

Stat. Auth.: ORS 238.650, 293.240 & 238A.450

Stats. Implemented: ORS 293.240(2)

Hist.: PERS 9-2011(Temp), f. & cert. ef. 11-23-11 thru 5-20-12; PERS 1-2012, f. & cert. ef. 2-1-12

459-075-0060

Vesting in the OPSRP Pension Program

For the purpose of determining vesting under ORS 238A.115(1)(a):

(1) Hours of service performed for all participating public employers during a calendar year are included.

(2) Hours of service performed during the six-month period required to establish membership under ORS 238A.100 are included.

(3) For calendar years beginning on or after January 1, 2004, hours of service will be determined based on hours reported to PERS by the member's employer(s) pursuant to OAR 459-070-0100.

(4) An eligible employee first employed by a participating public employer on or after August 29, 2003 and before January 1, 2004 is presumed to have performed less than 600 hours of service in calendar year 2003 unless records provided to PERS establish that the eligible employee performed at least 600 hours of service in the calendar year.

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(5) Hours of service attributable to periods of active membership before termination of membership under ORS 238.095 and hours of service excluded under ORS 238A.120 and 238A.145 may not be included.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.010, 238A.115
Hist.: PERS 9-2009, f. & cert. ef. 7-21-09; PERS 1-2012, f. & cert. ef. 2-1-12

459-080-0010

Membership

(1) An employee who is eligible for membership in the pension program under OAR 459-075-0010 becomes a member of the individual account program on the same date the employee becomes a member of the pension program.

(2) An employee who was an active or inactive member of PERS on August 28, 2003, and retains membership in PERS through January 1, 2004, becomes a member of the individual account program on January 1, 2004.

(3) An employee who performed a period of service before August 29, 2003, that was credited to the six-month period required under ORS 238.015 for membership in PERS becomes a member of the individual account program on the date the employee becomes a member of PERS, or January 1, 2004, whichever is later.

(4) An employee may become a member of the individual account program as provided in ORS 238A.300(2)

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.300, 238A.305 & OL 2011 Ch. 722
Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04; PERS 1-2012, f. & cert. ef. 2-1-12

Rule Caption: Administration of death/survivor benefits clarification. Rulemaking is also needed to address audit findings.

Adm. Order No.: PERS 2-2012

Filed with Sec. of State: 2-1-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 11-1-2011

Rules Adopted: 459-014-0040, 459-014-0050

Rules Amended: 459-014-0030

Subject: Recent audit findings raised concerns about the state of the administrative rules regarding the administration of death benefits for the OPSRP Pension Program (OPSRP), Individual Account Program (IAP), and the Tier One or Tier Two member death benefit. Modifications to the existing rule and two new rules reflect current administration of pre-retirement death benefits and post-retirement payments to survivors and beneficiaries, excluding judge members, whose death benefits are addressed in the judge member OARs.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-014-0030

Pre-Retirement Designation of Beneficiary

(1) At any time before the effective date of retirement, a member or alternate payee with a separate account may designate a new beneficiary or revoke a previous designation of beneficiary for the purposes of paying benefits under ORS 238.390 and 238A.410.

(2) A designation of beneficiary must be:

- (a) In a written format acceptable to PERS;
- (b) Signed and dated by the member or alternate payee; and
- (c) Received by PERS before the member or alternate payee's death.

(3) The receipt by PERS of a new beneficiary designation revokes all previous designations.

(4) A member who has a member account and IAP account or an alternate payee with separate accounts must file a designation of beneficiary for each account.

(5) If the designation of beneficiary on file with PERS at the time of death is not administrable, distributions will be paid as if no designation of beneficiary had been made in accordance with ORS 238.390 and 238A.410.

(6) If a trustee of a trust is named as beneficiary, the individual beneficiary or beneficiaries of the trust will be treated as designated beneficiaries for the purpose of federal Required Minimum Distribution rules pursuant to 26 CFR 1.401(a)(9)-4, if the trust satisfies the following requirements:

- (a) The trust is a valid trust under state law, or would be but for the fact it is not funded;
- (b) The trust is irrevocable or will become irrevocable upon the death of the member or alternate payee;
- (c) The beneficiaries of the trust, with respect to the trust's interest in the account, are identifiable from the trust instrument. The beneficiaries

will be considered identifiable as long as it is possible to identify the beneficiary with the shortest life expectancy; and

(d) PERS is provided:

- (A) A copy of the trust document; or
- (B) A certification of trust containing the following:
 - (i) A list of all beneficiaries of the trust;
 - (ii) Certification that the list is correct and complete to the best of the member or alternate payee's knowledge and the trust satisfies the requirements in subsections (a), (b) and (c) of this section; and
 - (iii) A statement agreeing to provide a copy of the trust document upon demand.

(7) If a trust fails to satisfy the requirements in section (6) of this rule, the member will be deemed as having no beneficiary for purposes of Required Minimum Distributions and the entire death benefit must be distributed to the trust by December 31 of the calendar year containing the fifth anniversary of the death of the member or alternate payee pursuant to 26 CFR 1.401(a)(9)-3.

(8) The beneficiary designation made by a Tier One or Tier Two member will apply to the member account as defined in ORS 238.005 and any optional unit account under ORS 238.440.

(9) A pre-retirement designation of beneficiary may not be made for the OPSRP Pension Program as ORS 238A.230 determines who is eligible to receive a pre-retirement death benefit.

(10) The right of a beneficiary to receive a death benefit payment may not be deemed nullified or waived by any agreement or property settlement between the member and the beneficiary, or on behalf of either of them, which does not specifically mention such right and waive it on the part of the beneficiary or vacate and set aside the designation of said beneficiary by such member.

Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238.390, 238A.230 & 238A.410
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0075; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 5-2006, f. & cert. ef. 4-5-06; PERS 2-2012, f. & cert. ef. 2-1-12

Rule Caption: Administration of death/survivor benefits clarification. Rulemaking is also needed to address audit findings.

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Notice Publication Date: 11-1-2011

Rules Adopted: 459-014-0040, 459-014-0050

Rules Amended: 459-014-0030

Subject: Recent audit findings raised concerns about the state of the administrative rules regarding the administration of death benefits for the OPSRP Pension Program (OPSRP), Individual Account Program (IAP), and the Tier One or Tier Two member death benefit. Modifications to the existing rule and two new rules reflect current administration of pre-retirement death benefits and post-retirement payments to survivors and beneficiaries, excluding judge members, whose death benefits are addressed in the judge member OARs.

Rules Coordinator: Daniel Rivas—(503) 603-7713

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(a) Before the first payment is due, the benefit option selected pursuant to ORS 238.300 or 238.305 determines how benefits are paid to the designated beneficiary.

(b) After the first payment is due, unpaid benefits accrued by the member or alternate payee before their death will be paid to the member or alternate payee's estate.

(5) A monthly benefit payable to a beneficiary is effective the first of the month after the last month payable to the member or alternate payee.

(6) If a retired member receiving unit payments under ORS 238.440 dies before the last payment has been made, the designated beneficiary will receive a lump sum payment of the remaining unit account balance. There is no benefit due from employer contributions.

(7) If adjustments are made to the retirement allowance or benefit of a deceased retiree:

(a) A member's estate will be paid any underpayment or invoiced for any overpayment of benefits paid to the member.

(b) An alternate payee's estate will be paid any underpayment or invoiced for any overpayment of benefits paid to the alternate payee.

(c) A beneficiary or a beneficiary's estate will be paid any underpayment or invoiced for any overpayment of benefits paid to a beneficiary.

Stat. Auth.: ORS 238.650 & 238A.450

Stats. Implemented: ORS 238.300, 238.305, 238.390, 238.715, 238A.190 & 238A.400

Hist.: PERS 2-2012, f. & cert. ef. 2-1-12

Oregon State Treasury
Chapter 170

Rule Caption: Clarifies and amends DMD fees for Conduit Revenue Bond Sales, Replacement of SWAP or Liquidity Providers, and Advance Refundings.

Adm. Order No.: OST 1-2012(Temp)

Filed with Sec. of State: 1-26-2012

Certified to be Effective: 1-26-12 thru 7-1-12

Notice Publication Date:

Rules Amended: 170-061-0015

Subject: Amendments to this rule will clarify the Debt Management Division's fee charged to an agency replacing a SWAP Counter Party Provider or Liquidity Provider for an outstanding bond transaction. An agency will be charged, in many cases, less than if the agency were issuing new bonds.

Amendments to this rule provide for the Debt Management Division to specifically charge for the Division's work to generate past Overlapping Debt Reports. Debt reports from prior years often require staff to do atypical research and analysis to complete. These type reports are expected to be requested more frequently as local government issuers use the report to fulfill past continuing disclosure requirements. This need for prior year overlapping debt reports is often the result of the Securities and Exchange Commission requiring bond underwriters to do more thorough due diligence with new municipal bond issues. Current year debt reports are provided to local government bond issuers free of charge, as the cost for those reports is covered under the Administrative Tracking and Reporting fee.

Amendments to this rule also clarify the fees charged by the Debt Management Division to state agencies related to the issuance of conduit revenue bonds apply for new money issues, and refundings or restructuring of conduit revenue debt. These amendments also eliminate the review and approval fee for a state agency advance refunding plans, which is no longer a required by state law.

Rules Coordinator: Curtis Hartinger—(503) 378-3150

170-061-0015

Fees Charged by the Debt Management Divisions

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of \$15 million or less. For a single series bond sale of \$15 million or less, a state agency will be charged \$15,000 per sale. For a bond sale of \$15 million or less by a single state agency with multiple series, the state agency will be charged the greater of (i) \$15,000 or (ii) \$6,000 per series. For a bond sale of \$15 million or less by two or more state agencies, each agency will be charged the greater of (i) \$7,500 or (ii) \$6,000 for each series sold for the agency. This subsection applies to initial offerings as well as refundings and the restructuring of bonds. This

subsection does not apply if the bond sale is a private placement conduit as described below in subsection (c).

(b) Agency Bond Issues of more than \$15 million. For a single series bond sale of more than \$15 million, a state agency will be charged \$20,000. For a bond sale of more than \$15 million by a single state agency with multiple series, the state agency will be charged the greater of (i) \$20,000 or (ii) \$7,000 per series. For a bond sale of more than \$15 million by two or more state agencies, each agency will be charged the greater of (i) \$10,000 or (ii) \$7,000 for each series sold for the state agency. This subsection applies to initial offerings as well as refundings and the restructuring of bonds. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Privately Placed Conduit Bonds are bonds that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment to the State of Oregon, that do not have a publicly disseminated official statement or other offering circular, and are sold to one or more sophisticated investors, accredited investors or qualified institutional buyers. A state agency that privately places conduit bonds will be charged:

(A) \$5,000 for sales that in aggregate total \$5 million or less;

(B) \$10,000 for sales that in aggregate total more than \$5 million but less than \$10 million; or

(C) \$15,000 for sales that in aggregate total \$10 million or more.

Should conduit bonds be sold publicly or using an official statement then subsection (a) or subsection (b) above applies. This subsection applies to initial offerings as well as refundings and the restructuring of bonds.

(d) Tax Anticipation Notes. A state agency shall be charged \$30,000 for each sale of tax anticipation notes.

(e) Interest Rate Exchange Agreements. In addition to any other fee, \$25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of \$10,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(f) Replacement of Liquidity Providers or SWAP Counter Party Providers. A state agency will be charged \$10,000 for activities related to each replacement of a liquidity provider or SWAP counter party provider. These charges do not include costs such as rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. The application fee for submission of an advance-refunding plan is \$350. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guarantee Program. School Districts that submit an application for participation in the Oregon School Bond Guarantee Program shall submit an application fee of \$200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates. If bonds are issued as "Qualified Bonds" under OAR 170-063-000 that may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of bonds, the fee for such Qualified Bonds shall be equal to .045% (.00045) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates and that there is no conversion to a different interest bearing format than the original terms of the bonds.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Administrative Tracking and Reporting fee. Local Government entities shall submit, at the time of closing, a fee equal to: (i) \$800 for bond sales of \$8 million or less, (ii) 0.01% (0.0001) of the principal amount for

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bond sales of greater than \$8 million but, less than \$50 million, or (iii) \$5,000 for bond sales of \$50 million or greater.

(b) Overlapping Debt Report fee. Overlapping Debt Reports requested for any date within one year of the request are provided free of charge. For Overlapping Debt Reports requested for any date greater than one year prior to the request date, subsection (c) applies.

(c) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive CAP shall pay to OST: (i) For a bond sale of \$10 million or less, a fee equal to \$3,000, payable within 10 business days of the closing bond sale, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 payable within 10 business days of the closing bond sale, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST:

(c) For a bond sale of \$10 million or less, a fee equal to \$3,000 of which the first \$500 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 of which the first \$2,000 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(5) OST may, at its discretion, waive or reduce any fee outlined in sections (1) to (4) based on compelling financial reasons.

Stat. Auth.: ORS 286A.014, 287A.370 & 287A.634

Stats. Implemented: ORS 287A & 286A

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 2-2009, f. & cert. ef. 4-22-09; OST 3-2009, f. & cert. ef. 7-21-09; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 2-2010(Temp), f. & cert. ef. 1-26-10 thru 7-24-10; OST 4-2010(Temp), f. 6-3-10, cert. ef. 7-1-10 thru 12-27-10; Administrative correction 1-25-11; OST 1-2011, f. & cert. ef. 2-28-11; OST 1-2012(Temp), f. & cert. ef. 1-26-12 thru 7-1-12

Oregon University System, Western Oregon University Chapter 574

Rule Caption: Revisions to special course fees and general services fees.

Adm. Order No.: WOU 1-2012

Filed with Sec. of State: 1-27-2012

Certified to be Effective: 1-27-12

Notice Publication Date: 1-1-2012

Rules Amended: 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

Rules Coordinator: Debra L. Charlton—(503) 838-8597

574-050-0005

Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

NOTE: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Vice President for Finance and Administration at Western Oregon University.

[Publications: Publications referenced are available from the Office of the Vice President for Finance and Administration at Western Oregon University.]

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-

90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04; WOU 2-2004, f. & cert. ef. 8-4-04; WOU 1-2005, f. & cert. ef. 3-8-05; WOU 2-2005, f. & cert. ef. 8-4-05; WOU 3-2005, f. & cert. ef. 8-12-05; WOU 1-2006, f. & cert. ef. 3-2-06; WOU 2-2006, f. & cert. ef. 8-7-06; WOU 1-2007, f. & cert. ef. 3-5-07; WOU 2-2007, f. & cert. ef. 7-31-07; WOU 4-2007, f. & cert. ef. 11-1-07; WOU 1-2008, f. & cert. ef. 2-1-08; WOU 2-2008, f. & cert. ef. 9-3-08; WOU 1-2009, f. & cert. ef. 2-13-09; WOU 2-2009, f. & cert. ef. 7-29-09; WOU 1-2010, f. & cert. ef. 1-27-10; WOU 2-2010, f. & cert. ef. 8-4-10; WOU 1-2011, f. & cert. ef. 2-2-11; WOU 2-2011, f. & cert. ef. 5-2-11; WOU 3-2011, f. & cert. ef. 8-5-11; WOU 1-2012, f. & cert. ef. 1-27-12

Oregon Youth Authority Chapter 416

Rule Caption: OYA has established a Research Committee to review research proposals and recommend approval or denial.

Adm. Order No.: OYA 1-2012

Filed with Sec. of State: 2-3-2012

Certified to be Effective: 2-3-12

Notice Publication Date: 1-1-2012

Rules Amended: 416-170-0000, 416-170-0005, 416-170-0010, 416-170-0020, 416-170-0030

Subject: OYA has established a Research Committee to review research proposals and recommend the proposals for agency approval or denial. OYA requires all proposals be approved by a human subjects review committee (e.g. institutional review board). These rules establish general project review and approval standards for OYA.

Rules Coordinator: Winifred Skinner—(503) 373-7570

416-170-0000

Purpose and Scope

(1) The purpose of these rules is to establish a uniform process for review and approval or denial of research project proposals to be conducted within the Oregon Youth Authority (OYA).

(2) These rules apply to all offenders in OYA physical or legal custody, including those placed under supervision within the community in contracted residential care programs or youth offender foster homes, and offenders in OYA close custody facilities.

(3) Research projects may be conducted by OYA staff, professional researchers, or by students and others with an interest in juvenile corrections services.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C, 420 & 420A

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05; OYA 1-2012, f. & cert. ef. 2-3-12

416-170-0005

Definitions

(1) Cabinet: An executive group that provides oversight to OYA operations.

(2) Offender: A person in the legal and physical custody of OYA, either in an OYA close custody facility or placed in the community under supervision; or a person in the legal custody of the Department of Corrections and the physical custody of OYA in an OYA close custody facility.

(3) OYA: Oregon Youth Authority

(4) OYA Research Committee (ORC): OYA committee comprised of OYA staff and external partners, overseen by the OYA Research Manager.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 2-2005, f. & cert. ef. 1-11-05; Renumbered from 416-170-0050, OYA 4-2005, f. & cert. ef. 1-13-05; OYA 1-2012, f. & cert. ef. 2-3-12

416-170-0010

General Standards

(1) No research may be conducted without OYA approval in the manner prescribed in these rules, and related OYA policy and procedures.

(a) Oregon Department of Corrections (DOC) approval is required for any research involving offenders in the legal custody of DOC and the physical custody of OYA.

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(b) Offender participation must be voluntary and the offender's confidentiality will be protected.

(c) OYA retains the right to review the compilation of data or completed report describing project outcomes prior to publication, and may require a disclaimer if it believes assumptions about the data are flawed.

(2) OYA will consider research proposals that benefit the agency or juvenile corrections as a whole, such as:

(a) Studies of possible causes of criminal behavior, and effects of incarceration;

(b) Studies of close custody systems or treatment programs as institutional structures or of youth as incarcerated persons;

(c) Research on conditions particularly affecting adjudicated or convicted offenders as a class; and

(d) Research on practices, both innovative and accepted, that have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which such research requires the assignment of offenders to control groups that may not benefit from the research, the research proposal will include discussion regarding the ethical considerations to support the research.

(3) All research project proposals submitted to OYA must have been reviewed and approved by a human subjects review committee prior to submittal to OYA.

(4) The risk posed to subjects will be no more than minimal and participation in the study will represent no more than an inconvenience.

(5) Treatments, therapies, and procedures used in the project must be generally recognized and accepted as therapeutic.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05; OYA 1-2012, f. & cert. ef. 2-3-12

416-170-0020

Project Review

(1) The OYA Research Committee (ORC) will review all research project proposals prior to implementation. Following such review, the ORC will submit a recommendation to the OYA Research Manager for approval or denial of the project. The decision of the OYA Research Manager is final.

(2) Proposals requiring OYA policy decisions will be referred to the OYA Cabinet, as appropriate.

(3) The ORC may recommend agency approval of research projects only if it finds that:

(a) The research project proposal has been reviewed and approved by a human subjects review committee (e.g., institutional review board);

(b) The research question is relevant and of importance to the agency or juvenile corrections as a whole;

(c) The implementation of such project does not cause undue expense or use of agency resources or compromise safety, security, OYA's mission, or state or federal laws;

(d) The advantages to the offender are not of such a magnitude as to affect the offender's ability to weigh the risks of the research against the value of such advantages in the limited-choice environment within facilities or programs;

(e) The risks involved in the research are commensurate with the risks that would be accepted by non-adjudicated or non-convicted persons;

(f) Procedures for selection of subjects within the facility are fair to all offenders and immune from arbitrary intervention by facility or program personnel, or other offenders. Unless there is written justification for following some other procedures, control subjects will be selected randomly from the group of available offenders who meet the characteristics needed for the particular research project; and

(g) Adequate assurance exists that an offender's participation in the project or refusal to participate will not affect the offender's release or privilege status.

(4) During the review process, the ORC may engage other parties, such as advisory committees and representatives of other governmental agencies, to provide technical critiques of the proposed project and opinions on its merits.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05; OYA 1-2012, f. & cert. ef. 2-3-12

416-170-0030

OYA Research Committee (ORC)

The ORC will:

(1) Develop procedures to ensure that proposals are reviewed in a timely manner;

(2) Represent the agency's facilities, programs, stakeholders, and offenders, and include persons with the technical knowledge and ability to review project methodology and outcomes;

(3) Review all research proposals and submit recommendations for approval or denial of such requests to the OYA Research Manager for final approval;

(4) Ensure proper consent and assent is given prior to an offender's participation in a research project, according to OYA policy and a human subjects review committee recommendations;

(5) Provide notification of approved research projects, including a copy of the approved informed consent or assent form, to relevant OYA programs or facilities;

(6) Maintain a complete and current list of all research projects approved by OYA;

(7) Review the resulting data or project report and recommend to the OYA Cabinet whether a disclaimer is necessary; and

(8) Assist in the development of a project summary for distribution to the agency-at-large.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05; OYA 1-2012, f. & cert. ef. 2-3-12

Parks and Recreation Department Chapter 736

Rule Caption: ATV Rule Changes as Required by House Bill 2329.

Adm. Order No.: PRD 1-2012

Filed with Sec. of State: 2-15-2012

Certified to be Effective: 2-15-12

Notice Publication Date: 11-1-2011

Rules Adopted: 736-004-0130

Rules Amended: 736-004-0005, 736-004-0010, 736-004-0015, 736-004-0020, 736-004-0025, 736-004-0030, 736-004-0045, 736-004-0060, 736-004-0062, 736-004-0085, 736-004-0090, 736-004-0095, 736-004-0100, 736-004-0105, 736-004-0115, 736-004-0120, 736-004-0125

Subject: The proposed rules codify procedures necessary to implement House Bill 2329 which alters the definitions of Class I, II, and III all-terrain vehicles and creates definition of Class IV all-terrain vehicle. The bill also exempts Class IV all-terrain vehicles from laws relating to vehicle registration, titling and accident reporting. The bill adds Class IV all-terrain vehicle to various offenses relating to all-terrain vehicles and creates offense of operation of Class IV all-terrain vehicle without driving privileges. The bill adds three members to All-Terrain Vehicle Advisory Committee.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-004-0005

Purpose of Rule

This rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department (OPRD) when allocating ATV Account monies to public and privately-owned land managers, ATV clubs and organizations; procedures for All-Terrain Vehicle (ATV) off-road operating permit; and implementation of safety and education requirements for Class I, III, and IV off-highway vehicles.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0010

Statutory Authority

(1) ORS 390.585 authorizes the Oregon Parks and Recreation Department to adopt rules and establish procedures to be used when OPRD allocates ATV Account money to public and privately-owned land managers, ATV clubs and organizations.

(2) OAR 736-004-0045 through 736-004-0070 are adopted pursuant to ORS 390.580, 390.585, and 390.590 which direct the Oregon Parks and Recreation Department to issue Class I, III, and IV Operating Permits to persons who satisfy the statutory requirements to ride on public property.

(3) OAR 736-004-0080 through 736-004-0130 are adopted pursuant to ORS 390.570 and 390.575 which direct the Oregon Parks and Recreation Department to issue or provide for issuance of Class I, III, and IV ATV operator permits to any person who has taken a Class I, III or IV OPRD-

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approved ATV safety education course and has been found qualified to operate a Class I, III, or IV all-terrain vehicle. These statutes require OPRD to provide safety education course instruction through public or private local and state organizations meeting qualifications established by the Department.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0015

Definitions

For purposes of this division, the following definitions shall apply:

(1) "Acquisition" means the gaining of real property rights for public use by donation or purchase including, but not limited to, fee title or easements.

(2) "Approved Course Provider" is any individual or organization who instructs or provides an OPRD-approved Class I, III or IV ATV safety course.

(3) "ATV" or "All-Terrain Vehicle" means:

(a) Class I ATV, as defined in ORS 801.190: a motorized, off-highway recreational vehicle that:

(A) Is 50 inches or less in width;

(B) Has a dry weight of 1,200 pounds or less;

(C) Travels on three or more pneumatic tires that are six inches or more in width and designed for use on wheels with a rim diameter of 14 inches or less;

(D) Uses handlebars for steering;

(E) Has a seat designed to be straddled for the operator; and

(F) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain.

(G) Class I ATV's can also be known as quads, three-wheelers, or four wheelers.

(b) Class II ATV, as defined in ORS 801.193: any motor vehicle that:

(A) Weighs more than or is wider than a Class I all-terrain vehicle;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;

(C) Is actually being operated off a highway or is being operated on a highway for agricultural purposes under ORS 821.191 and;

(D) Is not a Class IV all-terrain vehicle.

(E) Class II ATV's include, but are no limited to vehicles that can also be known as four-by-fours, pickups, jeep, sand rails, dune buggies, and SUV's.

(c) Class III ATV, as defined in ORS 801.194: a motorcycle that travels on two tires and that is actually being operated off highway. Also known as dual sport bikes, enduro, dirt bikes.

(d) Class IV ATV, as defined in ORS 801.xxx means any motorized vehicle that:

(A) Travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;

(C) Has nonstraddle seating;

(D) Has a steering wheel for steering controls;

(E) Has a dry weight of 1,800 pounds or less; and

(F) Is 65 inches wide or less at its widest point.

(G) Class IV may also be known as side-by-sides, recreational off-highway vehicle (ROHV), utility vehicle (UTV).

(e) May also be referred to as an OHV or Off-Highway Vehicle.

(4) "ATV-AC" means the fifteen-member All-Terrain Vehicle Advisory Committee established by ORS 390.565 and appointed by the commission.

(5) "ATV Account" means those moneys described in ORS 390.555 and deposited in a separate account in the State Parks and Recreation Department Fund. Moneys in the ATV Account may also be called "ATV grant funds."

(6) "ATV Grant Instruction Manual" means a manual prepared by OPRD containing state and federal policies, procedures, guidelines, and instructions to assist current and potential project sponsors.

(7) "ATV Grant Subcommittee" means the seven-member subcommittee established by ORS 390.565(5)(a).

(8) "ATV Operating Permit" means a permit (decal) issued through OPRD and which is permanently affixed to the vehicle. The permit authorizes the use of ATV's on trails and within designated areas authorized by the appropriate authorities.

(9) "ATV Operating Permit Agent" means a person, business or government agency to whom OPRD consigns ATV operating permits and decals for sale as a service to the general public.

(10) "ATV Operator Permit" means the ATV Safety Education Card issued upon completion of an OPRD-approved ATV Safety Education course and passage of the minimum standards test of ATV Safety Education competency as established by OPRD.

(11) "ATV Safety Checklist" is a document provided to a dealer, guide service, rental, or livery agent by OPRD that consists of selected facts about Oregon ATV laws.

(12) "ATV Safety Course" is any OPRD-approved course of instruction that is offered by an approved course provider and concludes with an examination.

(13) "ATV Safety Education" means those grant projects that include but are not limited to training programs, media with information for the public, safe riding practices, environmental ethics, or any combination thereof.

(14) "All-Terrain Vehicle Safety Education Card" is the ATV Operator's Permit required by ORS 390.570, 390.575, and XXX.XXX.

(15) "Certificate of Completion" is a certificate generated by OPRD indicating completion of the internet ATV Safety Course.

(16) "Commission" means the State Parks and Recreation Commission.

(17) "Conversion" means any real property acquisition or development that is later wholly or in part converted to another use other than its intended and stated use as described in the grant application and the grant agreement.

(18) "Correspondence Course and Self-Test" means a Class I, III or IV ATV safety course and examination provided by the OPRD that is taken at home without a proctor. This correspondence course and self-test will satisfy minimum standard of ATV safety education competency only for those individuals who have qualified for hardship status.

(19) "Dealer" means any person or business duly certified under ORS 822.020 and 822.040 to sell Class I, III, or IV ATVs.

(20) "Development" means the planning, design, construction and improvement of ATV recreational facilities, trails, and riding areas.

(21) "Director" means the director of the Oregon Parks and Recreation Department.

(22) "Dry Weight" means the unloaded weight, absent of all fluids, passengers, and any materials such as ice, snow or mud.

(23) "Emergency Medical Services" means medical services performed by certified personnel and the necessary items to perform their duties.

(24) "Endorsement Code" means an identifying color, text or mark on the ATV Safety Education Card that indicates the operator meets or exceeds OPRD's minimum standards in an approved hands-on ATV evaluation program.

(25) "Equivalency Exam" means a comprehensive written examination created by OPRD to provide either Class I or Class III operators, who are at least 16 years of age and have five or more years operating a Class I or a Class III vehicle, the opportunity to meet the minimum standard of ATV safety education competency.

(26) "Evaluation Course" means a course that measures the ATV operator's ability to demonstrate control of an ATV.

(27) "Grant Agreement" means an agreement between OPRD and a project sponsor describing the terms and conditions of a project and its associated grant of funds.

(28) "Grant Application" means the form and its format as developed by OPRD that the project sponsor uses to request ATV grant funds.

(29) "Hands-on Training" means any OPRD-approved evaluation course offered by an OPRD-approved course provider.

(30) "Hardship Status" means a situation or condition that prevents an individual from taking the ATV safety internet course. A hardship situation may allow an individual to use a correspondence course and self-test provided by OPRD. An individual must submit a written request for hardship status. The OPRD Director or designee has the authority to grant or deny hardship status.

(31) "Instruction Permit" is a provisional permit issued by OPRD to youth under the age of 16 upon successful completion of the OPRD internet course.

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(32) "Internet Course" means an OPRD-approved course of instruction that is offered through the internet.

(33) "Law Enforcement Services" means law enforcement services performed by certified personnel and the necessary items to perform their duties.

(34) "Minimum Standards of ATV Safety Education Competency" means a standard of proficiency established by OPRD that determines whether an applicant for a Class I, III, or IV ATV Safety Education Card has met or exceeded the requirements of an ATV safety course.

(35) "Notice to Proceed" means the notification from OPRD that the Director or designee and the project sponsor have signed the grant agreement authorizing the project.

(36) "OHV" means Off Highway Vehicle, also called ATV.

(37) "Operations and Maintenance" means the preservation, rehabilitation, restoration, operation and upkeep of the facilities, riding areas, and equipment, including the purchase of equipment necessary to perform these functions.

(38) "OPRD" means the Oregon Parks and Recreation Department.

(39) "Personal Property" means tangible property other than land: movable property including but not limited to items such as an ATV, trail repair equipment, or other movable property purchased through the ATV Grant Program.

(40) "Planning" means the research, design, engineering, environmental, and site survey of ATV recreation areas, trails, or facilities.

(41) "Project Sponsor" means the recipient of the grant funds and the responsible party for implementation of the project.

(42) "Public Lands" includes publicly and privately-owned land that is open to the general public for the use of all-terrain vehicles.

(43) "Real Property" means immovable property: land together with all the property on it that cannot be moved, together with any attached rights.

(44) "Rider Fit" means the minimum physical size requirements that a Class I ATV operator under 16 years of age must meet in relationship to the vehicle to be operated as established by OPRD and described in OAR 736-004-0115.

(45) "Successor" means a governmental entity that has agreed to accept the terms and conditions of the project sponsor's responsibilities as contained in the project sponsor's grant agreement and grant application should the project sponsor cease to exist; for example, if a club or non-profit organization should dissolve or disband. The successor shall agree to operate the project continuously for the public benefit and recreational purposes identified in the grant agreement and the grant application. If OPRD is a successor under OAR 736-004-0025(1)(c), OPRD may operate, sell, or qualify another successor to the project.

(46) "Sustainability" means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

(47) "Temporary ATV Safety Education Card" is a document issued by OPRD or an approved course provider allowing the bearer to operate a Class I, III, or IV ATV in Oregon for a period of time not to exceed 30 days.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0020

Apportionment of Monies

Monies in the All-Terrain Vehicle Account shall be used for the following purposes:

(1) Planning, promoting and implementing a statewide all-terrain vehicle program including the acquisition, development and maintenance of all-terrain vehicle recreation areas;

(2) Education and safety training for all-terrain vehicle operators;

(3) Provision of first-aid and police services related to all-terrain vehicle recreation;

(4) Paying the costs of instigating, developing, or promoting new programs for all-terrain vehicle users and of advising people of possible usage areas available for all-terrain vehicles;

(5) Paying the costs of coordinating between all-terrain vehicle user groups and the managers of public lands;

(6) Paying the costs of providing consultation and guidance to all-terrain vehicle user programs;

(7) Paying the costs of administration of the all-terrain vehicle programs including staff support provided under ORS 390.565 as requested by the ATV-AC;

(8) Paying the cost of law enforcement activities related to the operation of all-terrain vehicles; and

(9) Control and eradication of invasive species related to all-terrain vehicle recreation.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180 & 390.560

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0025

Grant Application Eligibility and Requirements

(1) Eligibility for funding assistance:

(a) Public agencies: Federal land managers, state agencies, and local governments that have the responsibility, or are capable of, providing a service to ATV users;

(b) Private land owners or managers: Private land owners or managers who offer public OHV recreation opportunities and will provide open public ATV recreation for a minimum prescribed period of daily or seasonal time and who will maintain the opportunity for a prescribed period of time as determined by OPRD;

(c) Clubs and non-profit organizations: ATV clubs and non-profit organizations registered with the State of Oregon for a minimum of three consecutive years;

(A) Clubs and non-profit organizations shall have in place, prior to receipt of any funding, a written agreement with a successor in which the successor agrees to operate the facility as described in the grant agreement and the grant application should the club or non-profit organization cease to exist, for example, due to disbanding or dissolution; or

(B) OPRD shall be listed on the title as successor to the property:

(i) OPRD may sell the property and shall deposit the net revenue from the sale into the ATV Account;

(ii) OPRD may operate the project; or

(iii) OPRD may qualify and assign another successor to the project.

(2) ATV projects or components not eligible for funding:

(a) Overtime is generally not eligible for funding except for an identified emergency situation;

(b) Overhead items such as office or building rent, insurance, depreciation and other fixed costs associated with the normal everyday operation of a business, agency or group;

(c) ATV projects that have no way to measure completion or specific intent are not eligible;

(d) Portions of projects completed prior to an ATV agreement or after the expiration of an ATV agreement;

(e) ATV projects that do not meet the goals of the ATV Grant Program, OAR 736-004-0020 to 736-004-0030, or are not in the best interest of ATV recreation;

(f) Vehicle or other personal property usage unrelated to the scope of the ATV project.

(3) Requirements for Match:

(a) The minimum match required for eligible ATV projects is 20 percent of the total project cost except for land acquisitions;

(b) For land acquisitions and when unusual circumstances exist, public agencies may request a partial or full waiver of the 20 percent match requirement. Consideration for the waiver will be based upon the following criteria:

(A) The public agency is able to demonstrate due diligence was exercised in obtaining other funds and that the following limitations, among others, are present:

(i) Budget authority does not exist;

(ii) Budget appropriations cannot be obtained in a reasonable time yet public support does exist; and

(iii) No saleable assets, such as conservation easements, exist from which to generate the full cash match requirement.

(B) The public agency is able to demonstrate their ability to operate and maintain the project property for ATV recreational purposes:

(i) By having budgeted funds in place; or

(ii) Having identified other resources such as volunteers or contracted services.

(C) The public agency is able to demonstrate that time is of the essence:

(i) The seller of the real property has placed time limits in which the public agency can affect a purchase, such as the expiration of an Option to Purchase or a First Right of Refusal; or

(ii) The public agency can identify the possible loss of other existing matching funds such as grants from other entities that may have an expiration date.

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(D) If a waiver to the required partial or full match is approved, the public agency shall be limited in all future grant requests to receiving ATV grant funds in an amount of 50 percent or less of the total costs for any development projects located on the acquired property.

(c) Match may include, but is not limited to, cash funds, labor, either force account or volunteer, materials, and equipment;

(d) Grants from other sources may be used as match provided the sponsor can certify the funds will be available within 120 days from the beginning date of the grant agreement;

(e) Eligible volunteer labor will require a log that includes the volunteer's name, date volunteer performed work, location volunteer performed work, the hours worked, and the hourly rate of compensation used for their contribution of labor.

(4) Conversions:

(a) It is the intent of the ATV Grant Program that all real property acquisitions or easements shall be retained and used for the project's intended and stated use as described in both the grant application and the grant agreement;

(b) The director has authority to disapprove conversion requests, reject proposed substitutions, or both;

(c) The project sponsor shall submit requests for conversions to OPRD in writing. OPRD may consider the request if the following prerequisites are met:

(A) All practical alternatives to a conversion have been evaluated and rejected on a sound basis;

(B) The project sponsor has established the fair market value of the property to be converted and the property proposed for substitution is of at least equal fair market value as established by a state-approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not directly enhance its ATV recreation utility;

(C) The project sponsor proposes a replacement property that is of reasonably equivalent usefulness and location as that being converted.

(d) If the project sponsor is unable to provide replacement property within 24 months of either the approved request for conversion or after the fact of conversion, the project sponsor shall pay OPRD a current amount equal to OPRD's original percentage of contribution to the project. As an example, if the OPRD provided an original grant of 80 percent for the project's acquisition costs, the project sponsor shall reimburse OPRD 80 percent of the real property's value at the time of conversion or discovery of conversion, whichever is later;

(e) In the case of development, rehabilitation, and equipment purchases, the project sponsor shall operate the improvements or equipment for its established useful life. Guidelines established by the IRS will be used by the project sponsor to define useful life per each item. If the facility is closed, service is terminated and the facility or equipment has not reached its useful life, it will be made available to other agencies or organizations. If a facility is closed, service is terminated, or land is closed, or the facility or equipment has not reached its useful life, the project sponsor will return a percentage of the allocated funds to OPRD equal to the percentage of useful life remaining in the funded facility or equipment.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0030

Project Administration

(1) Applications:

(a) A current ATV grant application is required for consideration of ATV funding;

(b) OPRD will provide information regarding application deadlines and public meetings through available media sources and on the OPRD — ATV website;

(c) Applicants must submit applications by published deadlines;

(d) OPRD and the ATV-Grant Subcommittee will review applications;

(e) The ATV-Grant Subcommittee will recommend ATV project funding to the commission.

(2) Agreements:

(a) To authorize an ATV Project, OPRD requires a signed ATV Grant Agreement.

(b) A project sponsor may not begin work on an ATV project without a Notice to Proceed.

(c) OPRD, upon written request by the project sponsor, may approve, in writing, that some match may be considered and allowed prior to commencement of the project.

(3) If funds are not available to fully fund a project, or the ATV-Grant Subcommittee has recommended partial funding, the project sponsor may be given the option of reducing the scope of the project.

(4) If the project sponsor anticipates the project will not be completed by the expiration date of the ATV grant agreement, the project sponsor must make a timely written request for an extension of the ATV grant agreement prior to the expiration date of the project agreement. The time extension request shall include any reasons for delay of project completion and a new projected completion date.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0045

ATV Operating Permit Agent Application and Privileges

(1) To become an ATV Operating Permit Agent an applicant shall:

(a) Submit an application in a form provided by OPRD to become an ATV Operating Permit Agent;

(b) OPRD may require the Operating Permit Agent to obtain a bond in an amount determined by OPRD if there is historical evidence of substandard performance by the Operating Permit Agent.

(c) Enter into an OPRD agreement to be designated as an ATV Operating Permit Agent.

(2) OPRD may consign ATV operating permits to an ATV Operating Permit Agent without prepayment.

(3) OPRD will establish by policy an amount the ATV Operating Permit Agent may retain for each permit issued in addition to the regular costs of the permit, to cover the agent's costs to handle the permits.

(4) ATV Operating Permit Agents shall legibly complete each ATV operating permit with the required information.

(5) OPRD may cancel an agent's authority to act as an ATV Operating Permit Agent at any time.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0060

ATV Operating Permit

(1) An ATV operating permit and decal shall be valid for a two-year period from the date of issue. The decal shall be placed on the vehicle as determined in OAR 736-004-0065. All ATV decals shall include:

(a) The distinctive number or characters assigned by OPRD to the vehicle;

(b) The word "Oregon"; and

(c) The expiration date.

(2) The application for an ATV operating permit shall be in a form as prescribed by OPRD and shall include:

(a) The name and address of the owner of the ATV; and

(b) The make and body style of the ATV for which application is made.

(3) To replace a permit or decal that is lost, destroyed, or mutilated, the owner must:

(a) Apply for a new permit in the same manner as for an original permit; and

(b) Pay the fee for a replacement ATV Operating Permit.

(4) The fee for an original or replacement ATV Operating Permit is \$10.00.

(5) OPRD may replace an ATV operating permit free of charge if legibility, adhesiveness, or other material effectiveness is lost due to production or manufacturer's defects.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0062

Ocean Shores ATV Operating Permit (Permit to operate a Class I ATV on the Ocean Shore)

(1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains an Ocean Shores ATV Operating Permit from OPRD.

(2) The operator must have, in addition to the Ocean Shores ATV Operating Permit, a current ATV Safety Education Card issued under ORS 390.570 and the vehicle must have a current ATV operating permit (ATV decal affixed to the vehicle) issued under 390.580.

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(3) The Ocean Shores ATV Operating Permit is to be used only to meet the access needs of:

(a) Persons with disabilities, as defined by ORS 174.107; or who have proof of motor vehicle disabled placard, or both;

(b) Emergency response or emergency aid workers during the course of their work; or

(c) Biologists, wildlife monitors, or other natural resources workers during the course of their work.

(4) Ocean Shores ATV Operating Permits issued under subsection (3)(a) will allow use in those areas open to motorized vehicle use. However, upon request from an individual with a disability, OPRD may issue such a permit for areas closed to motorized use if the Director or his designee determines that such use:

(a) Is a reasonable accommodation of the individual's access needs; and

(b) Does not significantly impact environmentally or culturally sensitive areas or create a safety hazard to the public.

(5) Permits issued under this section shall specify length of time, area of operation and access points.

(6) Class I ATV's shall not be operated in a careless manner on the Ocean Shore Recreation Area.

(7) Unless otherwise posted, Class I ATV's shall not be operated on the Ocean Shore in excess of 25 mph in open areas and 10 mph in closed areas.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.729

Hist.: PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 10-2008, f. & cert. ef. 12-15-08; PRD 10-2009, f. & cert. ef. 6-18-09; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0085

ATV Safety Education Card (ATV Operator Permits)

(1) To operate a Class I or Class III ATV on public lands in Oregon, a person must obtain an ATV Safety Education Card (ATV operator permit).

(2) To operate a Class IV ATV on public lands in Oregon, a person under 16 years of age must obtain an ATV Safety Education Card (ATV operator permit).

(3) The criteria for obtaining an ATV Safety Education Card are:

(a) Attain a test score of at least 80 percent on an OPRD-approved internet safety course;

(b) Attain a test score of at least 80 percent on a correspondence course and self-test provided by OPRD; or

(c) Be at least 16 years of age and have five or more years of experience operating a Class I or Class III all-terrain vehicle and successfully pass an equivalency examination with a score of at least 80 percent.

(d) Effective January 1, 2012, operators under 16 years of age must:

(A) Successfully demonstrate ATV proficiency, and

(B) Pass either an OPRD-approved:

(i) Hands-on training course, or

(ii) Evaluation course.

(e) Effective January 1, 2012, a person under 16 years of age will receive a Certificate of Completion upon passing the ATV internet safety course. The certificate of completion will also be an Instruction Permit which shall be valid for 180 days.

(4) To obtain an ATV Safety Education Card, the applicant must provide to the OPRD a completed application on a form provided by the OPRD with the following information: the applicant's name, address, date of birth, hair color, eye color, and gender. The applicant must also sign a statement declaring that the information is true and correct.

(5) ATV Safety Education Cards are not transferable.

(6) ATV Safety Education Cards shall contain a unique number and endorsement code that corresponds to the individual named on the permit.

(7) A person is considered in violation of the provisions of ORS 821.170, 821.172, and 821.xxx and subject to penalties prescribed by law when they:

(a) Provide a false statement or information or assist another person in giving a false statement or information on any application, affidavit, document or statement used to obtain an ATV Safety Education Card or replacement ATV Safety Education Card;

(b) Exhibit to a law enforcement officer an altered Oregon ATV Safety Education Card or any ATV Safety Education Card other than the one issued to them;

(c) Alter an ATV Safety Education Card or replacement card issued by the OPRD or its authorized agent;

(d) Produce or possess an unauthorized replica of an ATV Safety Education Card or replacement card;

(e) Operate a Class I or Class III ATV on public lands without a valid ATV Safety Education Card in their possession; or

(f) If under the age of 16, operate a Class IV ATV on public lands without a valid ATV Safety Education Card in their possession.

(8) In addition to any penalties that may result from a violation of ORS 821.170, 821.172, and 821.xxx, the ATV Safety Education Card is null and void for any person who provides a false statement or information or obtains a permit to which the person is not entitled.

(9) In accordance with ORS 821.174, when a person's driving privileges are suspended or revoked, the person may not operate a Class I, III, or IV all-terrain vehicle.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 2-2001, f. & cert. ef. 2-23-01; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0090

Replacement ATV Safety Education Card

(1) A person may apply for a replacement ATV Safety Education Card from OPRD if:

(a) They legally change their name;

(b) The card is lost, stolen or destroyed;

(c) Misinformation is printed on the card; or

(d) The card has a printing error or physical defect.

(2) To obtain a replacement card, an applicant must provide OPRD with a completed application form provided by OPRD which includes an affidavit signed by the applicant stating the circumstances that led to the need for replacement of the original card.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0095

Temporary ATV Safety Education Card

(1) A person who successfully passes the OPRD internet safety education course may print from their computer a temporary ATV safety education card and may operate an ATV for no more than 30 days from date of issue provided the temporary ATV safety education card is in the possession of the operator.

(2) A person residing in Oregon who is required to possess an ATV Safety Education Card and is in possession of a certificate issued by another state or nation that is equivalent to Oregon's ATV Safety Education Card may use that certificate as a temporary Safety Education Card and may operate an ATV in Oregon for no more than 30 days from date of residency provided the document is in the possession of the operator.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0100

ATV Safety Checklist

(1) Any person who provides a Class I, Class III, or Class IV ATV for rent in Oregon or offers guided tours for a client must require that:

(a) The operator(s) of the rental ATV show proof of possession of an ATV Safety Education Card before renting the person an ATV; or

(b) If the operator does not possess an ATV Safety Education Card, the rental or tour agent must provide the operator with an ATV Safety Checklist provided by OPRD;

(c) The operator must review and mark the ATV Safety Checklist in the presence of the rental or tour agent before they may operate the ATV; and

(d) The operator must retain the ATV Safety Checklist in their possession while operating the ATV.

(e) This section does not apply if the operator of a Class IV ATV is 16 years of age or older.

(2) A person who legally rents an ATV and is otherwise required to possess an ATV Safety Education Card may use the required ATV Safety Checklist as a temporary ATV Safety Education Card and may operate the rental ATV in Oregon for the term of the rental agreement but not longer than 30 days.

(3) Any dealer who sells Class I, III, or IV vehicles may offer to the buyer/operator a non-renewable ATV Safety Checklist provided by OPRD.

(a) The operator must review and mark the ATV Safety Checklist in the presence of the dealer before they operate the vehicle; and

(b) The operator must retain the ATV Safety Checklist in their possession when operating the ATV.

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(c) A person who purchases an ATV and is otherwise required to possess an ATV Safety Education Card may use the ATV Safety Checklist as a temporary ATV Safety Education Card and may operate the ATV in Oregon for not longer than 30 days from the date of purchase of the ATV.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0105

Exemptions

(1) Non-residents riding in Oregon are exempt from possessing a State of Oregon ATV Safety Education Card if they possess an ATV Safety Education Card or equivalent issued by their resident state or nation.

(a) An ATV Safety Education Card issued in another state or nation shall be honored in the State of Oregon if the issuing state or nation also honors an Oregon ATV Safety Education Card.

(b) The operator must have a State of Oregon ATV Safety Education Card if mandatory education is not required in their home state or nation to operate an ATV on public lands.

(2) A person operating a Class I, III, or IV in a sanctioned competitive ATV event is not required to possess an ATV Safety Education Card.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0115

Rider Fit

(1) A Class I ATV operator under 16 years of age must meet all the following minimum physical size requirements in relationship to the vehicle:

(a) Brake Reach: With hands placed in the normal operating position and fingers straight out, the first joint (from the tip) of the middle finger will extend beyond the brake lever and clutch;

(b) Leg Length: While sitting and with their feet on the pegs, the knee must be bent at least 45 degrees;

(c) Grip Reach: While sitting upright on the ATV with hands on the handlebars and not leaning forward, there must be a distinct angle between the upper arm and the forearm; and

(d) The rider must be able to turn the handlebars from lock to lock while maintaining grip on the handlebars and maintaining the throttle and brake control.

(2) A Class IV ATV operator under 16 years of age must meet all the following minimal physical size requirements in relationship to the vehicle:

(a) Leg Length: While sitting in the normal operating position and the safety restraints securely fastened around the operator, the operator's feet must be able to fully operate all foot controls.

(b) Arm Length: While sitting in the normal operating position and the safety restraints securely fastened around the operator, the operator's hands must be able to fully operate all hand controls.

(3) Disabled riders are allowed to use prosthetic devices or modified or adaptive equipment to achieve rider fit.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570, 390.575 & 821.174

Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0120

Minimum Training Standards

(1) Providers of a Class I, III, or IV ATV evaluation or training course must evaluate ATV operators in their ability to control an ATV at or above OPRD minimum training standards under section (2) of this rule.

(2) OPRD will provide minimum ATV training or evaluation standards that will include:

- (a) Prerequisite training requirements;
- (b) Rider fit under OAR 736-004-0115;
- (c) Familiarization of controls;
- (d) Internet safety course review;
- (e) Starting and stopping;
- (f) Turns and weaves; and
- (g) Navigating over and around obstacles.

(3) Participants in an ATV evaluation or training course must meet the following requirements:

(a) Rider must provide the eleven-digit card number from either their ATV Safety Education Card or their certificate of completion issued by OPRD;

(b) Rider under 16 years of age must be accompanied throughout the training by an adult at least 18 years of age; and

(c) Rider must have a Class I, III, or IV ATV. Three-wheeled vehicles are not allowed.

(4) Rider must wear the following while operating an ATV during evaluation or training:

(a) DOT (Department of Transportation) approved motorcycle helmet;

(b) Goggles (or helmet with face shield);

(c) Gloves;

(d) Sturdy over-the-ankle shoes or boots;

(e) Long-sleeved shirt or jacket; and

(f) Long pants.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570 & 390.575

Hist.: PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0125

ATV Training Course Approval by OPRD

(1) An ATV course provider shall submit a course approval request on an application form provided by OPRD.

(2) OPRD will evaluate the course application under section (3) of this rule within 90 days of receipt of a complete application.

(3) OPRD shall evaluate the sufficiency of the course to train or evaluate to OPRD's minimum ATV training standards under OAR 736-004-0120(2) and meet the participation and equipment requirements of OAR 736-004-0120(3) and (4).

(4) OPRD course approval is valid for three years. An ATV course provider may submit a course approval renewal request on an application form provided by OPRD. OPRD will evaluate the course application renewal within 90 days of receipt of a completed application.

(5) OPRD may periodically audit courses or contact students for the purposes of evaluation for adherence to OPRD ATV minimum training standards under OAR 736-004-0120(2) through (4).

(6) If OPRD determines a course provider does not meet the ATV minimum training standards under OAR 736-004-0120(2) through (4), or if OPRD determines that any element of a course poses a significant risk to any individual, OPRD may take one or more of the following actions:

(a) Notify the course provider in writing of course deficiencies and allow the course provider until the next scheduled course, or 30 days (whichever is later) to enact changes to comply with OAR 736-004-0120(2) through (4);

(b) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until required changes are made and determined to be in compliance with OAR 736-004-0120(2) through (4) by OPRD; or

(c) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until a new application for approval has been made under section (1) and approved under section (3) of this rule.

(7) Course providers are solely responsible for the oversight and management of course instructors.

Stat. Auth.: ORS 390.570 & 390.575

Stats. Implemented: ORS 390.570 & 390.575

Hist.: PRD 20-2009, f. & cert. ef. 12-8-09; PRD 1-2012, f. & cert. ef. 2-15-12

736-004-0130

Approved Internet Course Providers

(1) OPRD may regulate, approve, and limit the number of all-terrain vehicle safety internet courses provided for public use.

(2) Individuals and organizations may apply to OPRD to provide an ATV safety course as an internet course. An internet course provider applicant must submit a written request for course review and approval to OPRD.

(3) OPRD will review the applicant's internet course submittal to determine whether the proposed course:

(a) Meets the Oregon Internet Approval Standards provided by OPRD;

(b) Maintains Oregon-specific ATV safety information. An internet hyperlink to the OPRD website alone will not satisfy this requirement;

(c) Includes a final exam that has at least 14 Oregon-specific questions;

(d) Includes a final exam that has at least 50 total questions; and

(e) Requires a passing score of at least 80 percent correct answers on the final exam.

(4) An internet course provider approved to offer the public the opportunity to obtain an All-Terrain Vehicle Safety Education Card online must:

(a) Submit any proposed internet course changes to OPRD for approval;

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(b) Provide OPRD compatible electronic data files as specified by OPRD, containing all OPRD required data regarding individuals who are eligible to receive an All-Terrain Vehicle Safety Education Card. OPRD will specify the form and method that an internet course provider will transmit files to OPRD;

(c) Provide OPRD weekly deposits, if applicable, on a deposit day and to an account number specified by OPRD;

(d) Provide OPRD accounting section weekly reports indicating the total fee charged for each All-Terrain Vehicle Safety Education Card application and the total amount the internet course provider must pay OPRD; and

(e) Before personal information is exchanged online, provide each All-Terrain Vehicle Safety Education Card applicant information regarding security measures the internet course provider employs for financial transactions. All transactions must follow industry security standards.

(5) An internet course provider may not publish, promote or distribute to the public any materials or products that include the OPRD shield, logo, or name until OPRD has provided written approval to do so.

(6) An internet course provider may establish and charge its own All-Terrain Vehicle Safety Education Card testing fee. An internet course provider must clearly communicate the testing fee amount to each All-Terrain Vehicle Safety Education Card applicant prior to accepting an application.

(7) OPRD may place any approved internet course provider on probation for a period of up to 24 months or revoke an approved internet course if OPRD determines that the internet course provider:

(a) Made false statements or misrepresentations to OPRD;

(b) Made false statements or misrepresentations about, or otherwise misused, OPRD policies, OPRD procedures or OPRD;

(c) Failed to comply in any manner with federal or state law, including the rules of this division,

(d) Misinformed the public in advertising, marketing, or publishing efforts; or

(e) Generated or provided an All-Terrain Vehicle Safety Education Card for the State of Oregon.

Stat. Auth.: ORS 183 & 390.124

Stats. Implemented: ORS 390.124(1)

Hist.: PRD 1-2012, f. & cert. ef. 2-15-12

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend temporary permits, exam scores, lapsed fee, continuing education, board sanctions and initiation standards rules.

Adm. Order No.: PTLB 1-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 3-1-12

Notice Publication Date: 1-1-2012

Rules Amended: 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0035, 848-035-0030, 848-035-0040, 848-040-0125, 848-045-0010

Subject: Review and amend current rules to extend temporary permit for first time test takers from 60 days to 90 days to accommodate the new national examination fixed date testing; amend multiple passing score criteria for pre-1996 test takers to simply passing an exam approved by the board; change the late charge for a lapsed license fee to a single charge instead of a late charge for each year lapsed; broaden approved CE to include credit for other activities such as performing as a Clinical Instructor or for writing an published article; publish the Board's adopted sanction matrix into rule for practicing with a lapsed license and non-compliance with CE regulations; and clarify the need for performing an initial evaluation in the standards to initiate physical therapy; and other housekeeping items.

Rules Coordinator: James Heider—(971) 673-0203

848-010-0015

Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the exam-

ination a maximum of three times in any jurisdiction within a 12-month period, measured from the date of the first examination.

(2) All completed applications for examination, the non-refundable examination fee and other necessary forms must be approved by the Board prior to the scheduling of each examination in Oregon. For applicants taking the examination in another state or territory of the United States, or other Board approved location, and applying to Oregon for licensure by examination, all completed applications, the non-refundable fee and other necessary forms must be approved by the Board prior to licensure.

(3) Unless qualified for licensure by endorsement under OAR 848-010-0022, a foreign educated physical therapists must submit directly to the Board, prior to obtaining an application:

(a) A Credentials Evaluation Statement ("the Report") of professional education and training prepared by a Board-approved credentials evaluation agency. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation.

(A) The Report must provide evidence and documentation that the applicant's education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated from an accredited physical therapy education program approved by the Board pursuant to ORS 688.050(2).

(B) To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate Course Work Tool ("CWT") adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist graduated from their physical therapy program.

(b) English Language Proficiency

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(C) Verification that the applicant has achieved the following minimum scores for each category of the new internet based TOEFL (iBT) examination: writing, 24; speaking, 26; reading, 21; listening, 18; with an overall score of not less than 89.

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant's examination scores must be submitted to the Board directly from the Board-approved examination service.

(d) If applicant holds or has held a license in the country in which the applicant received their physical therapy education, the applicant must provide primary source verification of the license.

(e) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be "as of" the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) No person shall be allowed to take the physical therapist examination or physical therapist assistant examination for licensure in Oregon until all academic requirements are completed.

(6) The examination will be administered at a location approved by the Board.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period must demonstrate competence to practice physical therapy. If the applicant fails to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070, 688.090

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

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848-010-0020

Endorsement of Out-of-State Physical Therapists and Physical Therapist Assistants

Physical therapists and physical therapist assistants not licensed in the State of Oregon may be licensed by endorsement if they comply with all of the following:

- (1) File a completed application form and pay a non-refundable endorsement application fee.
- (2) Are at least 18 years of age.
- (3) Are graduates of an approved school for physical therapists or physical therapist assistants as provided in OAR 848-010-0010 and 848-010-0015(3).
- (4) Are currently licensed in any other state or territory of the United States.
- (5) Have passed the physical therapist or physical therapist assistant examination provided by a Board-approved examination service.
- (6) For applicants examined prior to January 1, 1961, the passing of an examination of the American Registry of Physical Therapists, or the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination of the American Registry of Physical Therapists.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 5, f. 12-20-74, ef. 1-11-75; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990(Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 3-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-010-0026

Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant the period specified below to an applicant who meets the requirements of this rule.

(a) A person who has completed a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination in Oregon may be issued a temporary permit for a period of 90 calendar days. Such applicant shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(b) A person who holds a valid current license to practice in another state or territory of the United States may be issued a temporary permit for a period of 60 calendar days. Such applicant shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee;

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program; and

(E) Have passed the physical therapist or physical therapist assistant examination as provided in OAR 848-010-0020(5).

(c) A person who is a foreign educated physical therapist who has graduated from a CAPTE accredited physical therapist program may be issued a temporary permit for a period of 60 calendar days. Such applicant shall:

(A) Submit a completed application for license by examination or endorsement and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee;

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist program; and

(D) Submit proof of passing scores on the TOEFL, TSE and TWE tests or iBTTOEFL test. However, this requirement does not apply if the physical therapist program was taught in English and English is the national language of the country where the physical therapist program was taught.

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) or (1)(c) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means an Oregon licensed physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means an Oregon licensed physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the period of the temporary permit by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one 60 calendar day extension to a person who holds a temporary permit.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110

Stats. Implemented: ORS 688.110

Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-010-0035

Renewal of Lapsed Licenses

(1) Any license that is not renewed before April 1 of each year shall automatically lapse. No person whose license has lapsed shall practice until the license is renewed. Failure to receive a renewal notice shall not excuse any licensee from the requirements of renewal. The Board may renew any lapsed license upon payment of all past unpaid renewal fees, payment of a single lapsed license renewal fee as provided in OAR 848-005-0020(1)(e) and, if applicable, documentation of completion of the continuing education requirements as provided in 848-035-0020(5). An applicant whose license has lapsed for non-completion of the continuing education requirements may reinstate the lapsed license upon completion of the requirements for the immediately prior certification period. Courses taken after March 31 of the even-numbered year to fulfill the requirements necessary to reinstate the lapsed license shall apply only to the prior certification period.

(2) In the event that an applicant's Oregon physical therapy license has lapsed for five or more consecutive years, the applicant must demonstrate competence to practice physical therapy. If the applicant fails to

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demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

(3) If the applicant holds a current physical therapist or physical therapist assistant license in another state or jurisdiction and the applicant's Oregon license has lapsed for five or more consecutive years, the applicant may apply for a license by endorsement as provided in OAR 848-010-0020.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.100

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 10, f. & ef. 10-21-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 5-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-035-0030

Continuing Education Requirements and Restrictions

(1) A licensee may satisfy the requirements of this division 35 by taking continuing education which may include but is not limited to:

(a) Courses, seminars, activities, and workshops sponsored, certified, or approved by an established and recognized medical or dental health-related organization or professional association recognized by the Board;

(b) Courses or activities approved for continuing education by other states which require continuing education for physical therapists or physical therapist assistants;

(c) Courses or activities certified for continuing education units (CEU) by a recognized physical therapy professional association;

(d) Courses provided by an accredited institution of higher education other than courses taken as part of the curriculum requirements of a CAPTE accredited physical therapy program;

(e) Individual study courses requiring an examination and recognized by an accredited institution or recognized health-related organization or professional association recognized by the Board;

(f) Courses in cardiopulmonary resuscitation (CPR) however, continuing education credit will be limited to one hour, regardless of the length of the course;

(g) Courses or lectures which a licensee presents if the course or lecture presented awards continuing education units or hours to participants and the licensee requests continuing education credit from the Board;

(A) The licensee may receive continuing education units or hours equivalent to the actual credit hours awarded to participants for that portion of the program which the licensee presents;

(B) The maximum cumulative credit granted for presenting courses or lectures shall be no more than one half of the total continuing education requirement during any certification period (ie: 12 hours for physical therapists and 6 hours for physical therapist assistants) and;

(C) A licensee may receive credit for presenting a particular course or lecture only one time during any certification period, regardless of how many times the licensee presents that course or lecture;

(h) Publishing an article in a peer review journal,

(A) The maximum credit granted for publishing an article shall be one half of the total continuing education requirement during any certification period (i.e.: 12 hours for physical therapists and 6 hours for physical therapist assistants).

(B) A licensee may receive credit for publishing an article only one time during any certification period;

(i) Serving as a certified clinical instructor as follows:

(A) A licensee who has completed a Board-approved clinical instructor certification program may receive continuing education credit equivalent to 1 credit hour for each 40 hours of direct clinical instruction to a physical therapist student or physical therapist assistant student enrolled in a physical therapy or physical therapy assistant program.

(B) The maximum cumulative credit granted for serving as a clinical instructor shall be no more than one-third of the total continuing education requirement during any certification period (ie. 8 hours for a physical therapist or 4 hours for a physical therapist assistant.)

(C) The licensee must obtain a letter or certificate from the student's academic institution verifying that the licensee has completed the course of clinical instruction; and

(j) Courses or activities approved by the Board by special request.

(2) Activities which will not satisfy the continuing education requirement include:

(a) In service programs or required workplace orientation, training or competencies;

(b) Professional association meetings for purposes of business or policy decisions making;

(c) Entertainment or recreational meetings; or
(d) Attending meetings, holding office, or representing a professional association as a lobbyist or delegate.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-035-0040

Documentation of Continuing Education Credits

(1) In order to qualify for credit against the required hours, a continuing education course or activity must include a completion certificate. The certificate must include the title of the course or activity, the name of the sponsor or speaker, date of completion, number of hours and licensee's name.

(2) The licensee is responsible for obtaining a [course] completion certificate from the sponsor or speaker. The licensee is further responsible for retaining the certificate in the event the Board requires the licensee to produce documentation of completion of the continuing education requirement. All completion certificates shall be retained for a minimum of four (4) years from the certificate date.

(3) A licensee who is seeking to receive credit for serving as a clinical instructor is responsible for obtaining a letter or certificate of completion from the academic institution for which the licensee served as a clinical instructor.

(4) The Board may require all or any percentage of physical therapists and physical therapist assistants who are renewing their licenses in the even numbered year to provide documentation of completion of the continuing education requirements of this division 35.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-040-0125

Standards For Initiation Of Physical Therapy

(1) Prior to initiating the first physical therapy treatment, a physical therapist shall perform an initial evaluation of each patient and determine a plan of care as provided in OAR 848-040-0135.

(2) For purposes of subsection (1) of this section, a physical therapist shall perform a separate initial evaluation under the following circumstances:

(a) The patient is returning to care after being discharged from therapy; or

(b) The patient is new to an inpatient or outpatient facility or home health agency.

(3) In the course of performing an initial evaluation the physical therapist shall examine the patient, obtain a history, perform relevant system reviews, assess the patient's functional status, select and administer specific tests and measurements and formulate clinical judgments regarding the patient. A physical therapist may incorporate by reference medical history or system review information about the patient prepared by another licensed health care provider and available in the physical therapy treatment record, IEP, IFSP or other designated plan of care.

(4) Only a physical therapist may perform an initial evaluation. A physical therapist shall not delegate the performance of an initial evaluation to a physical therapist assistant or to an aide.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010 & 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

848-045-0010

Authority and Sanctions

(1) If a licensee practices in a manner detrimental to the public health and safety or engages in illegal, unethical or unprofessional conduct as defined by the statutes and OAR 848-045-0020(2), the Board, after notice and opportunity for hearing as provided in ORS 688.145, may:

(a) Suspend or revoke a license or temporary permit.

(b) Impose a civil penalty not to exceed \$5,000, with the penalty for non-compliance with continuing education requirements to be as provided in the penalty schedule set out in Appendix A of these rules, and the penalty for practicing with a lapsed license to be as provided in the penalty schedule set out in Appendix B of these rules.

(c) Impose probation with conditions.

(d) Impose conditions, restrictions or limitations on practice.

(e) Reprimand the licensee.

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(f) Impose any other appropriate sanction, including assessment of the reasonable costs of a proceeding under ORS 688.145 as a civil penalty. Costs include, but are not limited to, the costs of investigation, attorney fees, hearing officer costs and the costs of discovery.

(2) A disciplinary sanction imposed against a licensee shall be generally consistent with sanctions imposed by the Board against other licensees in substantially similar cases.

(3) If a licensee has a mental, emotional or physical condition which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board, after notice and opportunity for hearing as provided in ORS 688.145, may suspend or revoke the license or temporary permit, impose probation with conditions, or impose conditions, restrictions or limitations on practice.

(4) As used in this rule, "licensee" includes a temporary permit holder.

Stat. Auth.: ORS 688.140, 688.160 & 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2012, f. 2-9-12, cert. ef. 3-1-12

Psychiatric Security Review Board Chapter 859

Rule Caption: PSRB Conditional Release Plan Review of Tier Two Offenders.

Adm. Order No.: PSRB 1-2012(Temp)

Filed with Sec. of State: 2-3-2012

Certified to be Effective: 2-3-12 thru 7-31-12

Notice Publication Date:

Rules Adopted: 859-070-0040

Rules Amended: 859-030-0005, 859-030-0010

Subject: Section 11a of SB 420 (Act) classifies individuals who have been found guilty except for insanity into tier-one offenders (i.e. Measure 11 offenders) and tier-two offenders (i.e. non-Measure 11 offenders). The Act directs that tier-two offenders who are committed to the state hospital be placed under the jurisdiction of the Oregon Health Authority (OHA), effective January 1, 2012. After OHA orders tier-two offenders to be placed on conditional release, their jurisdiction transfers to the PSRB pursuant to Section 1 of the Act. Section 5 of the Act directs OHA to notify PSRB prior to conducting a conditional release hearing. The Act also permits PSRB to provide OHA with conditions of release that PSRB determines are advisable.

PSRB's current rules do not describe a process for PSRB to provide conditions for release to OHA as described in Section 5 of the Act. PSRB must adopt OAR 859-070-0040 to create such a process. The adoption of 859-070-0040 creates a process for PSRB to immediately begin considering and providing to OHA conditions for the release of tier-two offenders when OHA notifies it under Section 5 of the Act. The amendments to 859-030-0005 and 0010 are necessary in order to update the Board's existing administrative rules to reflect its new responsibilities as noted above as well as house-keeping changes to reflect the Oregon Health Authority's new name.
Rules Coordinator: Mary Claire Buckley — (503) 229-5596

859-030-0005

Responsibilities, Function and Purpose of PSRB

The Board shall monitor the mental and physical health and treatment of any person placed under its jurisdiction as a result of a finding by a court of guilty except for insanity or any subsequent transfer of jurisdiction of an individual from the Oregon Health Authority. The Board shall have as its primary concern the protection of society. In addition, the Board's responsibilities shall include but not be limited to:

(1) Holding hearings as required by law to determine the appropriate status of persons under its jurisdiction;

(2) Providing the State Hospital Review Panel with conditions of release the Board finds advisable to be included in the Panel's order of conditional release of a Tier Two Offender;

(3) Overseeing the supervision of persons placed on conditional release in the community;

(4) Modifying or terminating conditional release plans;

(5) Maintaining and keeping current medical, social and criminal histories of all persons under the Board's jurisdiction;

(6) Observing the confidentiality of records as required by law.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, §33(2) (SB 420)

Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§5, 33, 41 (SB 420)

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12

859-030-0010

Jurisdiction of Persons Under the PSRB

The Board shall take jurisdiction over persons adjudged by the court to be guilty except for insanity and presenting a substantial danger to others:

(1) The court must find that the person would have been guilty of a felony, or if adjudged guilty except for insanity prior to January 1, 2012 of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another.

(2) The period of jurisdiction of the Board shall be equal to the maximum sentence the court finds the person could have received had the person been found guilty. The Board does not consider time spent on unauthorized leave from the custody of the Oregon Health Authority as part of the jurisdictional time.

(3) The Board has jurisdiction over all persons who used the insanity defense successfully and were placed on conditional release or committed to a state mental hospital by the court prior to January 1, 1978. The period of jurisdiction in these cases shall be equal to the maximum sentence the person could have received if found guilty and shall be measured from the date of judgment.

(4) The Board shall maintain jurisdiction over persons who are legally placed under its jurisdiction by any court of the State of Oregon or transferred from the jurisdiction of the Oregon Health Authority.

(5) The Board shall not retain jurisdiction over persons if the court order places the person under the Board only because of a judgment of guilty except for insanity for a probation violation. The person must be placed under the Board's jurisdiction for the initial offense.

(6) The Board shall not accept jurisdiction of juveniles found guilty except for insanity unless remanded to adult court.

(7) Upon receipt of verified information of time spent in custody, persons placed under the Board's jurisdiction shall receive credit for:

(a) Time spent in any correctional facility for the offense for which the person was placed under the Board's jurisdiction; and

(b) Time spent in custody of the Oregon Health Authority at a state mental hospital for determination of the defendant's fitness to proceed or for treatment until fit to proceed under a detainer for the criminal charges for which the person ultimately was found guilty except for insanity as well as a result of being committed by a court after being found guilty except for insanity of a charge.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, §33(2) (SB 420)

Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§5, 33, 41 (SB 420)

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 2-1987, f. 9-30-87, ef. 10-1-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12

859-070-0040

PSRB Conditional Release Plan Review of Tier Two Offenders

(1) As used in this section, "Condition" is defined as an event or circumstance that should occur or action that the individual should take for the individual to be eligible for release from the Oregon State Hospital. Conditions may include, but are not limited to, the elements of conditional release listed in 859-070-0015(1) through (6), such as an individual's compliance with supervision, mental health treatment, or a particular level of residential placement.

(2) Upon receipt of notice from the State Hospital Review Panel (SHRP) that it intends to conduct a hearing under ORS 161.315 to 161.351 and the documents listed in (3)(a) through (e) of this rule, the Board shall conduct an administrative review of the conditions proposed in the summary of conditional release plan. After that review, the Board may provide SHRP with conditions of release to be included in SHRP's order of conditional release.

(3) The Board shall conduct the administrative review of the Tier Two offender's conditional release plan within 21 days of receiving all of the following documents from SHRP:

(a) SHRP's order for evaluation of possible conditional release of a Tier Two offender;

(b) The Tier Two offender's current updated SHRP exhibit file;

(c) The evaluation by the proposed community provider;

(d) A summary of conditional release plan form which outlines the proposed conditions; and

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(e) A Progress Note Update authored by the treating psychiatrist dated within 30 days of the signed summary of the conditional release plan form.

(4) Notwithstanding the 21-day timeframe defined in section (3) of this rule, the Board may postpone the administrative review of the offender's conditional release plan for good cause, including, but not limited to, delays in placement availability and need for updated information.

(5) The administrative review conducted by the Board under this rule is not a hearing.

(6) The sole issue in the Board's administrative review is whether the Board would eliminate, add to, or modify the proposed conditions for the Tier Two offender.

(7) The PSRB shall provide to SHRP a report of its review of the proposed conditions for the Tier Two offender including any conditions that the Board determines are advisable within two working days of the conclusion of that review. Conditions are "advisable" if those are the conditions that the Board would impose if SHRP orders the conditional release of the Tier Two offender and transfer of jurisdiction to the Board.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, §33(2) (SB 420)
Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§5, 33, 41 (SB 420)
Hist.: PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12

**Secretary of State,
Audits Division
Chapter 162**

Rule Caption: Update Minimum Standards for Review of Oregon Municipal Corporations for changes in professional standards.

Adm. Order No.: AUDIT 1-2012

Filed with Sec. of State: 2-9-2012

Certified to be Effective: 4-1-12

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Rules Adopted: 162-040-0096

Rules Amended: 162-040-0001, 162-040-0002, 162-040-0005, 162-040-0010, 162-040-0020, 162-040-0050, 162-040-0054, 162-040-0055, 162-040-0060, 162-040-0065, 162-040-0070, 162-040-0075, 162-040-0095, 162-040-0155

Rules Repealed: 162-040-0015, 162-040-0090, 162-040-0110, 162-040-0115, 162-040-0120, 162-040-0125, 162-040-0130, 162-040-0135, 162-040-0136, 162-040-0140, 162-040-0146, 162-040-0148

Subject: (1) Amend rules for outdated and clarifying language to bring rules up to date.

(2) Repeal OAR 162-040-0015 – Duplicates standards already prescribed for reviews by the AICPA.

(3) Repeal OAR 162-040-0090, 162-040-0110, 162-040-0115, 162-040-0120, 162-040-0125, 162-040-0130, 162-040-0135, 162-040-0136, 162-040-0140, 162-040-0146, 162-040-0148 – Removes required procedures and report by auditor of municipality's compliance with laws, rules and regulations.

(4) Adopt OAR 162-040-0096 – Requires report of municipality acknowledging its responsibility for compliance with Oregon laws, rules, and regulations.

Rules Coordinator: Julie A. Sparks—(503) 986-2262

162-040-0001

Preface

(1) Pursuant to the provisions of ORS 297.465, there is presented herewith the Minimum Standards for Review of Oregon Municipal Corporations.

(2) These Standards have been approved by the Oregon Board of Accountancy (the Board), and have been adopted by the Secretary of State as Administrative Rules under the provisions of ORS Chapter 183.

(3) All reviews of municipal corporations shall be made in accordance with these Standards, and all review reports shall be in the form prescribed herein. The Standards are effective for reviews of fiscal years ending after March 31, 2012.

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.465
Hist.: AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0002

Definitions

(1) "Accountant" as used in these rules means a person licensed by the Oregon Board of Accountancy to conduct municipal audits and reviews.

(2) "Analytical Procedures" are substantive tests of financial information that involve comparisons of expectations developed by the independent accountant to recorded amounts or ratios developed from recorded amounts.

(3) "Determine" as used in these rules means to come to a decision after making inquiries and observations; performing analytical procedures; and other procedures found by the accountant to be necessary under the circumstances.

(4) "Review": A review is a service, the objective of which is to obtain limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles (GAAP). Financial statements prepared on the cash or modified cash basis of accounting is another comprehensive basis of accounting (OCBOA) other than GAAP and is permitted under municipal audit law.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465
Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0000; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; Renumbered from 162-040-0000 by AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0005

Introduction

(1) All municipal corporations, as defined in ORS 297.405, are required to have their accounts and fiscal affairs audited annually, unless they are exempt from audit under ORS 297.435. These administrative rules apply to review reports prepared under ORS 297.435(3).

(2) The objective of a review differs significantly from the objective of an audit of financial statements in accordance with generally accepted auditing standards. The objective of an audit is to provide a reasonable basis for expressing opinions on the financial statements that collectively comprise the municipality's basic financial statements. A review does not contemplate obtaining an understanding of the entity's internal control; assessing fraud risk; testing accounting records by obtaining sufficient appropriate evidence through inspection, observation, confirmation, or the examination of source documents; or other procedures ordinarily performed during an audit. A review is designed to obtain only limited assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in conformity with GAAP or another comprehensive basis of accounting permitted by law.

(3) The accountant who performs a review of the financial statements of a municipal corporation must:

(a) Be licensed by the Oregon Board of Accountancy to conduct municipal audits;

(b) Personally perform the review in accordance with these rules to an extent satisfactory to the Secretary of State; and

(c) Prepare a report expressing limited assurance on the financial statements in accordance with these rules.

(4) Since the functions and forms of government, as well as the accounting, internal control, and management information systems, will vary greatly among municipal corporations, the independent accountant must be or become familiar with legal provisions applicable to a particular government. The accountant must also be familiar with the accounting principles considered to be generally acceptable for governments.

(5) Officials of the municipal corporation must account for all resources for which they are responsible. An appropriate accounting by officials of the municipal corporation will include financial statements, notes to the financial statements, and the supplementary information required by these rules.

(6) Based upon the review, the accountant should ascertain whether the municipal corporation's accounts and records are maintained in a manner that will permit the preparation of financial statements which fairly present its financial position and results of operations in accordance with legal provisions, and in accordance with generally accepted accounting principles or another comprehensive basis of accounting permitted by law. The accounting principles contemplated are those contained in pronouncements of authoritative bodies including, but not necessarily limited to, the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and the Governmental Accounting Standards Board. If the municipal corporation does not prepare and present the financial statements specified in these rules, the accountant should make a reasonable attempt to draft them for the municipal corporation using its accounts and records. Whenever legal provisions conflict with generally accepted accounting principles or principles applicable to another comprehensive basis of accounting, the accountant shall disclose these conflicts and modify the review report if necessary.

ADMINISTRATIVE RULES

(7) The accountant should establish an understanding of the industry in which the municipality operates, and whether operations have been carried out in accordance with appropriate legal provisions including federal and state laws, charter provisions, court orders, ordinances, resolutions, and rules and regulations issued by other governmental agencies. The independent accountant should communicate to the appropriate level of management, and if applicable, to those charged with governance, material instances of noncompliance with such legal provisions that come to his or her attention during the review.

(8) The report shall include financial statements with appropriate notes, and the independent accountant's review report containing limited assurance on the financial statements. If the accountant becomes aware of a departure from GAAP or another comprehensive basis of accounting permitted by law that is material to the financial statements, the accountant should consider whether modification of the standard report is adequate to disclose the departure. The accountant's review report shall include the reporting elements prescribed by the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(9) The municipal corporation must file a copy of its report with the Secretary of State. The report and supporting documentation are subject to review by the Secretary of State for compliance with these rules. The Secretary of State may require the accountant to submit documentation covering the review engagement for purposes of this requirement.

(10) The accountant shall submit a summary of the revenues and expenditures of the municipal corporation within 30 days after delivering the review report. The summary shall encompass the period covered by the review and shall be prepared in a manner and on forms prescribed by the Secretary of State. One copy of the summary shall be delivered to the municipal corporation. A supply of the forms will be furnished to the accountant upon request.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0005; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0010

General Requirements

(1) Reviews shall be performed in accordance with a written agreement executed by the independent accountant and the municipal corporation. The agreement should clearly establish the nature of the services to be performed and shall clearly set forth the scope of work to be conducted by the accountant. The agreement must include a provision for the expression of limited assurance on the financial statements of the municipal corporation. The agreement should also provide for the accountant to make a reasonable attempt to draft the financial statements for the municipal corporation if the municipal corporation has not prepared them.

(2) If prior period financial statements are presented for comparative purposes, the accountant must clearly establish the degree of responsibility, if any, the accountant is assuming for such prior period statements.

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0010; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0020

Financial Statements

(1) In 1984, the Financial Accounting Foundation created the Governmental Accounting Standards Board. The GASB is recognized as the standard-setting authority of GAAP for state and local governments. As such, fair presentation of financial position and results of operations in conformity with GAAP for Oregon municipal corporations are those financial statements consistent with GASB Statements and Interpretations and the hierarchy of GAAP applicable to state and local governments established by the AICPA and adopted in GASB Statement Number 55 — The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments.

(2) The focus of accounting in an Oregon governmental unit is the individual fund. Therefore, the financial statements to be reviewed in accordance with these administrative rules, and upon which the accountant is to express limited assurance, should include the nonmajor combining and individual fund financial statements and schedules, whether presented as basic, required supplementary information (RSI) or supplementary information (SI).

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0020; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0050

Notes to Financial Statements

Fair presentation of financial position and results of operations in conformity with generally accepted accounting principles requires financial statements to be accompanied by appropriate notes. Appropriate notes shall also accompany financial statements prepared in conformity with another comprehensive basis of accounting permitted by law. Notes to financial statements provide additional factual detail beyond that which may be feasibly incorporated in the statements proper; they provide interpretive comment; they provide facts which by convention are excluded from financial statements; or, they explain the degree of uncertainty attaching to items presented in the financial statements.

Stat. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0050; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0054

Required Supplementary Financial Information (RSI)

In addition to financial statements, the independent accountant should be aware that the Governmental Accounting Standards Board may determine that certain statements, schedules, statistical data, or other information are necessary to supplement, although not required to be a part of, the basic financial statements.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0055

Supplementary Information

In addition to the basic financial statements, notes, and required supplementary information thereto, supplementary information is considered necessary for full disclosure and compliance with various laws, rules, and regulations relating to the operations and finances of the municipal corporation. Whenever appropriate, reports should contain the supplementary information set forth in OAR 165-040-0060 through 165-040-0085 or reasonable combinations thereof. If appropriate, the municipal corporation may include these schedules in the notes to the financial statements.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0055; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0060

Schedule of Revenues, Expenditures, and Changes in Fund Balances/Retained Assets, Budget and Actual (Each Fund)

The municipal corporation must prepare an individual schedule of revenues, expenditures/expenses, and changes in fund balances/net assets, budget and actual, for each fund for which budgets are legally required. It must compare estimated with actual revenues or receipts, transfers in, expenditures or disbursements, transfers out and ending balances on the basis of the legally adopted budget. If the municipal corporation has made appropriations in a manner which differs materially from the presentation of estimated expenditures in the budget document, a separate schedule must be included which compares actual expenditures/expenses with the legally adopted appropriations.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0060; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0065

Schedule of Property Tax Transactions or Acreage Assessments

A schedule of property tax transactions or acreage assessments is required which presents the current year and each of the previous five years separately, and all prior years in the aggregate. The schedule should include beginning of year balances, current year levy, adjustments, and end of year balances. In addition, the schedule may include such statistical information as may be desirable in order to fully and adequately disclose the property tax or acreage assessment transactions of the municipal corporation.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0065; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

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162-040-0070

Schedule of Bonded or Long-Term Debt Transactions

At a minimum, supplementary information should include a schedule of total outstanding matured and unmatured principal and matured interest obligations at the beginning of the period, the maturities and redemptions during the period, and the outstanding matured and unmatured principal and matured interest at the end of the period.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465
Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0070; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0075

Schedule of Future Requirements for Retirement of Bonded or Long-Term Debt

At a minimum, supplementary information should include a schedule presenting, by fund and by bond or other type of issue, in the aggregate and for each of the five succeeding years, and in five-year increments thereafter, the amount required for the retirement of bonded or other long term debt, both principal and interest.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465
Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0075; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0095

Officers and Registered Agent of the Municipal Corporation

Immediately inside the front cover, each report shall contain the names and mailing addresses of officers of the municipal corporation and members of its governing body. In addition, reports of special districts, as defined by law (ORS Chapter 198), shall contain the name of the district's registered agent and its registered address. If a special district has not designated a registered agent or registered address, then the report shall so indicate.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465
Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0095; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0096

Management Representation of Fiscal Affairs

Each report shall include inside the back cover a signed report of management's representation of the municipal corporation's compliance with its fiscal affairs. At a minimum, the report should include the representations in the following example:

Management Representation of Fiscal Affairs
Required by Oregon Regulation
The [name of entity] is subject to, and responsible for, compliance with various laws, rules, and regulations relating to its operation and finances. Among such laws, rules, and regulations are the requirements prescribed in Municipal Audit Law (ORS Chapter 297) and the Minimum Standards for Review of Oregon Municipal Corporations (OAR 162, division 40) including, but not limited to:
(a) Deposit of public funds with financial institutions (ORS Chapter 295).
(b) Indebtedness limitations, restrictions, and repayment.
(c) Budgets legally required (ORS Chapter 294).
(d) Insurance and fidelity bonds in force or required by law.
(e) Programs funded from outside sources.
(f) Highway revenues used for public highways and roads (ORS Chapters 294, 368 & 373).
(g) Authorized investment of surplus funds (ORS Chapter 294).
(h) Public contracts, purchasing, and improvements (ORS Chapters 279A, 279B, and 279C).

The management of [name of entity] is aware of the requirements of Oregon laws and administrative rules concerning each of the above requirements and has complied, in all material respects, with such requirements. Further, we are not aware of any violations or possible violations of laws, rules, or regulations, whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.

Signature _____

Printed Name _____ Title _____ Date _____

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.465
Hist.: AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

162-040-0155

Suggested Review Procedures

The AICPA Statement on Standards for Accounting and Review Services provide guidance for the accountant's inquiry and analytical procedures ordinarily performed in a review engagement. Those standards include an appendix of illustrative letters and reports/inquiries.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91; Renumbered from 165-040-0155; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2012, f. 2-9-12, cert. ef. 4-1-12

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Expands high school authorization on Initial and Continuing licenses to grades 7 and 8.

Adm. Order No.: TSPC 1-2012(Temp)

Filed with Sec. of State: 2-7-2012

Certified to be Effective: 2-15-12 thru 8-13-12

Notice Publication Date:

Rules Amended: 584-060-0051

Subject: Expands high school authorization on Initial and Continuing Teacher Licenses to grades 7 and 8 in a school designated by a high school.

Rules Coordinator: Lynn Beaton—(503) 373-0981

584-060-0051

Teaching Authorization Levels

(1) Teachers must qualify for one or more grade authorizations at the early childhood, elementary, middle or high school developmental levels.

(2) Teaching authorization levels will apply to all teaching licenses within division 60.

(3) Early Childhood Education (ECE) Authorization: The early childhood education (ECE) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in grades prekindergarten (pre-k) through four (4).

(a) The ECE authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in prekindergarten (pre-k) through grade four (4).

(b) The ECE authorization level with a multiple subjects endorsement is not valid for assignments requiring a specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(4) Elementary ELE Authorization: The elementary ELE authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades three (3) through eight (8). (See, OAR 584-017-0120 for ELEM authorization competencies and OAR 584-017-0175 for adding an authorization level to a license.)

(a) The ELE authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades three (3) through eight (8).

(b) The ELE authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(5) The Middle-Level (ML) Authorization: The middle-level (ML) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades five (5) through nine (9). The placement may only be in grade nine (9) if it is located in a middle school or junior high school. Additionally, the ML authorization requires in-depth knowledge of one subject-matter or specialty endorsement appropriate to middle-level teaching assignments.

(a) The ML authorization is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades five (5) through nine (9) of a school designated as an elementary, middle, or junior high school.

(b) The ML authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(6) The high school (HS) authorization level requires completion of an approved program and qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the required Commission-approved test or tests of subject mastery in the endorsement

ADMINISTRATIVE RULES

area, together with completion of a practicum experience with students in one or more grades between grades nine (9) through twelve (12). The high school (HS) authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed, in grades seven (7) through twelve (12) in a school designated as a high school.

(7) The Early Childhood Education/Elementary (ECE/ELE) authorization represents the merger of two grade authorization levels and requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades prekindergarten (pre-k) through eight (8).

(a) The ECE/ELE authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades prekindergarten (pre-k) through eight (8).

(b) The ECE/ELE authorization level with a multiple subjects endorsement is not valid for assignments requiring a specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(8) The Elementary/Middle Level (ELE/ML) authorization represents the merger of two grade authorization levels and requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades three (3) through nine (9). The placement may only be grade nine (9) if it is located in a middle school or junior high school.

(a) The ELE/ML authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades (3) through grade eight (8).

(b) The ELE/ML authorization level with a multiple subjects endorsement is not valid for assignments requiring a specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(9) The Middle Level/High School (ML/HS) authorization represents the merger of two grade authorization levels and requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) and qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the required Commission-approved test or tests of subject mastery in the endorsement area, together with completion of a practicum experience with students in one or more grades between grades five (5) through twelve (12).

(a) The ML/HS authorization is valid for any multiple subjects teaching assignment, except assignments in subsection (c) below, in grades five (5) through nine (9) of a school designated as an elementary, middle, or junior high school.

(b) The ML/HS authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed, in grades seven (7) through twelve (12) in a school designated as a high school.

(c) The ML/HS authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, library media, reading or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(10) The Prekindergarten-12 (pre-k through 12) authorization level represents qualification to teach in all four grade levels. The pre-k through grade 12 authorization level requires completion of an approved program including passing the commission-approved test or tests for specialty area endorsements (see OAR 584-060-0071) together with completion of two practica experiences with students in grades between pre-kindergarten through twelve (12).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 1-2008(Temp), f. & cert. ef. 2-15-08 thru 8-13-08; TSPC 6-2008, f. & cert. ef. 8-12-08; TSPC 1-2012(Temp), f. 2-7-12, cert. ef. 2-15-12 thru 8-13-12

Rule Caption: Amends fee rule; Conditional Assignment Permit rule and Career and Technical Education rules.

Adm. Order No.: TSPC 2-2012

Filed with Sec. of State: 2-15-2012

Certified to be Effective: 2-15-12

Notice Publication Date: 9-1-2011

Rules Amended: 584-036-0055, 584-042-0008, 584-042-0012, 584-042-0021, 584-042-0031, 584-042-0036, 584-042-0044, 584-042-0051, 584-042-0081

Subject: 584-036-0055 – *Fees:* Allows the Executive Director or her designee to consider extenuating circumstances and determine when it is appropriate to waive the fee.

584-042-0008 – *Five-Year Career and Technical Education Teaching License:* Effective July 15, 2011, 5-year license no longer issued. However, existing 5-year CTE license holders still valid and renewable.

584-042-0012 – *Career and Technical Education Teaching License Renewal:* Existing three-year CTE licensee must qualify for the CTE II upon expiration. In extenuating circumstances, CTE license holder may apply for a one-year CTE license to complete the additional requirements for renewal.

584-042-0021 – *Definitions:* Clarifies definition of CTE Mentor. Corrects statutes cited.

584-042-0031 – *Career and Technical Education I Teaching License:* Language clarification regarding fingerprints, and commission-approved civil rights test. Corrects statutes cited.

584-042-0036 – *Career and Technical Education II Teaching License:* Clarifies CTE II license holders eligible to teach within the full scope of the CTE endorsement. Corrects statutes cited.

584-042-0044 – *Career and Technical Education Endorsement:* Language clarification (3)(e), (3)(e)(B). Corrects statutes cited.

584-042-0051 – *Career and Technical Education (CTE) Professional Development Plan:* Corrects rule sub-sections in reference rules cited and corrects coursework hours required for license. Corrects statutes cited.

584-042-0081 – *Career and Technical Education Restricted Substitute Teaching License:* Clarifies language regarding commission-approved civil rights test. Adds Math and Language Arts requirements for teacher preparation. Corrects statutes cited.

Rules Coordinator: Lynn Beaton—(503) 373-0981

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;

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(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) \$25;

(t) Initial Administrator License (3 years): \$100;

(u) Initial School Psychologist License (3 years): \$100; and

(v) Initial School Social Worker 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.

(c) In certain cases involving extenuating circumstances related to OAR 584-036-0057 Late Fee Waivers, the Executive Director may choose to waive this late fee.

(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; TS 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; TSPC 5-2011, f. & cert. ef. 6-15-11; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0008

Five-Year Career and Technical Education Teaching License

(1) The Five-Year Career and Technical Education Teaching License is only valid to teach in ODE-approved career and technical education programs for which the educator is specifically licensed. The license is not eligible for any other district assignment including substituting in general education classes.

(2) The Five-Year Career and Technical Education Teaching License may be transferred to another Oregon school district if the new instructional assignment is comparable and in a career and technical education program approved by the Oregon Department of Education.

(3)(a) The Five-Year Career and Technical Education Teaching License is renewable upon joint application of the employing school board or school superintendent and the instructor under the following conditions:

(b) Completion of 125 clock hours or the equivalent of continuing professional development (CPD) consistent with OAR 584, division 90;

(4) Effective July 15, 2011, the Five-Year Career and Technical Education Teaching Licenses will no longer be issued as a first license. However, holders of the Five-Year CTE licenses issued prior to July 15, 2011 may continue to hold and renew this license.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 3-2002, f. 3-15-02, cert. ef. 1-15-03; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0012

Career and Technical Education Teaching License Renewal

(1)(a) The Three-Year Career and Technical Education Teaching License is not renewable. To obtain further career and technical education licensure, the applicant must qualify for the Career and Technical Education II Teaching License upon expiration of the Three-Year Career and Technical Education Teaching License.

(b) In extenuating circumstances, an applicant may be eligible for an Emergency Teaching license in order to complete the requirements for a Career and Technical Education II Teaching License.

(2) The Five-Year Career and Technical Education Teaching License may be renewed upon joint application of the employing school district and the instructor and upon completion, during the life of the license, of continuing professional development (CPD) consistent with OAR 584, division 90.

(3) The Career and Technical Education I Teaching License is not renewable. To obtain further career and technical education licensure, the

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application must qualify for the Career and Technical Education II Teaching License upon expiration of the Career and Technical Education I Teaching License.

(4) The Career and Technical Education II Teaching License may be renewed upon application upon completion, during the life of the license, or continuing professional development (CPD) consistent with OAR Division 90.

(5) Holders of a Five-Year Career and Technical Education Teaching License may optionally qualify to apply for the Career and Technical Education II Teaching License, if requirements are met as specified in OAR 584-042-0036.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78 except section 2(a), ef. 1-1-80; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 5-2007, f. & cert. ef. 8-15-07; Renumbered from 584-048-0040, TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0021

Definitions

(1) "Approved Career and Technical Education Program:" A career and technical education program (CTE), approved by the Oregon Department of Education (ODE).

(2) "Career and Technical Education (CTE) Mentor:" A teacher holding a pre-1965 Five-Year Teaching, Five-Year CTE, CTE II, Basic, Standard, Initial, Initial I, Initial II or Continuing teaching license who guides and supports a beginning CTE teacher on a CTE I Teaching License with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development. The assigned mentor must be approved by ODE to be a CTE mentor.

(3) "Career and Technical Education Professional Development Plan:" A plan for personal professional growth during the life of the Career and Technical Education I Teaching License and the Career and Technical Education II Teaching License consistent with OAR 584-042-0051 Career and Technical Education Professional Development Plan.

(4) "Regional Coordinator:" An individual hired by a local educational agency or community college and officially recognized by the Oregon Department of Education (ODE) to specifically coordinate the ODE approved regional system of Career and Technical Education.

(5) "Instructor Appraisal Committee (IAC):" A committee organized in accordance with OAR 584-042-0022.

(6) "Significant Progress:" Significant progress toward completion of CTE professional development plan requirements means the applicant has made a confirmed commitment in each year the license is held toward completing the CTE professional development plan submitted upon application to TSPC. Significant progress may be evidenced by completion of at least one-third of the requirements contained within the professional development plan. The progress must have been completed within the last year preceding application for renewal.

(7) "Waivers:" A waiver of the work experience or academic requirements for the CTE I Teaching License in accordance with OAR 584-042-0060 Waivers.

(8) "Work Experience:" Planned and coordinated work experience or previous and documented work experience that meets the criteria included in OAR 584-042-0070 Work Experience.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495, 342.553

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 2-2012, f. & cert. ef. 2-15-12

584-042-0031

Career and Technical Education I Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be eligible for a Career and Technical Education (CTE) I Teaching License in one or more Career and Technical Education endorsement areas. The license may be issued for up to three years.

(2) The Career and Technical Education I Teaching License is valid to teach in:

(a) An ODE-approved Career and Technical Education program[s] for which the educator is specifically licensed;

(b) Any CTE teaching license is valid for assignments in diversified occupations or as work experience coordinators.

(3) The application must be a joint application from the applicant and the school district seeking to employ the applicant. The complete applica-

tion must be directly submitted by the applicant. TSPC will not accept applications submitted by third parties.

(4) A complete application packet must include the following materials from both the Oregon Department of Education and TSPC:

(a) A signed and dated TSPC application and the appropriate fees;

(b) Fingerprints furnished in the manner prescribed by the commission and satisfactory responses to the character questions contained in the commission's licensure application; and

(c) Passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(d) A copy of the ODE-approved CTE I Teaching License application form, including:

(A) The Instructor Appraisal Committee's recommendation for licensure on an approved ODE form, including any course restrictions related to the recommended endorsement or endorsements unless waived by ODE pursuant to OAR 584-042-0060 Waivers and 584-042-0070 Work Experience;

(B) A copy of the signed CTE Professional Development Plan indicating the expectations for the educator over the next three years. The application for licensure is deemed incomplete if the professional development plan does not align with OAR 584-042-0051 CTE Professional Development Plan;

(C) Evidence the co-applicant school district has an ODE-approved program in the requested Career and Technical Education endorsement or endorsements area; or evidence that the district has submitted their application for approval of the CTE program to the ODE. The district must indicate the approximate date they expect to obtain ODE approval of their program;

(D) The name and credentials of the identified CTE mentor;

(E) Transcripts of an associate's degree or equivalent; or in the alternative, the ODE waiver, consistent with OAR 584-042-0060 Waivers that is signed and dated within 90 days from the date of the application to TSPC; and

(F) Work experience evidence documented in one of the following ways:

(i) Planned and coordinated or previous and documented work experience in accordance with OAR 584-042-0070 Work Experience verified by ODE and completed within the past five years; or

(ii) A copy of the industry certification or licensure.

(5) CTE I 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 signed and dated TSPC application and renewal fees as defined by rule;

(B) A letter of support from the co-applicant district;

(C) A passing score as currently specified by the commission on a test of basic skills; and

(D) Proof of significant progress toward completion of the requirements as outlined in the CTE professional development plan as defined in OAR 584-042-0020 Definitions.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees as defined by rule;

(B) A letter of support from the co-applicant district; and

(C) Proof of significant additional progress beyond the first renewal toward completion of the requirements as outlined in the CTE professional development plan as defined in OAR 584-042-0051 Professional Development Plan.

(c) Renewal under subsections 5(a) and 5(b) above are 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) Failure to show significant progress is deemed to be an incomplete application for renewal.

(e) The Executive Director may grant an Emergency Teaching License upon failure to show progress if the circumstances preventing completion of progress are exceptional and extenuating. In such cases, the Emergency Teaching License may be issued following submission of a C-1 application, C-3 from the district, the appropriate full fee, and a complete description of the circumstances creating the emergency for an Emergency Teaching License. If issued, the Emergency Teaching License may be issued for the minimum period of time it takes to cure the renewal deficit. Any time extensions under this subsection will be deducted from the next renewal cycle.

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(6) The Career and Technical Education I Teaching License is not renewable beyond three years. Holders of this license must finish their requirements for the CTE II Teaching License within three years from when the license is first issued, no exceptions. If the employment opportunity associated with first acquiring the license ceases, the license holder is encouraged to continue working toward completion of the CTE II Teaching License requirements.

(7) If the application and fee for the Career and Technical Education II Teaching License is received prior to the expiration of the Career and Technical Education I Teaching License, the license will remain valid for another 120 days following the expiration of the license.

(a) The applicant and co-applicant district must provide documentation that the requirements for the Career and Technical Education II Teaching License have been met prior to the expiration of the 120 days after the Career and Technical Education I Teaching License has expired to remain continuously licensed in this area.

(b) In the event the co-applicant district is unable to provide the documentation required in subsection (a) above, the ODE may certify that the applicant is qualified for the CTE II Teaching License.

(c) Applicants are encouraged to submit complete applications for the CTE II Teaching License at least 90 days prior to the expiration of the final CTE I Teaching License.

(8) In addition to the requirements for the CTE Professional Development Plan, the CTE licensee must meet all of the requirements for the CTE II Teaching License at the end of three years following the issuance of the CTE I.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.495, 342.553

Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 6-2010, f. & cert. ef. 8-31-10; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0036

Career and Technical Education II Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Career and Technical Education II Teaching License, valid for three years of teaching in an approved career and technical education program.

(2) The Career and Technical Education II Teaching License is valid to teach in ODE-approved career and technical education programs in the endorsement areas for which the educator is specifically licensed. All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement. Any CTE teaching license is valid for assignments in diversified occupations or as work experience coordinators.

(3) The application packet must include the following:

(a) A signed and dated TSPC application and the appropriate fees;

(b) Evidence that all the requirements for the Career and Technical Education I Teaching License as set forth in OAR 584-042-0031 have been met;

(c) Evidence of one year or the equivalent of career and technical education teaching experience while holding a license valid for the assignment as verified on a Professional Educational Experience Report Form (PEER);

(d) Evidence of completion of the CTE professional development plan as prescribed by the IAC and as filed with TSPC when the CTE I was first issued, including evidence the applicant has either:

(A) Transcripts of any coursework required by the CTE professional development plan; or

(B) Official verification of work experience required by the CTE professional development plan on a form approved by the ODE.

(4) Transcripts of coursework submitted for eligibility for the Career and Technical Education II Teaching License must be completed through an approved teacher education institution or an accredited community college.

(5) The Career and Technical Education II Teaching License is renewable upon completion of 75 clock hours or the equivalent of continuing professional development in accordance with OAR 584, division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.495, 342.553

Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0044

Career and Technical Education Endorsements

(1) Career and Technical Education (CTE) Endorsements are subject-matter endorsements in the career and technical fields.

(2) Only the Basic, Standard, Initial, Continuing or CTE II Teaching Licenses are eligible to hold any CTE endorsement. A CTE I Teaching License may only hold a single CTE endorsement.

(3) Endorsements indicate the scope of the subject-matter that may be taught on the license which holds the endorsement. Specific courses

allowed within the scope of each endorsement are identified by TSPC and published on the TSPC web site. Endorsements include the following:

(a) Endorsements in the Agriculture, Food and Natural Resource Systems area include:

(A) Agriculture Science and Technology;

(B) Natural Resources Management; and

(C) Environmental Services.

(b) Endorsements in the Arts, Information and Communications area include:

(A) Publishing and Broadcasting;

(B) Information and Communications Technology; and

(C) Visual, Performing and Media Arts.

(c) Endorsements in the Business and Management area include:

(A) Business Management and Administration;

(B) Finance;

(C) Hospitality and Tourism;

(D) Information and Communications Technology; and

(E) Marketing.

(d) Endorsements in the Health Sciences area include: Health Sciences.

(e) Endorsements in the Human Resources area include:

(A) Education and Related Fields;

(B) Hospitality and Tourism (Culinary);

(C) Human Services; and

(D) Public Services.

(f) Endorsements in the Industrial and Engineering Systems area include:

(A) Construction Technology;

(B) Engineering Technology;

(C) Information and Communications Technology;

(D) Transportation Technology; and

(E) Manufacturing Technology.

(4) Applicants for the CTE I Teaching License may be limited with regard to the courses they may teach in the first three years of licensure. The IAC will determine whether the applicant is fully prepared to teach all courses with the endorsement area in which the applicant seeks licensure.

(5) All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement.

(6) Adding a CTE Endorsement with Work Experience. Holders of Basic, Standard, Initial, Continuing or CTE II teaching licenses who meet all of the ODE-approved work experience requirements for a CTE II Teaching License may be eligible to add CTE endorsements onto their underlying teaching license. The endorsement shall be valid for the same amount of time as the underlying license. Only ODE may approve work experience under this subsection.

(7) Adding a CTE Endorsement without Work Experience. Holders of Basic, Standard, Initial, Continuing or CTE II teaching licenses who do not meet the work experience requirements to add a CTE endorsement must apply for a CTE I Teaching License in that endorsement area. Upon verification of the work experience requirements in an application to TSPC, the endorsement may be added to the holder's Basic, Standard, Initial, Continuing Teaching, or CTE II License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430, 342.455 – 342.495, 342.553

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; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0051

Career and Technical Education (CTE) Professional Development Plan

(1) A CTE professional development plan (PDP) is required as part of the application for the Career and Technical Education I Teaching License. The CTE professional development plan must be for at least three years.

(2) The CTE professional development plan must be signed by both the district and the prospective educator. The employing school district will keep a copy of the CTE professional development plan.

(3) A signed copy of the plan must be included in the CTE I Teaching License application materials submitted to the Commission.

(4) The plan must include assurances that the district has assigned an appropriately licensed administrator to monitor the progress and timely completion of the signed CTE professional development plan. The administrator must be identified in the application materials for the CTE I Teaching License.

(5) The plan must include assurances that the district has assigned an appropriately trained mentor consistent with 584-042-0021(6) and such mentor is identified in the application materials.

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(6) For applicants holding a pre-1965 Five-Year Teaching, Basic, Standard, Initial, Initial I, Initial II, Continuing, or an equivalent out-of-state non-provisional teaching license prior to applying for the Career and Technical Education I Teaching License; the scope of the PDP must include:

(a) Activities identified by the Instructional Appraisal Committee (IAC) that address relevant CTE professional development needs, including verifiable work experience, and coursework that specifically relates to career and technical education; and

(b) Verifiable work experience that has been performed in the last five (5) years and includes one of the following:

(A) At least 1800 hours of previous and documented related work as defined in OAR 584-042-0070(1) CTE Work Experience;

(B) At least 600 hours of planned and coordinated related work experience as defined in OAR 584-042-0070(2) CTE Work Experience;

(C) The equivalent combination of planned and coordinated and previous and documented related work at a technical skill level within the last five years; or

(D) Related industry certification or licensure.

(7) For applicants who have not previously completed a teacher preparation program, the CTE professional development plan must outline how the applicant will acquire a minimum of eighteen (18) quarter hours or twelve (12) semester hours, as specified below, of teacher preparation required for eligibility for a Career and Technical Education II Teaching License. The Instructor Appraisal Committee may increase the requirements if they deem the additional education is necessary. Applicants under this subsection must meet all of the following requirements in subsections (a) through (d).

(a) Obtain nine (9) quarter hours or six (6) semester hours of education-specific coursework which must be selected from the following areas:

(A) Introduction to Career and Technical Education in Oregon;

(B) Introduction to the Education Profession;

(C) Oregon School Law including a focus on special needs students;

(D) Classroom Management;

(E) Multi-cultural Education;

(F) Second Language Acquisition;

(G) Human Development for adolescent and older children;

(H) Education Psychology and Learning Development; and

(b) Obtain at least three (3) quarter hours or two (2) semester hours in Curriculum Design, Instructional Strategies and Assessment; and

(c) Obtain at least three (3) quarter hours or two (2) semester hours in instructional methodology in how to teach mathematics to secondary learners, which may include coursework focused on how to teach mathematics in the CTE context; and

(d) Obtain at least three (3) quarter hours or two (2) semester hours in instructional methodology in how to teach reading, or writing and literacy to secondary learners.

(8) In addition to the requirements in subsections (6) and (7) above, all applicants, regardless if they are coming from education or industry, must show evidence they have at one time obtained or will obtain all of the following specific college-level coursework:

(a) Three (3) quarter hours or two (2) semester hours of math at or above a level required by the industry related to the applicant's endorsement and identified by the IAC; and

(b) Three (3) quarter hours or two (2) semester hours of college level language arts or speech at the one-hundred level or higher as identified by the IAC.

(9) The IAC may increase the minimum requirements described in subsection (8) above if they deem additional education is needed.

(10) Coursework as required by the Instructor Appraisal Committee must be attained through a TSPC-approved teacher education program or an accredited community college and verified by transcripts submitted to TSPC at the time of application for a Career and Technical Education II License. If in doubt whether the coursework will apply, check with TSPC prior to enrolling in coursework to fulfill these requirements.

(11) Professional Development Plans may be modified after initial development and submission to TSPC with written approval by ODE. Modified plans must be submitted to TSPC with ODE's approval prior to the expiration of the CTE I Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.496; 342.553

Hist.: TSPC 6-2010, f. & cert. ef. 8-31-10; TSPC 2-2012, f. & cert. ef. 2-15-12

584-042-0081

Career and Technical Education Restricted 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 Career and Technical Education Restricted Substitute Teaching License.

(a) This license, issued for three years and renewable, is valid to substitute teach for a total of 60 days a school year (September through June) in any Career and Technical Education endorsement area to replace a licensed CTE teacher in an ODE-approved Career and Technical Education program 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 (which must co-apply with the applicant for 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 ten (10) days consecutively under any circumstances.

(e) This license is not eligible for substitute teaching in classrooms outside of ODE-approved CTE programs.

(2) To be eligible for a Career and Technical Education Restricted Substitute Teaching License, the applicant must:

(a) Submit evidence the applicant holds an associate's degree or higher from an accredited institution or an approved foreign equivalent, or obtain recommendation from the Oregon Department of Education for a waiver of the associate's degree (See OAR 584-042-0060 Waivers);

(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) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(d) Complete the appropriate Instructor Appraisal Committee evaluation as prescribed by ODE rule, be recommended for specific endorsements by the committee, and submit evidence of the following:

(A) Verification of a minimum of eighteen (18) quarter hours or twelve (12) semester hours of teacher preparation, in addition to three (3) quarter hours or two (2) semester hours each of math and language arts. (See required areas for preparation in OAR 584-042-0051 CTE Professional Development Plan.); and

(B) Verification of related work experience as specified by OAR 584-042-0070 Work Experience at a technical skill level within the last five years. (See required hours in OAR 584-042-0051 CTE Professional Development Plan.); and

(e) Provide a letter from the co-applicant district stating the need for the license.

(3) To be eligible for renewal of the Career and Technical Education Restricted Substitute Teaching License an applicant must:

(a) File a correct and complete application in form and manner prescribed by the commission; 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 Career and Technical Education Teaching License for the holder of a Career and Technical Education Restricted Substitute Teaching License if the district is unable to obtain a Career and Technical Education licensed teacher in any position in an ODE-approved Career and Technical Education program lasting more than three consecutive months.

(a) The Career and Technical Education Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in subsection (1) above.

(b) The Executive Director may approve the Career and Technical Education Emergency Teaching License upon proof of the district's emergency.

(5) A district and co-applicant educator who has held the CTE Restricted Substitute Teaching License may be eligible for and may apply for a Career and Technical Education I Teaching License for a position in an ODE-approved Career and Technical Education program related to the applicant's Career and Technical Education endorsement(s) without additional Instructor Appraisal Committee recommendations. Applicants interested in this option should contact ODE to check whether they are eligible to apply for a CTE I Teaching License through this avenue.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.496; 342.553

Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 2-2012, f. & cert. ef. 2-15-12

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Water Resources Department Chapter 690

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

Rule Caption: Implementation of HB 2133 (electronic communication), HB 2135 (newspaper notices), changes to reflect attorney general advice, and technical changes.

Adm. Order No.: WRD 1-2012

Filed with Sec. of State: 1-31-2012

Certified to be Effective: 2-1-12

Notice Publication Date: 10-1-2011

Rules Amended: 690-013-0100, 690-013-0310, 690-018-0050, 690-019-0080, 690-053-0015, 690-053-0030, 690-053-0035, 690-077-0029, 690-077-0031, 690-077-0039, 690-077-0077, 690-300-0010, 690-310-0020, 690-310-0050, 690-310-0080, 690-310-0090, 690-310-0100, 690-310-0150, 690-315-0050, 690-330-0010, 690-380-2260, 690-380-3100, 690-380-4000, 690-380-4020, 690-380-6040, 690-382-0600, 690-382-0800, 690-385-4100, 690-385-4600, 690-385-7600

Subject: The amended rules reflect a compilation of final changes resulting from three separate rulemakings undertaken to implement HB 2133 (relating to electronic communications); implement HB 2135 (relating to reductions in newspaper notice requirements), to make certain changes to reflect attorney general advice, and to make certain rules consistent with current statutory provisions. Notice for the three rulemakings was published in the October 1, 2011 issue of the Oregon Bulletin. In many instances, the final proposed rules of the three separate rulemakings resulted in overlapping but separate proposed changes to the same rule. To make it easier to understand the combined effect of the three separate rulemakings, final proposed rules from the three rulemakings were compiled into one combined final proposed rules package for Oregon Water Resource Commission (Commission) consideration. This compilation of final proposed rule changes was adopted by the Oregon Water Resources Commission on January 27, 2012. These changes affected the following Oregon Water Resources Department administrative rule divisions: OAR 690-013; 690-018; 690-019; 690-053; 690-077; 690-300; 690-310; 690-315; 690-330; 690-380; 690-382; and 690-385.

Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-013-0100

District Petitions

The district petition shall include:

(1) A listing of:

(a) All of the applicable water rights on lands within the district boundaries;

(b) Only the lands where water use changes have occurred. If the change involves part of a section quarter-quarter, all water rights in the quarter-quarter must be requested; or

(c) A portion of the district to provide a clear record of the water rights. If a portion involves part of a section quarter-quarter, the entire quarter-quarter must be requested. Any part of the district that no longer matches the Department map or certificate should be included in the petition.

(2) A listing of all completed transfers appurtenant to the lands listed.

(3) A map meeting the requirements of OAR 690-013-0200.

(4) A description of the land to which each water right is appurtenant, including the township, range, section, quarter-quarter and assessor's tax lot number. The water right shall be described by the number of acres within each quarter-quarter, the use and the user's name. If a tax lot covers more than one quarter-quarter, it shall be listed in each quarter-quarter.

(5) A description of the district's legal boundaries.

(6) A description of the type(s) of use made on each parcel listed in the petition.

(7) A list containing the total number of acres:

(a) Contained in the petition;

(b) Assessed by the district as of July 1, 1989; and

(c) Assessed by the district as of July 1, 1993.

(8) A statement of whether the U.S. Secretary of the Interior must assent to inclusion of lands within the district's boundaries. If the Secretary's assent is required but has not yet been given, the petition must include a copy of the district's request for the Secretary's assent.

Stat. Auth.: ORS 541.325 - 541.333

Stats. Implemented: ORS 537.325 - 541.333

690-013-0310

Processing of Petition

(1) When the Department receives a petition and map the Director shall examine the petition and map under OAR 690-013-0350. If, after the petitioner has had an opportunity to correct identified deficiencies, this examination shows that the district has met the requirements of ORS 541.325 to 541.333 and that the proposed changes would not result in injury to existing water rights, the Director shall issue a proposed order approving the petition as submitted or as modified. If the Director proposes to deny a petition, the Commission shall hold a hearing as described in section (5) of this rule.

(2) The Director shall provide public notice of all proposed orders through publication in the Department's Weekly Summary of Applications Filed. The Director shall also mail a summary of the proposed order to the planning department of each affected local government, to a newspaper of general circulation within the affected area, to any person who has requested notification of proposals and any other parties the Director determines should be notified. These notice requirements shall not affect petitioner's notice responsibilities under ORS 541.329.

(3) Within 30 days after a proposed order is issued the petitioner shall provide notice to the owners of all lands whose rights, as recorded in the state's records or in the district's records, would be altered by the proposed order. This notice shall be sent to the last-known address of the landowner, with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the landowner is being assessed, if any, a general description or tax lot number of the land whose right will be altered, and a description of the use. In addition to the notice of the proposed order sent to the landowners, for proposed orders issued by the Department prior to February 1, 2012, the petitioner shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks, but for proposed orders issued on or after February 1, 2012, for a period of at least two weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive;

(b) That the proposed map and order are available for inspection at the office of the petitioner during normal business hours for a period of 120 days from the date of first publication;

(c) That 120 days after the date of first publication, the Commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of ORS 541.325 to 541.333; and

(d) That a landowner whose right of record is to be altered by the proposed order has the right to protest the proposed order and map.

(4) Any landowner or user whose rights, as recorded in either the state's records or the district's records, would be altered by the petition may file with the Water Resources Commission, within 120 days after the date of first newspaper publication, as provided in section (3) of this rule, a protest against a proposed order approving the petition. Any person may file comments on the proposed order within 120 days of the date of first newspaper publication. The Director may work with any person or agency submitting protests or comments and the petitioner to determine whether the issues can be resolved through mutually agreeable conditions, or by modifications to the proposal. Whenever a timely protest cannot be resolved, the Commission shall schedule a hearing to consider the protest. The Commission shall also schedule a hearing whenever, in its opinion, considering timely comments received, it is necessary to determine:

(a) If the petitioner has met the requirements of ORS 541.325 to 541.333;

(b) If the petition may result in injury to existing water rights. The hearing shall be conducted according to the provisions of ORS 183.310 to 183.550 applicable to contested cases.

(5) If after examination or hearing, the Commission finds that:

(a) The petitioner has met the requirements of ORS 541.325 to 541.333; and

(b) That the changes described in the proposed order would not result in injury to existing rights; then

(c) The Commission shall issue a final order approving the petition and map as described in the proposed order. If the Commission cannot make the findings in subsections (a) and (b) of this section then the final order may modify or deny the petition, and may include conditions, as necessary to ensure that existing water rights are not injured. However, no final order denying a petition shall be issued before holding a hearing on the

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denial. If a final order approving a petition is issued, and if a water right has been issued previously, the Commission shall cancel the previous certificate and issue a new certificate that conforms to the final order and map and retains the original priority date.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 541.325 - 541.333
Stats. Implemented: ORS 537.325 - 541.333
Hist.: WRD 4-1994, f. & cert. ef. 3-25-94; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-018-0050

Processing a Conservation Application

(1) When the Department receives an application for allocation of conserved water, the Director shall provide public notice of the application through:

(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the application are located, for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week; and

(b) Concurrent with the date of first publication pursuant to subsection (a) of this section, mailing to individuals, organizations and agencies including the Indian tribes and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the Director determines should be notified.

(2) As provided in ORS 540.520(5), the cost of the publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and the indirect costs which may not exceed twenty (20) percent of the direct costs.

(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specified in the notice shall provide at least 20 days after the date of last publication pursuant to subsection (1)(a) of this rule for the submittal of comments.

(4) The Department shall review the application and consider any comments received under section (3) of this rule to determine:

(a) If the proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights;

(b) If the proposed allocation of conserved water will harm existing water rights;

(c) If the application is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);

(d) The quantity of conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water that may be allocated;

(e) The new rate and duty for the existing water rights held by the applicant and for any out-of-stream use of the conserved water rights;

(f) In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, if conserved water is needed to support instream uses;

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3);

(h) The areas within which the conserved water may be used for out-of-stream purposes and the stream reaches to which the conserved water may be dedicated for instream purposes;

(i) The periods to be allowed for the applicants to file a notice of completion of the conservation measures and to request that the allocation be finalized pursuant to OAR 690-018-0062. The time allowed between filing the notice of completion of the conservation measures and requesting that the allocation be finalized shall not exceed five years; and

(j) Any other conditions or limitations to be included in the new water rights, including conditions or limitations to prevent or mitigate for harm to existing water rights.

(5) The Department shall provide notice of the determination under section (4) of this rule to the applicant and to each person who commented on the application for allocation of conserved water in response to the public notice under section (3) of this rule.

(6) If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the determination provided pursuant to section (5) of this rule, the Director may work with the applicant and any protestant to determine whether the issues can

be resolved through mutually agreeable conditions, or by modifying the application

(7) If no protests are received or if the protests are resolved pursuant to section (6) of this rule, the Director shall issue an order consistent with the determination and including any agreed-upon conditions. An order approving an application shall provide for issuance of a certificate superseding the original certificate at the reduced rate and duty and for allocation of the conserved water, contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062.

(8) If protests are received raising issues that cannot be resolved pursuant to section (6) of this rule, the Director shall present the application, all protests and a recommendation for action to the Commission for review and action.

(9) The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and 690, divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with these rules, the Commission may authorize the Director to issue an order approving the application.

(10) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 536.025, 536.027 & 537.480
Stats. Implemented: ORS 537.455 - 537.500
Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-019-0080

Option or Agreement for Use of Existing Right

(1) In order to plan for and mitigate the effects of severe, continuing drought, a local government, public corporation, or water right holder may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area. If approved as provided in sections (2) to (6) of this rule, an option or agreement may be exercised during a period of declared drought after the parties to the option or agreement notify the Department.

(2) Water used under the terms of an approved option or agreement may be used at locations, at points of diversion and for beneficial uses other than those described in the water right.

(3) The holder of the option or agreement is not required to construct any diversion or other appropriation facilities or works.

(4)(a) An option or agreement proposed under section (1) of this rule shall be subject to approval of the Director or Commission. The Director must find that the use of water under the proposed option or agreement will not cause injury to existing water rights and will not impair or be detrimental to the public interest;

(b) A local government, public corporation, or water right holder proposing an option or agreement shall submit an application to the Director. The application shall be accompanied by the fee set forth in ORS 536.050(1)(a). The application shall include the following information:

(A) The name of the local government, public corporation, or water right holder applying for approval of the option or agreement;

(B) The name of the holder of the permitted, certificated, or decreed water right that will be affected by the option or agreement;

(C) A copy of the water right permit, certificate or decree that shall be affected by the option or agreement;

(D) A copy of the proposed option or agreement;

(E) A statement that the water is intended for in-stream use, or a description of the lands on which the water is currently used, and a description of the lands on which the water shall be used under the option or agreement;

(F) Evidence that the water to be used under the option or agreement has been used over the past five years according to the terms and conditions of the owner's permitted, certificated, or decreed water right.

(G) If not intended for in-stream use, evidence that the water shall be used to supplement an existing water right held by the local government, public corporation, or water right holder and that water is not available under the existing right.

(5) Upon receipt of an application for an option or agreement, the Director will provide notice in the regular weekly notice of the Department pertaining to applications received and by publication once a week for at

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least two successive weeks in a newspaper having general circulation in the area in which the water supply for the permitted, certificated or decreed water right is located and in which the option or agreement shall be exercised. The Director shall not take action on an application until at least 20 days after the last date the notice appeared in the newspaper.

(6) Any person whose use of water under an existing water right may be affected by the option or agreement, or any person who represents a public interest that may be affected by the option or agreement, may file a protest against approval of the application with the Department. The protest shall be filed with the Department within 30 days from the date of the first publication. If the petitioner seeks to protect a use of water under an existing water right, the protest shall contain a detailed statement of the petitioner's water use and how the use may be affected by approval of the option or agreement. If the petitioner represents a public interest, the protest shall contain a detailed statement of such public interest and the manner in which the public interest shall be affected by the option or agreement.

(7) Whenever a timely protest is filed or in the opinion of the Director a hearing is necessary to determine whether the exercise of a proposed option or agreement will result in injury to an existing water right or may impair or be detrimental to the public interest, the Director shall schedule a hearing and refer the matter to the Commission for final determination. Notice and conduct of the hearing shall be in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases, and the hearing shall be held in the area where the underlying water rights that are subject to the proposed option or agreement are located unless all parties agree to a different location.

(8) If, after a hearing by the Commission or examination by the Director, it is found that the option or agreement can be implemented without injury to existing water rights or impairment or detriment to the public interest, the Director shall issue an order approving the option or agreement. The order shall:

(a) Contain conditions describing the period of time in which use may occur and include a limitation that use may occur under the option or agreement only after a declaration of severe, continuing drought has been made by the Governor, and use may not continue after the drought declaration has been rescinded;

(b) Include any other conditions the Director deems appropriate, including but not limited to water use conservation, measurement and curtailment measures; and

(c) Remain in effect until terminated by the parties to the option or agreement or by order of the Commission or Director.

(9) The Director may review any order issued under subsection (8) of this section to determine whether the order shall be continued in effect, modified or terminated in order to insure protection of other existing water rights and the public interest. Before making such determination the Director shall provide notice and an opportunity for hearing in the manner described in subsections (2) to (6) of this section.

(10) Any proposed change to a previously-approved option or agreement shall be submitted to the Director for approval before the changes may be implemented. Upon receipt of any proposed change, the Director shall proceed as described in subsection (5) of this section. If the Director determines that the proposed change substantially alters the previously-approved option or agreement, the Director may request additional information to review the proposed change. Prior to the date the Director may take action on the change, any person wishing to protest may proceed as allowed under subsection (6) of this section. Only the proposed change may be addressed in the process. The Director shall then proceed as per subsections (5), (6), (7), and (8) of this section.

(11) The Commission may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area during the time in which a severe, continuing drought is declared to exist. Water used under the terms of an approved option or agreement may be used at locations, at points of diversion, and for beneficial uses other than those described in the water right. The total use of water by the water right holder and the Commission must be within the rate, volume and seasonal limits of the water right, and must not cause injury to any other water right.

(12) When the Governor declares that a severe, continuing drought exists, the Commission, a local government, a public corporation, or water right holder may proceed with the terms of an approved option or agreement. In addition to the conditions in the agreement, the terms of the use shall be as follows:

(a) Use may begin at any time, but the total use shall be limited to the rate, volume, acreage, time and other limits of the existing water right; and

(b) The local watermaster shall be given written, advance notice of intent to proceed;

(c) Measuring and reporting requirements may be a condition of use required by the Director.

(13) Use or nonuse of water under the terms of an approved option or agreement shall not be considered by the Department in a determination of abandonment of a perfected and developed water right under ORS 540.610(1).

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-1995, f. & cert. ef. 6-14-95; WRD 6-2001, f. & cert. ef. 10-8-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-053-0015

Notice Requirements

(1) The Department shall give notice of amendment applications received by publication in the Department's weekly notice "Public Notice of Water Use Requests." Any person interested in an amendment application shall submit written comments to the Department within 30 days of the weekly notice or the last day of the newspaper notice in 690-053-0015(2), whichever is later.

(2) After notice is published by the Department, the applicant shall arrange for publication of a notice provided by the Department in an appropriate newspaper having general circulation in the area in which the hydroelectric facility is located for a period of at least two weeks and not less than one publication each week. The applicant shall provide the Department with a certificate of publication.

(3) The notice must include the following information about the application:

(a) The application and project file number.

(b) The county of use.

(c) The type of amendment proposed.

(d) The applicants name and address.

(e) The date by which comments on the amendment application must be received by the Department.

(f) A statement that upon issuance of a draft proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality.

(4) The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project. Agency comments must be received within 30 days after the last date of publication shown on the notice to file comments. Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-053-0030

Public Hearing

(1) Based on review of the application, public comments received, the size of the project and other pertinent information, the Director will determine whether a public meeting and a request for additional studies or consultation will be required.

(2) The public meeting may be omitted under one or more of the following circumstances:

(a) The project generates less than 100 theoretical horsepower of electricity;

(b) The proposed amendment does not involve a change in the annual amount of water used; or

(c) The proposed amendment is one agreed upon by the Department and the affected resource agencies; or

(d) No public comments were received raising substantial issues.

(3) If the Director determines a public meeting is required, notice will be sent two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment process. Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

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690-053-0035

Issuance of Amendment Order

After the close of the public comment periods, or the public hearing if one is held, and upon a finding that the proposed amendment meets standards in OAR 690-053-0020, the Department shall issue a proposed order within 120 days.

(1) In developing the proposed order, the Department shall consider all comments received under OAR-690-053-0015 and 0030, but the proposed order need not separately address each comment received.

(2) The proposed order shall include findings of fact and conclusions of law that show the standards in OAR 690-053-0020 and 0025 are met.

(3) The Department shall send by regular mail, or with the consent of the recipient, by electronic means, copies of the proposed order to the applicant and to persons who have requested copies. Within 15 days after issuing the proposed order, the Department shall publish notice of the order in the weekly notice published by the Department.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-077-0029

Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-077-0027, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations and allow the applicant 14 days from the date the Department sends the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application. If the Department receives no timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.025, 536.027, 537.150 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-077-0031

Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-077-0029(2), the Department shall give public notice of the application in the weekly notice published by the Department. The weekly notice shall be sent to the following:

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(b) Affected Indian tribes; and

(c) All persons on the Department's weekly mailing list.

(2) The notice shall include a request for comments on the application, the date by which comments must be received by the Department, and information about how an interested person may obtain future notices about the application and a copy of the proposed final order. The notice also shall include the following information about the application:

(a) The name(s) and address(es) of the applicant agency(ies);

(b) County(ies) of water use;

(c) Application file number;

(d) Description of the characteristics and the purpose of the proposed instream water right;

(e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation;

(f) Common name of surface water source(s); and

(g) The stream reach by mile or geographic location.

(3) The notice shall be sent by regular United States mail, or with the consent of the recipient, by electronic means.

(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the

Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before the end of the 30-day comment period.

(5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 537.140 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-077-0039

Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-077-0031 and all findings of the Department, but the proposed final order need not separately address each comment received.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft certificate, including any proposed modifications, conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the Department.

(3) The Department shall send copies of the proposed final order to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send copies of the proposed final order by regular mail to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050.

(4) Within seven days after issuing the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-077-0031, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-077-0043(4).

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-077-0077

Processing an Instream Lease Application

(1) On receipt of a lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office.

(2) A written assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use and avoid injury or enlargement;

(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include but are not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the year leased; the role of return flows; conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and issues potentially arising from water users that share a conveyance system. Any allegations of injury to existing water rights or enlargement of the original water right that are received within 21 days of the date of mailing of the weekly public notice shall be

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reviewed by the parties to the lease before the Department issues an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.

(4) If the Department determines that the proposed lease may cause injury to existing water rights or enlargement of the original right, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

(5) If a lease is for more than one year the parties shall review any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.

(6) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to continue.

(7) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(3)(c) shall conform to the provisions of 690-077-0015(7) and (8) and 690-077-0075(2).

(8) Except as provided in OAR 690-077-0079, a lease involving a water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the original water right or the instream right, not both, during any one season unless the source is from stored water.

(9) If the water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the original right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source.

(10) Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a lease when needed to establish an instream water right in a particular season or at a particular time. A renewal shall be subject to the provisions of this rule.

(11) Water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right.

(12) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

(13) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system.

(14) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered by OAR chapter 690 division 19.

(15) Except as provided in Sections (4) and (5) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-300-0010

Definitions

The following definitions apply in OAR chapter 690, divisions 15, 310, 320, 330, 340, and 350 and to any permits, certificates or transfers issued under these rules:

(1) "Affected Local Government" means any local government as defined in OAR 690-005-0015 within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit, water right transfer, or certificate.

(2) "Agricultural Water Use" means the use of water related to the production of agricultural products. These uses include, but are not limited to, construction, operation and maintenance of agricultural facilities and livestock sanitation at farms, ranches, dairies and nurseries. Examples of

these uses include, but are not limited to, dust control, temperature control, animal waste management, barn or farm sanitation, dairy operation, and fire control. Such use shall not include irrigation.

(3) "Aquatic Life Water Use" means the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

(4) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source.

(5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance.

(7) "Comment" means a written statement concerning a particular proposed water use. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

(8) "Commission" means the Water Resources Commission.

(9) "Contested Case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS Chapter 53, ORS 183.413 - 183.497 and OAR Chapter 690, Division 2.

(10) "Cranberry Use" means all necessary beneficial uses of water for growing, protecting and harvesting cranberries. Examples of these uses include, but are not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control.

(11) "Deficiency of Rate Right" means an additional right allowed from the same source for the same use at the same place of use when an earlier right does not allow a full duty or rate of flow of water.

(12) "Department" means the Water Resources Department.

(13) "Director" means the Director of the Department.

(14) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(15) "Domestic Use Expanded" means the use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or non-commercial garden.

(16) "Drainage Basin", as used in OAR 690-340-0020, 690-340-0030 and 690-340-0050, means hydrologic unit delineated as a cataloging unit by the US geological Survey Office of Water Data Coordination on the State Hydrologic Unit map.

(17) "Fire Protection Water Use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

(18) "Fish Bypass Structure", as used in OAR 690-340-0010, means any pipe, flume, open channel or other means of conveyance that transports fish that have entered a water diversion structure back to the body of water from which the fish were diverted.

(19) "Fish Screen", as used in OAR 690-340-0010, means a screen, bar, rack trap or other barrier at a water diversion to entrap or provide adequate protection for fish populations, including related improvements necessary to insure its effective operation.

(20) "Fishway," as used in OAR 690-340-0010, means any structure, facility or device used to facilitate upstream or downstream passage of fish through, over or around any man-made or natural barrier to free movement.

(21) "Forestland and Rangeland Management," as used in Chapter 595, Oregon Laws 1993, means water used for operations conducted on or pertaining to forestlands and rangelands. Such uses may include, but are not limited to, reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation.

(22) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in ORS 537.515(5).

(23) "Group Domestic Water Use" means the use of water for domestic water use by more than one residence or dwelling unit.

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(24) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

(25) "Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt industrial water use under Division 340 does not include irrigation or landscape maintenance.

(26) "Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

(27) "Mining Water Use" means the use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control. Examples of mining include, but are not limited to, aggregate, hard rock, heap leach and placer mining.

(28) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses.

(29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power.

(30) "Nursery Operations Use" means the use of water for operation of a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities. The use of water within plant nursery operations constitutes a different use from field irrigation, although that may be a part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the defined agricultural irrigation season.

(31) "Off-Channel" means outside a natural waterway of perceptible extent which, during average water years, seasonally or continuously contains moving water that flows off the property owned by the applicant and has a definite bed and banks which serve to confine the water. "Off-channel" may include the collection of storm water run-off, snow melt or seepage which, during average water years, does not flow through a defined channel and does not flow off the property owned by the applicant.

(32) "Planned" means a determination has been made for a specific course of action either by a legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by both the public and private sector.

(33) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this section. Such uses include, but are not limited to, the uses approved in the policies, provisions, and maps contained in acknowledged city and county comprehensive plans and land use regulations.

(34) "Pollution Abatement or Pollution Prevention Water Use" means the use of water to dilute, transport or prevent pollution.

(35) "Power Development Water Use" means the use of the flow of water to develop electrical or mechanical power. Examples of these uses include, but are not limited to, the use of water for the operation of a hydraulic ram or water wheel and hydroelectric power production.

(36) "Primary Right" means the right to store water in a reservoir or the water right designated by the commission as the principle water supply for the authorized use, or if no designation has been made, the first in time or initial appropriation.

(37) "Proposed Certificate" means a draft version of a water right certificate describing the elements and extent of the water right developed under the terms of a permit or transfer approval order, as determined by field investigation.

(38) "Protest" means a written statement expressing disagreement with a proposed final order that is filed in the manner and has the content described in ORS 537.145 to 537.240.

(39) "Public Corporation" means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government.

(40) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program.

(41) "Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation.

(42) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge.

(43) "Recreation Water Use" means the use of water for play, relaxation or amusement. Examples of these uses include, but are not limited to boating, fishing, wading, swimming, and scenic values. (44) "Riparian Area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, or ephemeral, intermittent or perennial stream.

(45) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate.

(46) "Stockwater Use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

(47) "Storage" means the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits.

(48) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge.

(49) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses.

(50) "Storm Water Management Water Use" means the use or storage of water in any structure or drainage way that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement, flood control or property protection. It may also include, but is not limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as storm water quality facilities.

(51) "Stream or Riparian Area Enhancement Water Use" means the use of water to restore or enhance a stream or riparian area.

(52) "Supplemental Water Right or Supplemental Water Use Permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right.

(53) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.

(54) "Temperature Control" means the use of water to protect a growing crop from damage from extreme temperatures.

(55) "Transfer" means a change of use or place of use or point of diversion of a water right.

(56) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner or that right but has not yet returned to the channel of a natural stream. In an irrigation district, the wastewater of an individual user is not subject to appropriation until it leaves the boundaries of the district. Wastewater abandoned to the channel of a natural stream becomes a part of that stream and is subject to appropriation.

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

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(a) The requested source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or

(b) If the requested source is already over-appropriated for any portion of the period of use proposed in a new application:

(A) The applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated;

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source.

(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period.

(58) "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use.

(59) "Water Right Subject to a Transfer" means a right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued.

(60) "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(61) "Wetland Enhancement Water Use" means the use of water to restore, create, or enhance or maintain wetland resources.

(62) "Wildlife Water Use" means the use of water by or for sustaining wildlife species and their habitat.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 536, 537, 539, 540 & 541

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 4-1993, f. & cert. ef. 10-7-93; WRD 6-1993, f. & cert. ef. 11-30-93; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 7-1994, f. & cert. ef. 6-14-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0010; WRD 3-1996, f. & cert. ef. 3-15-96; WRD 2-1998, f. & cert. ef. 10-13-98; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0020

Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work

(1) The Department shall not issue a permit without notifying the owner, as identified in the application, of any land to be crossed by a proposed ditch, canal or other work as set forth in the application. The Department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(2) If more than 25 persons are identified in the application as required under OAR 690-310-0040(1)(a)(F), the Department may provide the notice required under section (1) of this rule by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the Department.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.130

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0050

Map to Accompany Application for Water Use Permit

(1) Each application shall be accompanied by a map or drawing which shall be considered a part of the application.

(2) Maps submitted with water use applications shall meet the following criteria:

(a) The application map, which is made part of the record, shall be of permanent quality and drawn in ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced;

(b) Maps shall be drawn on good-quality paper. If the map is larger than 11 inches by 17 inches, one additional copy must be submitted;

(c) All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. The map may be of another standard scale if the Department grants, by mail or electronic means, advance approval of the use of the scale. All maps must include the scale to which the map is drawn and a north directional symbol.

(3) A platted and recorded subdivision map, deed description survey map or county assessor may be submitted as the application map if all of the required information is clearly shown.

(4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:

(a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);

(b) The location of main canals, ditches, pipelines, or flumes;

(c) The location of the place where water is to be used identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. The Department also shall accept any locational coordinate information that the applicant may wish to provide, including latitude and longitude as established by a global positioning system. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatching and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.140 & 537.615

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0070; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0080

Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in 690-310-0070, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations. The applicant shall have 14 days from the date the Department sends the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application and all except \$50 of any fees paid by the applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.150 & 537.620

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0090

Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-310-0080(2), the Department shall give public notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application. The notice also shall include the following information about the application:

(a) Type of water use application;

(b) County of water use;

(c) Application file number;

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- (d) Applicant name and address;
- (e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
- (f) Common name of surface water source(s) or basin;
- (g) Nature of use; and
- (h) Location of the proposed point of diversion by section quarter/quarter, township and range.

(2) The weekly notice shall be sent to the following:

(a) Affected local, state and federal agencies, including the planning Departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location;

(b) Property owners listed on an application pursuant to OAR 690-310-0040;

(c) Affected Indian tribes; and

(d) All persons on the Department's weekly mailing list.

(3) The notice shall be sent by regular United States mail or, with the consent of the recipient, by electronic means.

(4) Within 30 days after the public notice under section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who requests a copy of the Department's proposed final order shall submit to the Department a written request accompanied by the fee required under ORS 536.050(1). The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

(5) If the land use information required under OAR 690-310-0040(1)(a)(L) is not received by the Department within the 30-day comment period, the Department shall conclude that the requirement for obtaining land use information has been satisfied and may presume the proposed use is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.150, 537.620, 537.338 & 537.356 - 537.358

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0155; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0100

Completion of Application Review; Additional Information and Proposed Final Order

Within 60 days after the Department proceeds with the application under OAR 690-310-0080(2), the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail, or with the consent of the recipient, by electronic means. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department sends the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-310-0260 by the date specified in the request, the Department may reject the application and may refund fees in accordance with ORS 536.050(3). The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this subsection.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-310-0150

Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-310-0090(4), but the proposed final order need not separately address each comment received.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability;

(d) The amount of water necessary for the proposed use;

(e) An assessment of whether the proposed use would result in injury to existing water rights;

(f) If the application is for the use of surface water, an assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(g) If the application is for the use of ground water, an assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;

(h) Whether the rebuttable presumption set forth in OAR 690-310-0110 or 690-310-0130 has been established;

(i) If the public interest presumption is established, the Department's determination as to whether the presumption is overcome.

(j) An assessment of the measures, if any, proposed by the applicant to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters;

(k) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(l) The date by which protests to the proposed final order and requests for standing must be received by the Department; and

(m) The date by which the applicant must request a contested case hearing under OAR 690-310-0170.

(3) The Department shall send copies of the proposed final order to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send copies of the proposed final order by regular mail to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050. Within seven days after issuing the proposed final order, the Department also shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-310-0090, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-310-0160(4).

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-315-0050

Department Action on Extension Applications

If the Department finds an applicant has submitted a completed application as required in 690-315-0020 or 690-315-0030, the Department shall process the application as established in this rule.

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:

(a) Applicant name and address;

(b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;

(c) Common name of water source(s) listed in the permit;

(d) Permit number;

(e) Use allowed in the permit;

(f) Proposed extended date of completion; and

(g) A statement that copy fees are required to receive a proposed final order.

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may respond to the issue, if applicable and relevant to the decision, within the proposed final order.

(3) The Department shall send the proposed final order issued under subsection (2) of this rule to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send a copy of the proposed final order by regular mail to any person other than the applicant who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

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(5) Extension orders may include, but are not limited to, any condition or provision needed to:

(a) Ensure future diligence;

(b) Mitigate the effects of the subsequent development on competing demands on the resource; and

(c) Periodically document the continued need for the permit.

(6) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports described in subsection (6)(a) of this rule in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-330-0010

Proof of Appropriation

(1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be sent by first class mail to the permittee at the last known address, or with the consent of the recipient, by electronic means together with notice that the permittee or landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630 (4).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630 & 540 & 543

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0110; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0225; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-380-2260

Exchanges of Water

(1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.

(2) After receipt of a complete exchange application, the Department shall give at least 30 days public notice of the application:

(a) By publication in the Department's weekly notice; and

(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, at least once each week for two successive weeks.

(3) Any person may submit comments by the date identified in the notices prescribed by subsections (2)(a) and (b) of this rule.

(4) After the comment period prescribed in section (2) of this rule, the Director shall:

(a) Issue a proposed order approving or denying the application in compliance with ORS 540.537 taking into account comments received under section (3) of this rule; and

(b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed order.

(5) If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentors to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.

(6) After the public hearing, the Commission may:

(a) Confirm the Director's decision and authorize issuance of a final order;

(b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or

(c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS 183.310 to 183.550.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-380-3100

Map Requirements

(1) A map shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) Except as otherwise provided under OAR chapter 690, division 380 or 382, the map shall be prepared by a certified water right examiner.

(b) The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(c) The preferred map size is 8-1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(d) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.

(e) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(f) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(g) The map shall be plotted to the accuracy consistent with the map scale.

(h) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(i) If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.

(j) If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).

(2) The map(s) shall include the following information:

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(a) A north arrow, the scale, and a clear legend;
(b) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original;

(c) The location of each existing and proposed point of diversion or appropriation;

(d) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;

(e) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;

(f) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(g) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(h) Notwithstanding the requirements of subsection (1)(g), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;

(i) Notwithstanding the requirements of subsection (1)(g), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(j) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0070; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-380-4000

Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By regular mail, or with the consent of the recipient, by electronic means to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-380-4020

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the transfer application and preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week; and

(c) By sending by regular mail, or with the consent of the recipient, by electronic means a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

(2) The notice shall include the following information about the application:

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required under OAR 690-380-4000; \

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the right to be transferred, and the authorized source for the right;

(c) The application file number;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) As provided in ORS 540.520(5), the cost of publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.

(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice, and a request for payment for the cost of publishing the notice. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use;

(b) A change in point of diversion or appropriation to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or

(c) Applications for a change in the point of diversion or appropriation of less than one-fourth mile and where there are no intervening diversions or wells between the old point of diversion or appropriation and the proposed new point of diversion or appropriation.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520 & 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0080; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

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690-380-6040

Proof of Completion of Change

(1) The director shall issue a certificate of water right upon satisfactory proof of completing the change or changes authorized by a transfer approval order. Satisfactory proof shall be one of the following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the transfer approval order was completed to the extent authorized; or

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the transfer approval order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be sent by first class mail, or with the consent of the recipient, by electronic means to the transferee, together with notice that the transferee or the landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the director shall issue a water right certificate to the transferee or landowner pursuant to ORS 540.530(2) and the transfer approval order.

(3) If the Department determines that proof has been made to the full extent granted by the approval order, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0120; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-382-0600

Request for Comments

(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required by OAR 690-382-0400.

(2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By regular mail, or with the consent of the recipient, by electronic means to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-382-0800

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the application to modify the registration and the preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week, and

(c) By sending by regular mail, or with the consent of the recipient, by electronic means a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

(2) The notice shall include the following information about the application:

(a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required OAR 690-382-0600;

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the registration to be modified, and the authorized source for the registration;

(c) The registration and certificate numbers;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) The cost of publication in a newspaper shall be paid by the applicant in advance of the publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.

(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice and a request for payment for the cost of publishing the notice. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use; or

(b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny recognition of the modification if the applicant fails to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-385-4100

Notice of District Permanent Transfer

(1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:

(a) The district files notice of the change in place of use under section

(2) of this rule prior to making the change;

(b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and

(c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:

(A) Direct the district to cease delivery of water; or

(B) Require mitigation to avoid injury to other water rights.

(2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District name, mailing address, and phone number;

(b) Certificate number, or permit number if applicable, subject to the change;

(c) Names of affected users;

(d) Location of the affected lands according to public land survey description and tax lot number; and

(e) A map meeting the requirements of OAR 690-385-4300.

(3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.

(4) A district delivering notice to the local area Department Watermaster shall concurrently send by mail or by electronic means the form(s) (but not the map) described in section (2) of this rule to the

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Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).

(5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:

(a) Direct the district to cease delivery of water to the affected lands; or

(b) Direct the district to mitigate the injury caused by the change.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-385-4600

Protests and Requests for Hearings

Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:

(1) Within 30 days of posting the Department's weekly notice;

(2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and

(3) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.

(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

(5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:

(a) Refer the protest to the district to resolve; and

(b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 183.310 - 183.550 & 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

690-385-7600

Proof of Completion of Change

(1) The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:

(a) A determination by the Department that the application of water to beneficial use under the terms of the transfer final order was completed to the extent authorized; or

(b) A determination by the Department that the application of water to a beneficial use under the terms of the transfer final order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the water right.

(2) The Department shall prepare a proposed water right certificate if it determines that proof has been made to an extent different or less than that approved. The proposed certificate shall describe the right determined completed under the provisions of the transfer final order. The proposed certificate shall be sent by first class mail, or with the consent of the recipient, by electronic means to the district and affected user, together with notice that the district and affected user has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed water right certificate. If no request for reconsideration is received within the 60-day period, the Department shall issue a water right certificate pursuant to ORS 540.530(2).

(3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:

(a) Whether the district or users within the district requested issuance of a new certificate;

(b) The number of permanent district transfers for which satisfactory proof has been determined;

(c) The frequency and trend in transfer applications submitted by a district; and

(d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0600, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

Rule Caption: Requirements for the construction of close loop ground source heat pump borings.

Adm. Order No.: WRD 2-2012

Filed with Sec. of State: 2-2-2012

Certified to be Effective: 2-2-12

Notice Publication Date: 11-1-2011

Rules Adopted: 690-240-0040, 690-240-0043, 690-240-0046, 690-240-0049

Rules Amended: 690-240-0010, 690-240-0035

Subject: The adopted and amended rules provide guidance and standards for installers to meet when constructing closed loop ground source heat pump borings, cased or uncased, that are greater than 18 feet deep. Although the construction methods required in the proposed rules are not significantly different from the performance standards in existing rule, the adopted and amended rules provide more clarity, consistency and certainty than the existing rules.

Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-240-0010

Definitions

The following definitions apply to terms as used in monitoring well, geotechnical hole and other hole rules, OAR 690-240-0005 to 690-240-0640. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove all or any portion of a monitoring well from service by filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing is effectively and permanently prevented. This term is synonymous with "decommission".

(2) "Abandonment, Temporary" means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) "Altering a Well" means the deepening, re-casing, perforating, re-perforating, installation of packers or seals, and other material changes in the design or construction of a well. Material changes include but are not limited to the installation or modification of well casing including casing extensions, or installation or modification of liner pipe, or under reaming of the borehole.

(4) "Annular Space" means the space between the drillhole wall and the outer well casing.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature. **(Figure 240-1)**

(6) "Area of Known or Reasonably Suspected Contamination" means a site that is currently under investigation by the Oregon Department of Environmental Quality, U.S. Environmental Protection Agency, or other state or federal agency for the presence of contaminants, or a site where a prudent person would suspect contamination after conducting an appropriate inquiry consistent with good commercial or customary practice as to the nature of the property.

(7) "Artesian Aquifer" means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian well. **(Figure 240-1)**.

(8) "Artesian Monitoring Well" means a monitoring well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian monitoring well.

(9) "Bored Well" means a well constructed with the use of earth augers turned either by hand or by power equipment.

(10) "Casing" means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

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(11) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall, above the filter pack seal, to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(12) "Civil Engineer" means an individual registered by the State of Oregon to practice civil engineering.

(13) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(14) "Closed Loop Ground Source Heat Pump Boring" means a geotechnical hole, cased or uncased, constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(15) "Commission" means the Oregon Water Resources Commission.

(16) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(17) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer. (Figure 240-1)

(18) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, materials such as basalt, sandstone, shale, hard claystone, and granite.

(19) "Contamination" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(20) "Continuing Education" means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(21) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(22) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(23) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(24) "Converting" a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(25) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(26) "Department" means the Oregon Water Resources Department.

(27) "Director" means the Director of the Department or the Director's authorized representatives.

(28) "Documentation of Completion" means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(29) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(30) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(31) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(32) "Filter Pack" means the granular material placed in the annular space between the well screen and the borehole.

(33) "Filter Pack Seal" means the fine grained sand or dry bentonite which is placed in the annulus above the filter pack and prevents grout infiltration into the filter pack.

(34) "Geologic Formation" means an igneous, sedimentary or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation".

(35) "Geologist" means an individual registered by the State of Oregon to practice geology.

(36) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. . "Geotechnical hole"

includes closed loop ground source heat pump borings. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(37) "Grout" means approved cement, concrete or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(38) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(39) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(40) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(41) "Hazardous Waste" means a substance as defined by ORS 466.005.

(42) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include, but are not limited to naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(43) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a monitoring well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, filter pack seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(44) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(45) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

(46) "Impermeable Sealing Material" means cement or bentonite which is used to fill the open annulus.

(47) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(48) "Leakage" means movement of surface and/ or subsurface water around the well casing or seal.

(49) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(50) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(51) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(52) "Monitoring Well Drilling Machine" means any driving, jetting, percussion, rotary, boring, auguring, or other equipment used in the construction, alteration, or abandonment of monitoring wells.

(53) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(54) "Other Hole" means a hole other than a water supply well, monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to these rules. Examples of other holes are listed in OAR 690-240-0030.

(55) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material. (Figure 240-1)

(56) "Permeability" means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(57) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations,

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political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(58) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(59) "Piezometer" means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with observation well.

(60) "Porosity" means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(61) "Potable Water" means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(62) "Potentiometric Surface" means the level to which water will rise in tightly cased wells. (Figure 240-1).

(63) "Pressure Grouting" means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(64) "Professional" means a person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering. All licenses and registrations must be valid at the time of monitoring well, water supply well or geotechnical hole construction, alteration or abandonment as required by these rules.

(65) "Public-at-Large" means a person not actively engaged in the well industry.

(66) "Refusal to Renew" means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor's license, for a specified term not to exceed one year from the expiration date of the current license.

(67) "Remediation Well" means a well used for extracting contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well".

(68) "Respondent" means the person against whom an enforcement action is taken.

(69) "Responsible Party" means the person or agency that is in charge of construction or maintenance, or the landowner of record and is either in violation as specified in a notice of violation or who may benefit from that violation.

(70) "Rough Drilling Log" means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(71) "Revoke" means termination of a well constructor's license.

(72) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(73) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.002 mm in diameter.

(74) "Slope Stability Geotechnical Hole" means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(75) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(76) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(77) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(78) "Sump" means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.

(79) "Suspension" means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(80) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(81) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(82) "Underground Injection System" means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(83) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(84) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(85) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(86) "Water Supply Well Constructor" means any person who has a current water well constructor's license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(87) "Water Supply Well Constructor's License" means a Water Well Constructor's License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(88) "Water Table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at which water stands in wells that penetrate the water body. (See Figure 240-1)

(89) "Water Well Constructor's License" means a license to construct, alter, deepen, abandon or convert wells issued in accordance with ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert.

(90) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

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

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 2-2012, f. & cert. ef. 2-2-12

690-240-0035

Geotechnical Holes: General Performance and Responsibility Requirements

(1) A geotechnical hole is defined in OAR 690-240-0010(36). Geotechnical holes cased or uncased are generally constructed to evaluate subsurface data or information (geologic, hydrogeologic, chemical, or other physical characteristics). Geotechnical holes are divided into the following classifications:

- (a) Temporary (abandoned within 72 hours) geotechnical holes;
- (b) Cased permanent geotechnical holes;
- (c) Uncased permanent geotechnical holes; or
- (d) Slope stability geotechnical holes.

(2) A geotechnical hole report shall be signed by a professional and must be submitted to the department if the geotechnical hole is:

- (a) Greater than 18 feet deep; or
- (b) Within 50 feet of a water supply or monitoring well; or
- (c) Used to make a determination of water quality; or
- (d) Constructed in an area of known or reasonably suspected contamination.

(3) Geotechnical holes between ten and eighteen feet in depth that do not meet any of the criteria spelled out in OAR 690-240-0035(2) do not require a geotechnical hole report to be filed with the Department, but shall be required to have a professional as described in OAR 690-240-0035(4)(c) be responsible for the construction and abandonment of the geotechnical hole.

(4)(a) Although enforcement actions may be exercised against other parties, the landowner of the property where the geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, and abandonment of the geotechnical hole;

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(b) Conversion of a geotechnical hole to a water supply or monitoring well shall be considered by the Department on a case by case basis;

(c) When a geotechnical hole report is required, or if it is between 10' and 18' in depth, the professional responsible for the construction, alteration or abandonment of a geotechnical hole shall have one of the following certifications or licenses at the time the professional signs the geotechnical hole report:

- (A) A valid Oregon Monitoring Well Constructor's License;
- (B) A valid Oregon Water Supply Well Constructor's License;
- (C) Valid certification by the State of Oregon as a Registered Geologist; or
- (D) Valid certification by the State of Oregon as a Professional Engineer.

(d) The professional shall provide proof of license, certification or registration and photo identification to Department employees upon request.

(e) In order to protect the ground water resource, all geotechnical holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water, or loss of artesian pressure.

(f) If the geotechnical hole is completed above ground, it shall have a minimum casing height of one foot above finished grade and a lockable cap with lock shall be attached to the top of the casing. If a geotechnical hole, except a slope stability hole, is completed flush with the land surface, a lockable watertight cap with lock, shall be attached to the top of the casing. A vault or monument designed to be watertight, level with the ground surface, shall be installed to prevent the inflow of surface water. The cover must be designed to withstand the maximum expected loadings.

(5)(a) A 'Geotechnical Hole Report' shall be prepared for each geotechnical hole, including unsuccessful geotechnical holes, constructed, altered, converted, or abandoned if the hole meets any of the requirements of OAR 690-240-0035(2) above.

(b) The 'Geotechnical Hole Report' shall be filed with the Department within 30 days of the completion of the geotechnical hole;

(c) The report shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the professional, and the second copy shall be given to the landowner or customer who contracted for the construction of the geotechnical hole;

(d) In the event any drilling equipment or other tools are left in a geotechnical hole the professional shall enter this fact on the Geotechnical Hole Report;

(e) A copy of any special authorizations or special standards issued by the Director shall be attached to the Geotechnical Hole Report. See OAR 690-240-0006 for information concerning special standards;

(f) The report of geotechnical hole construction shall include, as a minimum, the following:

- (A) Landowner name and address;
- (B) Started/Completed date;
- (C) Location of the geotechnical hole by County, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);
- (D) Use of geotechnical hole;
- (E) Type of geotechnical hole;
- (F) Depth;
- (G) Map showing location of geotechnical hole on site must be attached and shall include an approximate scale and a north arrow;
- (H) General hydrologic and geologic information as indicated on the Geotechnical Hole Report; and

(I) Such additional information as required by the Department.

(6) Temporary geotechnical holes:

(a) Temporary geotechnical holes include but are not limited to: drive points, soil and rock borings, temporary sample holes, permeability test holes, and soil vapor holes;

(b) Temporary geotechnical holes shall be abandoned within 72 hours of initial construction;

(c) Any temporary casing that has been installed shall be removed as part of the abandonment.

(7) Cased permanent geotechnical holes:

(a) Cased permanent geotechnical holes include but are not limited to: gas migration holes, cathodic protection holes, vapor extraction holes, and air sparging holes;

(b) If permanent casing is installed in a geotechnical hole, it shall meet the casing requirements in OAR 690-240-0430, 690-210-0210, or 690-210-0190 and the sealing requirements in 690-240-0475.

(8) Uncased permanent geotechnical holes:

(a) Uncased permanent geotechnical holes include but are not limited to: pneumatic and electrical piezometers;

(b) Temporary casing can be used during the construction of the uncased permanent geotechnical hole but must be removed prior to completion. Surface casing (5 feet maximum) may be installed for placement of logging or recording equipment.

(9) Slope stability geotechnical holes.

(a) Slope stability geotechnical holes include but are not limited to: slope instrumentation holes such as slope inclinometers, and slope remedial holes.

(b) Slope stability geotechnical holes are defined in OAR 690-240-0010(72). Such holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water.

(c) When a Geotechnical Hole Report is required under OAR 690-240-0035(2) for a slope stability geotechnical hole that is constructed to facilitate water level measurements, an affidavit from an engineer or geologist qualified to perform geotechnical investigations shall be attached to the Geotechnical Hole Report. The affidavit shall have the qualified engineer or geologist's stamp on it and shall certify that the slope stability geotechnical hole is on a landslide or a mass-wasting feature.

(10) Geotechnical Holes abandonment:

(a) Geotechnical holes shall be abandoned so that they do not:

(A) Connect water bearing zones or aquifers;

(B) Allow water to move vertically with any greater facility than in the undisturbed condition prior to construction of the geotechnical hole; or

(C) Allow surface water to enter the hole.

(b) Temporary geotechnical holes constructed to collect a water quality sample shall be abandoned in accordance with OAR 690-240-0510.

Stat. Auth.: ORS 537.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 2-2012, f. & cert. ef. 2-2-12

690-240-0040

Closed Loop Ground Source Heat Pump Boring – General Requirements

(1) In addition to the requirements for cased permanent and uncased permanent geotechnical holes contained in 690-240-0035, a closed loop ground source heat pump boring greater than 18 feet deep shall meet the following requirements:

(a) Prior to installation, the professional responsible for the construction of the ground source heat pump boring is encouraged to notify the Department's regional office.

(b) Ground source heat pump borings shall not be used for any purpose other than heat exchange.

(c) After completion, ground source heat pump borings shall not be converted to a monitoring well or a water supply well without written approval by the Department.

(d) The professional shall ensure that the ground source heat pump boring is constructed in accordance with 690-240-0040 through 690-240-0049.

(2) A minimum setback of 50 feet is required from any potential source of groundwater contamination, including but not limited to, temporarily abandoned water supply wells, water wells, septic tanks, drain fields, fuel oil or other petroleum tanks, cesspools, chemical storage or preparation areas. Municipal sewer and storm water systems are excluded from the 50 feet setback.

(3) All fluids used in the construction of a closed loop ground source heat pump boring and associated ground source heat pump system shall meet International Groundwater Source Heat Pump Association standards in place at the time of construction and shall be handled, utilized, and installed in a manner that does not contaminate the groundwater resource.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

690-240-0043

Construction Standards

(1) If permanent casing is needed in a ground source heat pump boring, it shall meet the standards set out in OAR 690-210-0190 through 690-210-0220 for steel and plastic.

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(2) Site specific conditions shall be assessed to determine the best method and materials to be used for sealing the boring annulus to protect the groundwater resource and that method shall meet the standards set out in OAR 690-210-0300 through 690-210-0360 for sealing wells.

(3) The diameter of the borehole for cased and uncased ground source heat pump borings shall allow placement of the heat exchange loop and grout pipe to the bottom of the boring as follows:

(a) For installation of a $\frac{3}{4}$ inch loop, the diameter of the borehole shall be a minimum of 4 inches;

(b) For installation of a 1 inch loop, the diameter of the borehole shall be a minimum of 4 $\frac{1}{2}$ inches; and

(c) For installation of a 1 $\frac{1}{4}$ inch loop, the diameter of the borehole shall be a minimum of 5 inches.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

690-240-0046

Grouting of Uncased Boring

(1) Grouting of an uncased boring shall be completed after the heat exchange loop is installed. The boring shall be completed in a manner to allow ease in locating including but not limited to the use of marking or locating magnetic tape if maintenance or abandonment is necessary. The area near land surface where the ground source heat pump boring will be connected to a manifold or to the closed loop system may be filled with earth materials.

(2) Sealing shall be completed using active solids content bentonite grout slurry (minimum 20% active solids by weight) or high solids fluid mixture of cement. Controlled density fill (CDF), fly ash, drill cuttings or drilling fluids shall not be used in grouting the uncased boring.

(3) Mixes of bentonite or cement slurry shall be installed by pumping through a grout pipe in a continuous operation from the bottom of the boring upward. The grout pipe shall extend the full depth of the borehole before pumping begins. Minimum slurry volume used shall be equal to or exceed the calculated annulus volume in the borehole. Grouting material shall surround all pipes remaining in the borehole.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

690-240-0049

Reporting Requirements

(1) The professional responsible for construction of the ground source heat pump boring(s) shall prepare a complete and certified boring log for each ground source heat pump boring.

(2) Boring logs shall be prepared in triplicate; an original and two copies. The original shall be submitted to the Department and contain a site map showing the location of each ground source heat pump boring. One copy shall be retained by the professional responsible for construction of the ground source heat pump boring and the second copy shall be provided to the customer/landowner who contracted for the construction of the ground source heat pump boring.

(3) The Professional shall file the boring log with the Department within 30 days after the completion of the ground source heat pump boring.

(4) The boring log required in section (2) of this rule shall be recorded on a form provided or previously approved in writing by the Department. The form shall include, as a minimum, the following:

(a) Name and Address of Landowner;

(b) Start/Completion date;

(c) Location of the boring by county, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);

(d) A description and depth of each change of formation;

(e) Total depth and diameter of the completed closed loop heat pump boring

(f) Depth of the surface seal, if any;

(g) The nominal diameter and depth of the casing, if any;

(h) The type and amount of grout material used;

(i) The type of grout additives used;

(j) The depth the borehole is grouted to; and

(k) Such additional information as required by the Department.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

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137-048-0310	1-1-2012	Amend	1-1-2012	150-315.326	1-1-2012	Adopt	2-1-2012
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137-055-1140	12-5-2011	Amend(T)	1-1-2012	161-002-0000	1-1-2012	Amend(T)	2-1-2012
137-055-1140	1-3-2012	Amend	2-1-2012	161-006-0000	11-17-2011	Amend	1-1-2012
137-055-1145	12-5-2011	Suspend	1-1-2012	161-006-0025	11-17-2011	Amend	1-1-2012
137-055-1145	1-3-2012	Repeal	2-1-2012	161-006-0025(T)	11-17-2011	Repeal	1-1-2012
137-055-1160	1-3-2012	Amend	2-1-2012	161-006-0160	11-17-2011	Amend	1-1-2012
137-055-1800	1-3-2012	Amend	2-1-2012	161-006-0175	11-17-2011	Amend	1-1-2012
137-055-2100	1-3-2012	Adopt	2-1-2012	161-008-0040	11-17-2011	Amend	1-1-2012
137-055-2160	1-3-2012	Amend	2-1-2012	161-010-0020	11-17-2011	Amend	1-1-2012
137-055-3220	1-3-2012	Amend	2-1-2012	161-010-0025	11-17-2011	Amend	1-1-2012
137-055-3430	1-3-2012	Amend	2-1-2012	161-010-0035	11-17-2011	Amend	1-1-2012
137-055-3640	1-3-2012	Amend	2-1-2012	161-010-0045	11-17-2011	Amend	1-1-2012
137-055-4130	1-3-2012	Amend	2-1-2012	161-010-0085	11-17-2011	Amend	1-1-2012
137-055-4440	1-3-2012	Amend	2-1-2012	161-020-0015	11-17-2011	Amend	1-1-2012
137-055-4520	1-3-2012	Amend	2-1-2012	161-020-0045	11-17-2011	Amend	1-1-2012
137-055-5400	1-3-2012	Amend	2-1-2012	161-020-0055	11-17-2011	Amend	1-1-2012
137-055-5420	1-3-2012	Amend	2-1-2012	161-020-0140	11-17-2011	Amend	1-1-2012
137-055-6021	1-3-2012	Amend	2-1-2012	161-020-0150	11-17-2011	Amend	1-1-2012
137-055-6100	1-3-2012	Repeal	2-1-2012	161-025-0060	11-17-2011	Amend	1-1-2012
137-055-6200	1-3-2012	Amend	2-1-2012	161-025-0060	1-1-2012	Amend(T)	2-1-2012
137-055-6220	1-3-2012	Amend	2-1-2012	161-030-0000	1-1-2012	Amend	1-1-2012
137-055-6240	1-3-2012	Amend	2-1-2012	161-500-0000	1-1-2012	Adopt(T)	2-1-2012
137-055-6260	1-3-2012	Amend	2-1-2012	161-510-0010	1-1-2012	Adopt(T)	2-1-2012
137-060-0130	2-2-2012	Amend	3-1-2012	161-510-0030	1-1-2012	Adopt(T)	2-1-2012
137-060-0150	2-2-2012	Amend	3-1-2012	161-520-0010	1-1-2012	Adopt(T)	2-1-2012
137-060-0160	2-2-2012	Amend	3-1-2012	161-520-0020	1-1-2012	Adopt(T)	2-1-2012
137-060-0230	2-2-2012	Amend	3-1-2012	161-520-0030	1-1-2012	Adopt(T)	2-1-2012
137-060-0250	2-2-2012	Amend	3-1-2012	161-520-0040	1-1-2012	Adopt(T)	2-1-2012
137-060-0330	2-2-2012	Amend	3-1-2012	161-530-0010	1-1-2012	Adopt(T)	2-1-2012
137-060-0350	2-2-2012	Amend	3-1-2012	161-530-0020	1-1-2012	Adopt(T)	2-1-2012
137-060-0360	2-2-2012	Amend	3-1-2012	161-530-0030	1-1-2012	Adopt(T)	2-1-2012
137-060-0430	2-2-2012	Amend	3-1-2012	161-530-0040	1-1-2012	Adopt(T)	2-1-2012
137-060-0450	2-2-2012	Amend	3-1-2012	161-540-0010	1-1-2012	Adopt(T)	2-1-2012
141-110-0080	12-13-2011	Amend	1-1-2012	161-550-0010	1-1-2012	Adopt(T)	2-1-2012
150-18.385	1-1-2012	Amend	2-1-2012	161-560-0010	1-1-2012	Adopt(T)	2-1-2012
150-18.385(A)	1-1-2012	Amend	2-1-2012	161-560-0020	1-1-2012	Adopt(T)	2-1-2012
150-267.380(2)	1-1-2012	Amend	2-1-2012	161-570-0010	1-1-2012	Adopt(T)	2-1-2012
150-294.435(1)-(A)	1-1-2012	Amend	2-1-2012	162-040-0001	4-1-2012	Amend	3-1-2012

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162-040-0005	4-1-2012	Amend	3-1-2012	177-052-0060(T)	12-1-2011	Repeal	1-1-2012
162-040-0010	4-1-2012	Amend	3-1-2012	177-052-0070	12-1-2011	Adopt	1-1-2012
162-040-0015	4-1-2012	Repeal	3-1-2012	177-052-0070(T)	12-1-2011	Repeal	1-1-2012
162-040-0020	4-1-2012	Amend	3-1-2012	177-085-0000	1-15-2012	Amend	2-1-2012
162-040-0050	4-1-2012	Amend	3-1-2012	177-085-0005	1-15-2012	Amend	2-1-2012
162-040-0054	4-1-2012	Amend	3-1-2012	177-085-0010	1-15-2012	Amend	2-1-2012
162-040-0055	4-1-2012	Amend	3-1-2012	177-085-0015	1-15-2012	Amend	2-1-2012
162-040-0060	4-1-2012	Amend	3-1-2012	177-085-0020	1-15-2012	Amend	2-1-2012
162-040-0065	4-1-2012	Amend	3-1-2012	177-085-0025	1-15-2012	Amend	2-1-2012
162-040-0070	4-1-2012	Amend	3-1-2012	177-085-0025	1-15-2012	Amend(T)	2-1-2012
162-040-0075	4-1-2012	Amend	3-1-2012	177-085-0030	1-15-2012	Amend	2-1-2012
162-040-0090	4-1-2012	Repeal	3-1-2012	177-085-0035	1-15-2012	Amend	2-1-2012
162-040-0095	4-1-2012	Amend	3-1-2012	177-085-0065	1-15-2012	Amend	2-1-2012
162-040-0096	4-1-2012	Adopt	3-1-2012	177-085-0065	1-15-2012	Amend(T)	2-1-2012
162-040-0110	4-1-2012	Repeal	3-1-2012	177-098-0110	1-9-2012	Amend(T)	2-1-2012
162-040-0115	4-1-2012	Repeal	3-1-2012	177-200-0020	12-1-2011	Amend	1-1-2012
162-040-0120	4-1-2012	Repeal	3-1-2012	177-200-0020(T)	12-1-2011	Repeal	1-1-2012
162-040-0125	4-1-2012	Repeal	3-1-2012	177-200-0032	12-1-2011	Amend	1-1-2012
162-040-0130	4-1-2012	Repeal	3-1-2012	177-200-0032(T)	12-1-2011	Repeal	1-1-2012
162-040-0135	4-1-2012	Repeal	3-1-2012	213-003-0001	1-1-2012	Amend(T)	2-1-2012
162-040-0136	4-1-2012	Repeal	3-1-2012	213-003-0001(T)	1-1-2012	Suspend	2-1-2012
162-040-0140	4-1-2012	Repeal	3-1-2012	213-017-0006	1-1-2012	Amend(T)	2-1-2012
162-040-0146	4-1-2012	Repeal	3-1-2012	213-017-0006(T)	1-1-2012	Suspend	2-1-2012
162-040-0148	4-1-2012	Repeal	3-1-2012	213-017-0007	1-27-2012	Amend(T)	3-1-2012
162-040-0155	4-1-2012	Amend	3-1-2012	250-010-0440	12-22-2011	Amend(T)	2-1-2012
165-001-0015	1-3-2012	Amend	2-1-2012	250-010-0650	2-1-2012	Amend	2-1-2012
165-001-0016	1-3-2012	Amend	2-1-2012	250-010-0650(T)	2-1-2012	Repeal	2-1-2012
165-001-0025	1-3-2012	Amend	2-1-2012	250-010-0660	2-1-2012	Adopt	2-1-2012
165-001-0034	1-3-2012	Amend	2-1-2012	250-010-0660(T)	2-1-2012	Repeal	2-1-2012
165-007-0300	1-3-2012	Amend	2-1-2012	250-017-0000	2-1-2012	Amend	2-1-2012
165-007-0320	1-3-2012	Repeal	2-1-2012	250-017-0010	2-1-2012	Amend	2-1-2012
165-010-0005	1-3-2012	Amend	2-1-2012	250-017-0020	2-1-2012	Amend	2-1-2012
165-010-0060	1-3-2012	Amend	2-1-2012	250-017-0030	2-1-2012	Amend	2-1-2012
165-010-0085	1-3-2012	Repeal	2-1-2012	250-017-0040	2-1-2012	Amend	2-1-2012
165-012-0005	1-3-2012	Amend	2-1-2012	250-020-0280	12-1-2011	Amend(T)	1-1-2012
165-012-0060	1-3-2012	Repeal	2-1-2012	250-020-0280	1-1-2012	Amend(T)	2-1-2012
165-012-0240	1-3-2012	Amend	2-1-2012	250-020-0280(T)	1-1-2012	Suspend	2-1-2012
165-013-0010	1-3-2012	Amend	2-1-2012	255-032-0035	11-30-2011	Amend	1-1-2012
165-013-0020	1-3-2012	Amend	2-1-2012	255-032-0037	11-30-2011	Adopt	1-1-2012
165-014-0005	1-3-2012	Amend	2-1-2012	257-010-0060	12-15-2011	Adopt(T)	1-1-2012
165-014-0270	1-3-2012	Amend	2-1-2012	259-008-0060	12-23-2011	Amend	2-1-2012
165-020-0005	1-3-2012	Repeal	2-1-2012	259-008-0069	11-28-2011	Amend(T)	1-1-2012
170-061-0015	1-26-2012	Amend(T)	3-1-2012	259-020-0015	12-30-2011	Amend	2-1-2012
177-052-0000	12-1-2011	Adopt	1-1-2012	259-061-0018	2-6-2012	Adopt(T)	3-1-2012
177-052-0000(T)	12-1-2011	Repeal	1-1-2012	259-070-0010	12-28-2011	Amend	2-1-2012
177-052-0010	12-1-2011	Adopt	1-1-2012	291-024-0081	11-17-2011	Adopt(T)	1-1-2012
177-052-0010(T)	12-1-2011	Repeal	1-1-2012	291-031-0025	1-27-2012	Amend	3-1-2012
177-052-0020	12-1-2011	Adopt	1-1-2012	291-105-0005	12-7-2011	Amend	1-1-2012
177-052-0020(T)	12-1-2011	Repeal	1-1-2012	291-105-0010	12-7-2011	Amend	1-1-2012
177-052-0030	12-1-2011	Adopt	1-1-2012	291-105-0013	12-7-2011	Amend	1-1-2012
177-052-0030(T)	12-1-2011	Repeal	1-1-2012	291-105-0015	12-7-2011	Amend	1-1-2012
177-052-0040	12-1-2011	Adopt	1-1-2012	291-105-0021	12-7-2011	Amend	1-1-2012
177-052-0040(T)	12-1-2011	Repeal	1-1-2012	291-105-0026	12-7-2011	Amend	1-1-2012
177-052-0050	12-1-2011	Adopt	1-1-2012	291-105-0028	12-7-2011	Amend	1-1-2012
177-052-0050(T)	12-1-2011	Repeal	1-1-2012	291-105-0031	12-7-2011	Amend	1-1-2012

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291-105-0041	12-7-2011	Amend	1-1-2012	291-180-0605	12-7-2011	Repeal	1-1-2012
291-105-0046	12-7-2011	Amend	1-1-2012	291-180-0615	12-7-2011	Repeal	1-1-2012
291-105-0066	12-7-2011	Amend	1-1-2012	291-180-0625	12-7-2011	Repeal	1-1-2012
291-105-0069	12-7-2011	Amend	1-1-2012	291-180-0635	12-7-2011	Repeal	1-1-2012
291-105-0081	12-7-2011	Amend	1-1-2012	291-180-0645	12-7-2011	Repeal	1-1-2012
291-105-0100	12-7-2011	Amend	1-1-2012	291-180-0655	12-7-2011	Repeal	1-1-2012
291-180-0115	12-7-2011	Repeal	1-1-2012	291-180-0665	12-7-2011	Repeal	1-1-2012
291-180-0125	12-7-2011	Repeal	1-1-2012	291-208-0010	1-27-2012	Adopt	3-1-2012
291-180-0135	12-7-2011	Repeal	1-1-2012	291-208-0020	1-27-2012	Adopt	3-1-2012
291-180-0145	12-7-2011	Repeal	1-1-2012	291-208-0030	1-27-2012	Adopt	3-1-2012
291-180-0155	12-7-2011	Repeal	1-1-2012	291-208-0040	1-27-2012	Adopt	3-1-2012
291-180-0165	12-7-2011	Repeal	1-1-2012	291-208-0050	1-27-2012	Adopt	3-1-2012
291-180-0175	12-7-2011	Repeal	1-1-2012	309-016-0600	1-1-2012	Amend(T)	2-1-2012
291-180-0185	12-7-2011	Repeal	1-1-2012	309-016-0605	1-1-2012	Amend(T)	2-1-2012
291-180-0195	12-7-2011	Repeal	1-1-2012	309-016-0610	1-1-2012	Amend(T)	2-1-2012
291-180-0205	12-7-2011	Repeal	1-1-2012	309-016-0630	1-1-2012	Amend(T)	2-1-2012
291-180-0215	12-7-2011	Repeal	1-1-2012	309-016-0675	1-1-2012	Amend(T)	2-1-2012
291-180-0225	12-7-2011	Repeal	1-1-2012	309-016-0685	1-1-2012	Amend(T)	2-1-2012
291-180-0235	12-7-2011	Repeal	1-1-2012	309-016-0745	1-1-2012	Amend(T)	2-1-2012
291-180-0245	12-7-2011	Repeal	1-1-2012	309-016-0750	1-1-2012	Amend(T)	2-1-2012
291-180-0252	12-7-2011	Adopt	1-1-2012	309-031-0200	1-1-2012	Suspend	2-1-2012
291-180-0255	12-7-2011	Repeal	1-1-2012	309-031-0205	1-1-2012	Suspend	2-1-2012
291-180-0262	12-7-2011	Adopt	1-1-2012	309-031-0210	1-1-2012	Suspend	2-1-2012
291-180-0275	1-10-2012	Amend(T)	2-1-2012	309-031-0220	1-1-2012	Suspend	2-1-2012
291-180-0285	12-7-2011	Repeal	1-1-2012	309-031-0250	1-1-2012	Suspend	2-1-2012
291-180-0295	12-7-2011	Repeal	1-1-2012	309-031-0255	1-1-2012	Suspend	2-1-2012
291-180-0305	12-7-2011	Repeal	1-1-2012	309-031-0315	1-1-2012	Suspend	2-1-2012
291-180-0315	12-7-2011	Repeal	1-1-2012	309-032-0175	11-22-2011	Suspend	1-1-2012
291-180-0325	12-7-2011	Repeal	1-1-2012	309-032-0180	11-22-2011	Suspend	1-1-2012
291-180-0335	12-7-2011	Repeal	1-1-2012	309-032-0185	11-22-2011	Suspend	1-1-2012
291-180-0345	12-7-2011	Repeal	1-1-2012	309-032-0190	11-22-2011	Suspend	1-1-2012
291-180-0355	12-7-2011	Repeal	1-1-2012	309-032-0195	11-22-2011	Suspend	1-1-2012
291-180-0365	12-7-2011	Repeal	1-1-2012	309-032-0200	11-22-2011	Suspend	1-1-2012
291-180-0375	12-7-2011	Repeal	1-1-2012	309-032-0205	11-22-2011	Suspend	1-1-2012
291-180-0385	12-7-2011	Repeal	1-1-2012	309-032-0210	11-22-2011	Suspend	1-1-2012
291-180-0395	12-7-2011	Repeal	1-1-2012	309-032-0301	11-22-2011	Adopt(T)	1-1-2012
291-180-0405	12-7-2011	Repeal	1-1-2012	309-032-0301	2-9-2012	Adopt	3-1-2012
291-180-0415	12-7-2011	Repeal	1-1-2012	309-032-0301(T)	2-9-2012	Repeal	3-1-2012
291-180-0425	12-7-2011	Repeal	1-1-2012	309-032-0311	11-22-2011	Adopt(T)	1-1-2012
291-180-0435	12-7-2011	Repeal	1-1-2012	309-032-0311	2-9-2012	Adopt	3-1-2012
291-180-0445	12-7-2011	Repeal	1-1-2012	309-032-0311(T)	2-9-2012	Repeal	3-1-2012
291-180-0455	12-7-2011	Repeal	1-1-2012	309-032-0321	11-22-2011	Adopt(T)	1-1-2012
291-180-0465	12-7-2011	Repeal	1-1-2012	309-032-0321	2-9-2012	Adopt	3-1-2012
291-180-0475	12-7-2011	Repeal	1-1-2012	309-032-0321(T)	2-9-2012	Repeal	3-1-2012
291-180-0485	12-7-2011	Repeal	1-1-2012	309-032-0331	11-22-2011	Adopt(T)	1-1-2012
291-180-0495	12-7-2011	Repeal	1-1-2012	309-032-0331	2-9-2012	Adopt	3-1-2012
291-180-0505	12-7-2011	Repeal	1-1-2012	309-032-0331(T)	2-9-2012	Repeal	3-1-2012
291-180-0515	12-7-2011	Repeal	1-1-2012	309-032-0341	11-22-2011	Adopt(T)	1-1-2012
291-180-0525	12-7-2011	Repeal	1-1-2012	309-032-0341	2-9-2012	Adopt	3-1-2012
291-180-0535	12-7-2011	Repeal	1-1-2012	309-032-0341(T)	2-9-2012	Repeal	3-1-2012
291-180-0545	12-7-2011	Repeal	1-1-2012	309-032-0351	11-22-2011	Adopt(T)	1-1-2012
291-180-0555	12-7-2011	Repeal	1-1-2012	309-032-0351	2-9-2012	Adopt	3-1-2012
291-180-0565	12-7-2011	Repeal	1-1-2012	309-032-0351(T)	2-9-2012	Repeal	3-1-2012
291-180-0575	12-7-2011	Repeal	1-1-2012	309-032-1500	1-1-2012	Amend(T)	2-1-2012
291-180-0585	12-7-2011	Repeal	1-1-2012	309-032-1505	1-1-2012	Amend(T)	2-1-2012

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309-032-1515	1-1-2012	Amend(T)	2-1-2012	309-092-0095	1-1-2012	Adopt(T)	2-1-2012
309-032-1520	1-1-2012	Amend(T)	2-1-2012	309-092-0100	1-1-2012	Adopt(T)	2-1-2012
309-032-1525	1-1-2012	Amend(T)	2-1-2012	309-092-0105	1-1-2012	Adopt(T)	2-1-2012
309-032-1530	1-1-2012	Amend(T)	2-1-2012	309-092-0110	1-1-2012	Adopt(T)	2-1-2012
309-032-1535	1-1-2012	Amend(T)	2-1-2012	309-092-0115	1-1-2012	Adopt(T)	2-1-2012
309-032-1540	1-1-2012	Amend(T)	2-1-2012	309-092-0120	1-1-2012	Adopt(T)	2-1-2012
309-032-1545	1-1-2012	Amend(T)	2-1-2012	309-092-0125	1-1-2012	Adopt(T)	2-1-2012
309-032-1550	1-1-2012	Amend(T)	2-1-2012	309-092-0130	1-1-2012	Adopt(T)	2-1-2012
309-032-1555	1-1-2012	Amend(T)	2-1-2012	309-092-0135	1-1-2012	Adopt(T)	2-1-2012
309-032-1560	1-1-2012	Amend(T)	2-1-2012	309-092-0140	1-1-2012	Adopt(T)	2-1-2012
309-032-1565	1-1-2012	Amend(T)	2-1-2012	309-092-0145	1-1-2012	Adopt(T)	2-1-2012
309-035-0100	12-5-2011	Amend(T)	1-1-2012	309-092-0150	1-1-2012	Adopt(T)	2-1-2012
309-035-0105	12-5-2011	Amend(T)	1-1-2012	309-092-0155	1-1-2012	Adopt(T)	2-1-2012
309-035-0250	12-5-2011	Amend(T)	1-1-2012	309-092-0160	1-1-2012	Adopt(T)	2-1-2012
309-035-0260	12-5-2011	Amend(T)	1-1-2012	309-092-0165	1-1-2012	Adopt(T)	2-1-2012
309-040-0300	12-5-2011	Amend(T)	1-1-2012	309-092-0170	1-1-2012	Adopt(T)	2-1-2012
309-040-0305	12-5-2011	Amend(T)	1-1-2012	309-092-0175	1-1-2012	Adopt(T)	2-1-2012
309-090-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0180	1-1-2012	Adopt(T)	2-1-2012
309-090-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0185	1-1-2012	Adopt(T)	2-1-2012
309-090-0010	1-1-2012	Adopt(T)	2-1-2012	309-092-0190	1-1-2012	Adopt(T)	2-1-2012
309-090-0015	1-1-2012	Adopt(T)	2-1-2012	309-092-0195	1-1-2012	Adopt(T)	2-1-2012
309-090-0020	1-1-2012	Adopt(T)	2-1-2012	309-092-0200	1-1-2012	Adopt(T)	2-1-2012
309-090-0025	1-1-2012	Adopt(T)	2-1-2012	309-092-0205	1-1-2012	Adopt(T)	2-1-2012
309-090-0030	1-1-2012	Adopt(T)	2-1-2012	309-092-0210	1-1-2012	Adopt(T)	2-1-2012
309-090-0035	1-1-2012	Adopt(T)	2-1-2012	309-092-0215	1-1-2012	Adopt(T)	2-1-2012
309-090-0040	1-1-2012	Adopt(T)	2-1-2012	309-092-0220	1-1-2012	Adopt(T)	2-1-2012
309-091-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0225	1-1-2012	Adopt(T)	2-1-2012
309-091-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0230	1-1-2012	Adopt(T)	2-1-2012
309-091-0010	1-1-2012	Adopt(T)	2-1-2012	309-092-0235	1-1-2012	Adopt(T)	2-1-2012
309-091-0015	1-1-2012	Adopt(T)	2-1-2012	309-092-0240	1-1-2012	Adopt(T)	2-1-2012
309-091-0020	1-1-2012	Adopt(T)	2-1-2012	309-102-0100	2-9-2012	Adopt	3-1-2012
309-091-0025	1-1-2012	Adopt(T)	2-1-2012	309-102-0100(T)	2-9-2012	Repeal	3-1-2012
309-091-0030	1-1-2012	Adopt(T)	2-1-2012	309-102-0110	2-9-2012	Adopt	3-1-2012
309-091-0035	1-1-2012	Adopt(T)	2-1-2012	309-102-0110(T)	2-9-2012	Repeal	3-1-2012
309-091-0040	1-1-2012	Adopt(T)	2-1-2012	309-102-0120	2-9-2012	Adopt	3-1-2012
309-091-0045	1-1-2012	Adopt(T)	2-1-2012	309-102-0120(T)	2-9-2012	Repeal	3-1-2012
309-091-0050	1-1-2012	Adopt(T)	2-1-2012	309-102-0130	2-9-2012	Adopt	3-1-2012
309-092-0000	1-1-2012	Adopt(T)	2-1-2012	309-102-0130(T)	2-9-2012	Repeal	3-1-2012
309-092-0005	1-1-2012	Adopt(T)	2-1-2012	309-102-0140	2-9-2012	Adopt	3-1-2012
309-092-0010	1-1-2012	Adopt(T)	2-1-2012	309-102-0140(T)	2-9-2012	Repeal	3-1-2012
309-092-0015	1-1-2012	Adopt(T)	2-1-2012	309-102-0150	2-9-2012	Adopt	3-1-2012
309-092-0020	1-1-2012	Adopt(T)	2-1-2012	309-102-0150(T)	2-9-2012	Repeal	3-1-2012
309-092-0025	1-1-2012	Adopt(T)	2-1-2012	330-070-0013	1-1-2012	Amend	2-1-2012
309-092-0030	1-1-2012	Adopt(T)	2-1-2012	330-070-0014	1-1-2012	Amend	2-1-2012
309-092-0035	1-1-2012	Adopt(T)	2-1-2012	330-070-0019	1-1-2012	Amend	2-1-2012
309-092-0040	1-1-2012	Adopt(T)	2-1-2012	330-070-0020	1-1-2012	Amend	2-1-2012
309-092-0045	1-1-2012	Adopt(T)	2-1-2012	330-070-0021	1-1-2012	Amend	2-1-2012
309-092-0050	1-1-2012	Adopt(T)	2-1-2012	330-070-0022	1-1-2012	Amend	2-1-2012
309-092-0055	1-1-2012	Adopt(T)	2-1-2012	330-070-0024	1-1-2012	Amend	2-1-2012
309-092-0060	1-1-2012	Adopt(T)	2-1-2012	330-070-0025	1-1-2012	Amend	2-1-2012
309-092-0065	1-1-2012	Adopt(T)	2-1-2012	330-070-0026	1-1-2012	Amend	2-1-2012
309-092-0070	1-1-2012	Adopt(T)	2-1-2012	330-070-0027	1-1-2012	Amend	2-1-2012
309-092-0075	1-1-2012	Adopt(T)	2-1-2012	330-070-0029	1-1-2012	Adopt	2-1-2012
309-092-0080	1-1-2012	Adopt(T)	2-1-2012	330-070-0045	1-1-2012	Amend	2-1-2012
309-092-0085	1-1-2012	Adopt(T)	2-1-2012	330-070-0048	1-1-2012	Amend	2-1-2012

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330-070-0060	1-1-2012	Amend	2-1-2012	331-210-0020	1-1-2012	Repeal	2-1-2012
330-070-0064	1-1-2012	Amend	2-1-2012	331-210-0021	1-1-2012	Repeal	2-1-2012
330-070-0070	1-1-2012	Amend	2-1-2012	331-215-0000	1-1-2012	Repeal	2-1-2012
330-070-0073	1-1-2012	Amend	2-1-2012	331-215-0010	1-1-2012	Repeal	2-1-2012
330-070-0089	1-1-2012	Amend	2-1-2012	331-215-0020	1-1-2012	Repeal	2-1-2012
330-070-0091	1-1-2012	Amend	2-1-2012	331-215-0030	1-1-2012	Repeal	2-1-2012
330-070-0097	1-1-2012	Amend	2-1-2012	331-215-0040	1-1-2012	Repeal	2-1-2012
330-090-0130	1-13-2012	Amend(T)	2-1-2012	331-220-0000	1-1-2012	Repeal	2-1-2012
330-090-0133	11-30-2011	Amend	1-1-2012	331-220-0010	1-1-2012	Repeal	2-1-2012
330-090-0160	11-30-2011	Adopt	1-1-2012	331-220-0020	1-1-2012	Repeal	2-1-2012
330-180-0010	11-22-2011	Adopt	1-1-2012	331-220-0030	1-1-2012	Repeal	2-1-2012
330-180-0020	11-22-2011	Adopt	1-1-2012	331-220-0040	1-1-2012	Repeal	2-1-2012
330-180-0030	11-22-2011	Adopt	1-1-2012	331-220-0050	1-1-2012	Repeal	2-1-2012
330-180-0040	11-22-2011	Adopt	1-1-2012	331-220-0060	1-1-2012	Repeal	2-1-2012
330-180-0050	11-22-2011	Adopt	1-1-2012	331-220-0080	1-1-2012	Repeal	2-1-2012
330-180-0060	11-22-2011	Adopt	1-1-2012	331-225-0000	1-1-2012	Repeal	2-1-2012
330-180-0070	11-22-2011	Adopt	1-1-2012	331-225-0020	1-1-2012	Repeal	2-1-2012
330-210-0000	12-23-2011	Adopt(T)	2-1-2012	331-225-0030	1-1-2012	Repeal	2-1-2012
330-210-0010	12-23-2011	Adopt(T)	2-1-2012	331-225-0040	1-1-2012	Repeal	2-1-2012
330-210-0020	12-23-2011	Adopt(T)	2-1-2012	331-225-0050	1-1-2012	Repeal	2-1-2012
330-210-0030	12-23-2011	Adopt(T)	2-1-2012	331-225-0060	1-1-2012	Repeal	2-1-2012
330-210-0040	12-23-2011	Adopt(T)	2-1-2012	331-225-0070	1-1-2012	Repeal	2-1-2012
330-210-0045	12-23-2011	Adopt(T)	2-1-2012	331-225-0080	1-1-2012	Repeal	2-1-2012
330-210-0050	12-23-2011	Adopt(T)	2-1-2012	331-225-0090	1-1-2012	Repeal	2-1-2012
330-210-0060	12-23-2011	Adopt(T)	2-1-2012	331-225-0100	1-1-2012	Repeal	2-1-2012
330-210-0070	12-23-2011	Adopt(T)	2-1-2012	331-225-0110	1-1-2012	Repeal	2-1-2012
330-210-0080	12-23-2011	Adopt(T)	2-1-2012	331-225-0120	1-1-2012	Repeal	2-1-2012
330-210-0090	12-23-2011	Adopt(T)	2-1-2012	331-225-0130	1-1-2012	Repeal	2-1-2012
330-210-0100	12-23-2011	Adopt(T)	2-1-2012	331-225-0140	1-1-2012	Repeal	2-1-2012
330-210-0150	12-23-2011	Adopt(T)	2-1-2012	331-225-0150	1-1-2012	Repeal	2-1-2012
330-220-0000	2-7-2012	Adopt(T)	3-1-2012	331-225-0160	1-1-2012	Repeal	2-1-2012
330-220-0010	2-7-2012	Adopt(T)	3-1-2012	331-505-0000	1-1-2012	Repeal	2-1-2012
330-220-0020	2-7-2012	Adopt(T)	3-1-2012	331-505-0010	1-1-2012	Repeal	2-1-2012
330-220-0030	2-7-2012	Adopt(T)	3-1-2012	331-510-0000	1-1-2012	Repeal	2-1-2012
330-220-0040	2-7-2012	Adopt(T)	3-1-2012	331-515-0000	1-1-2012	Repeal	2-1-2012
330-220-0050	2-7-2012	Adopt(T)	3-1-2012	331-515-0010	1-1-2012	Repeal	2-1-2012
330-220-0070	2-7-2012	Adopt(T)	3-1-2012	331-515-0020	1-1-2012	Repeal	2-1-2012
330-220-0080	2-7-2012	Adopt(T)	3-1-2012	331-515-0030	1-1-2012	Repeal	2-1-2012
330-220-0090	2-7-2012	Adopt(T)	3-1-2012	331-520-0000	1-1-2012	Repeal	2-1-2012
330-220-0100	2-7-2012	Adopt(T)	3-1-2012	331-520-0010	1-1-2012	Repeal	2-1-2012
330-220-0150	2-7-2012	Adopt(T)	3-1-2012	331-520-0030	1-1-2012	Repeal	2-1-2012
330-230-0000	12-23-2011	Adopt(T)	2-1-2012	331-520-0040	1-1-2012	Repeal	2-1-2012
330-230-0010	12-23-2011	Adopt(T)	2-1-2012	331-520-0070	1-1-2012	Repeal	2-1-2012
330-230-0020	12-23-2011	Adopt(T)	2-1-2012	331-525-0000	1-1-2012	Repeal	2-1-2012
330-230-0030	12-23-2011	Adopt(T)	2-1-2012	331-525-0020	1-1-2012	Repeal	2-1-2012
330-230-0040	12-23-2011	Adopt(T)	2-1-2012	331-525-0035	1-1-2012	Repeal	2-1-2012
330-230-0050	12-23-2011	Adopt(T)	2-1-2012	331-525-0038	1-1-2012	Repeal	2-1-2012
330-230-0060	12-23-2011	Adopt(T)	2-1-2012	331-525-0040	1-1-2012	Repeal	2-1-2012
330-230-0110	12-23-2011	Adopt(T)	2-1-2012	331-525-0055	1-1-2012	Repeal	2-1-2012
330-230-0120	12-23-2011	Adopt(T)	2-1-2012	331-525-0060	1-1-2012	Repeal	2-1-2012
330-230-0130	12-23-2011	Adopt(T)	2-1-2012	331-525-0065	1-1-2012	Repeal	2-1-2012
330-230-0140	12-23-2011	Adopt(T)	2-1-2012	331-530-0000	1-1-2012	Repeal	2-1-2012
331-205-0020	1-1-2012	Repeal	2-1-2012	331-530-0020	1-1-2012	Repeal	2-1-2012
331-205-0030	1-1-2012	Repeal	2-1-2012	331-535-0000	1-1-2012	Repeal	2-1-2012
331-210-0000	1-1-2012	Repeal	2-1-2012	331-535-0010	1-1-2012	Repeal	2-1-2012
331-210-0010	1-1-2012	Repeal	2-1-2012	331-535-0020	1-1-2012	Repeal	2-1-2012

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331-535-0030	1-1-2012	Repeal	2-1-2012	331-705-0072(T)	1-1-2012	Repeal	2-1-2012
331-535-0040	1-1-2012	Repeal	2-1-2012	331-705-0080	1-1-2012	Adopt	2-1-2012
331-535-0050	1-1-2012	Repeal	2-1-2012	331-710-0005	1-1-2012	Adopt	2-1-2012
331-535-0060	1-1-2012	Repeal	2-1-2012	331-710-0010	1-1-2012	Amend	2-1-2012
331-535-0070	1-1-2012	Repeal	2-1-2012	331-710-0015	1-1-2012	Adopt	2-1-2012
331-535-0080	1-1-2012	Repeal	2-1-2012	331-710-0020	1-1-2012	Amend	2-1-2012
331-540-0000	1-1-2012	Repeal	2-1-2012	331-710-0030	1-1-2012	Repeal	2-1-2012
331-540-0010	1-1-2012	Repeal	2-1-2012	331-710-0040	1-1-2012	Adopt	2-1-2012
331-540-0020	1-1-2012	Repeal	2-1-2012	331-710-0045	1-1-2012	Adopt	2-1-2012
331-540-0030	1-1-2012	Repeal	2-1-2012	331-710-0050	1-1-2012	Adopt	2-1-2012
331-545-0000	1-1-2012	Repeal	2-1-2012	331-712-0000	1-1-2012	Adopt	2-1-2012
331-545-0020	1-1-2012	Repeal	2-1-2012	331-712-0010	1-1-2012	Adopt	2-1-2012
331-550-0000	1-1-2012	Repeal	2-1-2012	331-712-0020	1-1-2012	Adopt	2-1-2012
331-555-0010	1-1-2012	Repeal	2-1-2012	331-715-0010	1-1-2012	Amend	2-1-2012
331-555-0030	1-1-2012	Repeal	2-1-2012	331-715-0030	1-1-2012	Repeal	2-1-2012
331-555-0040	1-1-2012	Repeal	2-1-2012	331-715-0045	1-1-2012	Repeal	2-1-2012
331-560-0000	1-1-2012	Repeal	2-1-2012	331-718-0000	1-1-2012	Adopt	2-1-2012
331-560-0010	1-1-2012	Repeal	2-1-2012	331-718-0010	1-1-2012	Adopt	2-1-2012
331-560-0020	1-1-2012	Repeal	2-1-2012	331-718-0020	1-1-2012	Adopt	2-1-2012
331-560-0030	1-1-2012	Repeal	2-1-2012	331-720-0010	1-1-2012	Amend	2-1-2012
331-560-0040	1-1-2012	Repeal	2-1-2012	331-720-0015	1-1-2012	Adopt	2-1-2012
331-560-0060	1-1-2012	Repeal	2-1-2012	331-725-0020	1-1-2012	Repeal	2-1-2012
331-565-0000	1-1-2012	Repeal	2-1-2012	331-740-0000	1-1-2012	Adopt	2-1-2012
331-565-0020	1-1-2012	Repeal	2-1-2012	331-900-0000	1-1-2012	Adopt	2-1-2012
331-565-0025	1-1-2012	Repeal	2-1-2012	331-900-0005	1-1-2012	Adopt	2-1-2012
331-565-0030	1-1-2012	Repeal	2-1-2012	331-900-0010	1-1-2012	Adopt	2-1-2012
331-565-0040	1-1-2012	Repeal	2-1-2012	331-900-0015	1-1-2012	Adopt	2-1-2012
331-565-0050	1-1-2012	Repeal	2-1-2012	331-900-0020	1-1-2012	Adopt	2-1-2012
331-565-0060	1-1-2012	Repeal	2-1-2012	331-900-0025	1-1-2012	Adopt	2-1-2012
331-565-0080	1-1-2012	Repeal	2-1-2012	331-900-0030	1-1-2012	Adopt	2-1-2012
331-565-0085	1-1-2012	Repeal	2-1-2012	331-900-0035	1-1-2012	Adopt	2-1-2012
331-565-0090	1-1-2012	Repeal	2-1-2012	331-900-0040	1-1-2012	Adopt	2-1-2012
331-565-0095	1-1-2012	Repeal	2-1-2012	331-900-0045	1-1-2012	Adopt	2-1-2012
331-570-0000	1-1-2012	Repeal	2-1-2012	331-900-0050	1-1-2012	Adopt	2-1-2012
331-570-0020	1-1-2012	Repeal	2-1-2012	331-900-0055	1-1-2012	Adopt	2-1-2012
331-575-0000	1-1-2012	Repeal	2-1-2012	331-900-0060	1-1-2012	Adopt	2-1-2012
331-575-0010	1-1-2012	Repeal	2-1-2012	331-900-0065	1-1-2012	Adopt	2-1-2012
331-575-0020	1-1-2012	Repeal	2-1-2012	331-900-0070	1-1-2012	Adopt	2-1-2012
331-575-0030	1-1-2012	Repeal	2-1-2012	331-900-0075	1-1-2012	Adopt	2-1-2012
331-575-0040	1-1-2012	Repeal	2-1-2012	331-900-0080	1-1-2012	Adopt	2-1-2012
331-575-0050	1-1-2012	Repeal	2-1-2012	331-900-0085	1-1-2012	Adopt	2-1-2012
331-580-0000	1-1-2012	Repeal	2-1-2012	331-900-0090	1-1-2012	Adopt	2-1-2012
331-580-0010	1-1-2012	Repeal	2-1-2012	331-900-0095	1-1-2012	Adopt	2-1-2012
331-580-0020	1-1-2012	Repeal	2-1-2012	331-900-0100	1-1-2012	Adopt	2-1-2012
331-580-0030	1-1-2012	Repeal	2-1-2012	331-900-0105	1-1-2012	Adopt	2-1-2012
331-585-0000	1-1-2012	Repeal	2-1-2012	331-900-0110	1-1-2012	Adopt	2-1-2012
331-585-0010	1-1-2012	Repeal	2-1-2012	331-905-0000	1-1-2012	Adopt(T)	2-1-2012
331-585-0020	1-1-2012	Repeal	2-1-2012	331-905-0005	1-1-2012	Adopt(T)	2-1-2012
331-585-0030	1-1-2012	Repeal	2-1-2012	331-905-0010	1-1-2012	Adopt(T)	2-1-2012
331-585-0040	1-1-2012	Repeal	2-1-2012	331-905-0015	1-1-2012	Adopt(T)	2-1-2012
331-590-0000	1-1-2012	Repeal	2-1-2012	331-905-0020	1-1-2012	Adopt(T)	2-1-2012
331-590-0020	1-1-2012	Repeal	2-1-2012	331-905-0025	1-1-2012	Adopt(T)	2-1-2012
331-705-0050	1-1-2012	Amend	2-1-2012	331-905-0030	1-1-2012	Adopt(T)	2-1-2012
331-705-0060	1-1-2012	Repeal	2-1-2012	331-905-0035	1-1-2012	Adopt(T)	2-1-2012
331-705-0072	11-22-2011	Adopt(T)	1-1-2012	331-905-0040	1-1-2012	Adopt(T)	2-1-2012
331-705-0072	1-1-2012	Adopt	2-1-2012	331-905-0045	1-1-2012	Adopt(T)	2-1-2012

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331-905-0050	1-1-2012	Adopt(T)	2-1-2012	331-950-0050	1-1-2012	Adopt	2-1-2012
331-905-0055	1-1-2012	Adopt(T)	2-1-2012	331-950-0060	1-1-2012	Adopt	2-1-2012
331-905-0060	1-1-2012	Adopt(T)	2-1-2012	331-950-0070	1-1-2012	Adopt	2-1-2012
331-905-0065	1-1-2012	Adopt(T)	2-1-2012	332-040-0000	1-1-2012	Amend(T)	2-1-2012
331-910-0000	1-1-2012	Adopt	2-1-2012	333-010-0000	1-1-2012	Amend	2-1-2012
331-910-0005	1-1-2012	Adopt	2-1-2012	333-010-0010	1-1-2012	Amend	2-1-2012
331-910-0010	1-1-2012	Adopt	2-1-2012	333-010-0020	1-1-2012	Amend	2-1-2012
331-910-0015	1-1-2012	Adopt	2-1-2012	333-010-0030	1-1-2012	Amend	2-1-2012
331-910-0020	1-1-2012	Adopt	2-1-2012	333-010-0032	1-1-2012	Adopt	2-1-2012
331-910-0025	1-1-2012	Adopt	2-1-2012	333-010-0035	1-1-2012	Amend	2-1-2012
331-910-0030	1-1-2012	Adopt	2-1-2012	333-010-0040	1-1-2012	Amend	2-1-2012
331-910-0035	1-1-2012	Adopt	2-1-2012	333-010-0050	1-1-2012	Amend	2-1-2012
331-910-0040	1-1-2012	Adopt	2-1-2012	333-010-0055	1-1-2012	Amend	2-1-2012
331-910-0045	1-1-2012	Adopt	2-1-2012	333-010-0060	1-1-2012	Amend	2-1-2012
331-910-0050	1-1-2012	Adopt	2-1-2012	333-010-0070	1-1-2012	Amend	2-1-2012
331-910-0055	1-1-2012	Adopt	2-1-2012	333-010-0080	1-1-2012	Amend	2-1-2012
331-910-0060	1-1-2012	Adopt	2-1-2012	333-010-0100	1-17-2012	Amend	3-1-2012
331-910-0065	1-1-2012	Adopt	2-1-2012	333-010-0105	1-17-2012	Amend	3-1-2012
331-915-0000	1-1-2012	Adopt	2-1-2012	333-010-0110	1-17-2012	Amend	3-1-2012
331-915-0005	1-1-2012	Adopt	2-1-2012	333-010-0115	1-17-2012	Amend	3-1-2012
331-915-0010	1-1-2012	Adopt	2-1-2012	333-010-0130	1-17-2012	Amend	3-1-2012
331-915-0015	1-1-2012	Adopt	2-1-2012	333-010-0197	1-17-2012	Adopt	3-1-2012
331-915-0020	1-1-2012	Adopt	2-1-2012	333-011-0006	1-1-2012	Amend	2-1-2012
331-915-0025	1-1-2012	Adopt	2-1-2012	333-011-0016	1-1-2012	Amend	2-1-2012
331-915-0030	1-1-2012	Adopt	2-1-2012	333-011-0061	1-1-2012	Amend	2-1-2012
331-915-0035	1-1-2012	Adopt	2-1-2012	333-011-0101	1-1-2012	Amend	2-1-2012
331-915-0040	1-1-2012	Adopt	2-1-2012	333-015-0025	2-1-2012	Amend	3-1-2012
331-915-0045	1-1-2012	Adopt	2-1-2012	333-015-0030	2-1-2012	Amend	3-1-2012
331-915-0050	1-1-2012	Adopt	2-1-2012	333-015-0035	2-1-2012	Amend	3-1-2012
331-915-0055	1-1-2012	Adopt	2-1-2012	333-015-0040	2-1-2012	Amend	3-1-2012
331-915-0060	1-1-2012	Adopt	2-1-2012	333-015-0045	2-1-2012	Amend	3-1-2012
331-915-0065	1-1-2012	Adopt	2-1-2012	333-015-0064	2-1-2012	Amend	3-1-2012
331-920-0000	1-1-2012	Adopt	2-1-2012	333-015-0066	2-1-2012	Amend	3-1-2012
331-920-0005	1-1-2012	Adopt	2-1-2012	333-015-0068	2-1-2012	Amend	3-1-2012
331-925-0000	1-1-2012	Adopt	2-1-2012	333-015-0069	2-1-2012	Amend	3-1-2012
331-925-0005	1-1-2012	Adopt	2-1-2012	333-015-0070	2-1-2012	Amend	3-1-2012
331-925-0010	1-1-2012	Adopt	2-1-2012	333-015-0075	2-1-2012	Amend	3-1-2012
331-925-0015	1-1-2012	Adopt	2-1-2012	333-015-0080	2-1-2012	Amend	3-1-2012
331-925-0020	1-1-2012	Adopt	2-1-2012	333-015-0082	2-1-2012	Amend	3-1-2012
331-925-0025	1-1-2012	Adopt	2-1-2012	333-015-0085	2-1-2012	Amend	3-1-2012
331-925-0030	1-1-2012	Adopt	2-1-2012	333-015-0090	2-1-2012	Repeal	3-1-2012
331-925-0035	1-1-2012	Adopt	2-1-2012	333-019-0041	12-14-2011	Amend	1-1-2012
331-925-0040	1-1-2012	Adopt	2-1-2012	333-019-0042	12-14-2011	Adopt	1-1-2012
331-925-0045	1-1-2012	Adopt	2-1-2012	333-047-0010	1-1-2012	Adopt	2-1-2012
331-930-0000	1-1-2012	Adopt	2-1-2012	333-047-0030	1-1-2012	Adopt	2-1-2012
331-930-0005	1-1-2012	Adopt	2-1-2012	333-047-0040	1-1-2012	Adopt	2-1-2012
331-930-0010	1-1-2012	Adopt	2-1-2012	333-047-0050	1-1-2012	Adopt	2-1-2012
331-930-0015	1-1-2012	Adopt	2-1-2012	333-049-0010	1-1-2012	Amend	2-1-2012
331-930-0020	1-1-2012	Adopt	2-1-2012	333-049-0040	1-1-2012	Amend	2-1-2012
331-930-0025	1-1-2012	Adopt	2-1-2012	333-049-0050	1-1-2012	Amend	2-1-2012
331-930-0030	1-1-2012	Adopt	2-1-2012	333-049-0065	1-1-2012	Amend	2-1-2012
331-940-0000	1-1-2012	Adopt	2-1-2012	333-049-0070	1-1-2012	Amend	2-1-2012
331-950-0010	1-1-2012	Adopt	2-1-2012	333-049-0090	1-1-2012	Amend	2-1-2012
331-950-0020	1-1-2012	Adopt	2-1-2012	333-265-0000	1-1-2012	Amend	2-1-2012
331-950-0030	1-1-2012	Adopt	2-1-2012	333-265-0010	1-1-2012	Amend	2-1-2012
331-950-0040	1-1-2012	Adopt	2-1-2012	333-265-0012	1-1-2012	Amend	2-1-2012

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333-265-0014	1-1-2012	Amend	2-1-2012	340-204-0030	12-21-2011	Amend	2-1-2012
333-265-0015	1-1-2012	Amend	2-1-2012	340-204-0040	12-21-2011	Amend	2-1-2012
333-265-0016	1-1-2012	Amend	2-1-2012	407-014-0000	12-16-2011	Amend	2-1-2012
333-265-0018	1-1-2012	Amend	2-1-2012	407-014-0000(T)	12-16-2011	Repeal	2-1-2012
333-265-0020	1-1-2012	Amend	2-1-2012	407-014-0015	12-16-2011	Adopt	2-1-2012
333-265-0022	1-1-2012	Amend	2-1-2012	407-014-0015(T)	12-16-2011	Repeal	2-1-2012
333-265-0023	1-1-2012	Amend	2-1-2012	407-014-0020	12-16-2011	Amend	2-1-2012
333-265-0025	1-1-2012	Amend	2-1-2012	407-014-0020(T)	12-16-2011	Repeal	2-1-2012
333-265-0030	1-1-2012	Amend	2-1-2012	407-014-0030	12-16-2011	Amend	2-1-2012
333-265-0040	1-1-2012	Amend	2-1-2012	407-014-0030(T)	12-16-2011	Repeal	2-1-2012
333-265-0050	1-1-2012	Amend	2-1-2012	407-014-0040	12-16-2011	Amend	2-1-2012
333-265-0060	1-1-2012	Amend	2-1-2012	407-014-0040(T)	12-16-2011	Repeal	2-1-2012
333-265-0070	1-1-2012	Amend	2-1-2012	407-014-0050	12-16-2011	Amend	2-1-2012
333-265-0080	1-1-2012	Amend	2-1-2012	407-014-0050(T)	12-16-2011	Repeal	2-1-2012
333-265-0083	1-1-2012	Amend	2-1-2012	407-014-0060	12-16-2011	Amend	2-1-2012
333-265-0085	1-1-2012	Amend	2-1-2012	407-014-0060(T)	12-16-2011	Repeal	2-1-2012
333-265-0087	1-1-2012	Amend	2-1-2012	407-014-0070	12-16-2011	Amend	2-1-2012
333-265-0090	1-1-2012	Amend	2-1-2012	407-014-0070(T)	12-16-2011	Repeal	2-1-2012
333-265-0100	1-1-2012	Amend	2-1-2012	407-014-0300	2-1-2012	Amend	3-1-2012
333-265-0105	1-1-2012	Amend	2-1-2012	407-014-0300(T)	2-1-2012	Repeal	3-1-2012
333-265-0110	1-1-2012	Amend	2-1-2012	407-014-0305	2-1-2012	Amend	3-1-2012
333-265-0140	1-1-2012	Amend	2-1-2012	407-014-0305(T)	2-1-2012	Repeal	3-1-2012
333-265-0150	1-1-2012	Amend	2-1-2012	407-014-0310	2-1-2012	Amend	3-1-2012
333-265-0160	1-1-2012	Amend	2-1-2012	407-014-0310(T)	2-1-2012	Repeal	3-1-2012
333-265-0170	1-1-2012	Amend	2-1-2012	407-014-0315	2-1-2012	Amend	3-1-2012
334-001-0000	1-1-2012	Amend	1-1-2012	407-014-0315(T)	2-1-2012	Repeal	3-1-2012
334-001-0005	1-1-2012	Amend	1-1-2012	407-014-0320	2-1-2012	Amend	3-1-2012
334-001-0020	1-1-2012	Amend	1-1-2012	407-014-0320(T)	2-1-2012	Repeal	3-1-2012
334-001-0025	1-1-2012	Adopt	1-1-2012	407-043-0020	12-27-2011	Adopt	2-1-2012
334-001-0028	1-1-2012	Adopt	1-1-2012	407-043-0020(T)	12-27-2011	Repeal	2-1-2012
334-001-0032	1-1-2012	Adopt	1-1-2012	407-045-0250	12-5-2011	Amend	1-1-2012
334-001-0035	1-1-2012	Repeal	1-1-2012	407-045-0260	12-5-2011	Amend	1-1-2012
334-001-0036	1-1-2012	Adopt	1-1-2012	407-045-0280	12-5-2011	Amend	1-1-2012
334-001-0060	1-1-2012	Amend	1-1-2012	407-045-0290	12-5-2011	Amend	1-1-2012
334-010-0005	1-1-2012	Amend	1-1-2012	407-045-0320	12-5-2011	Amend	1-1-2012
334-010-0008	1-1-2012	Amend	1-1-2012	407-045-0320(T)	12-5-2011	Amend	1-1-2012
334-010-0009	1-1-2012	Adopt	1-1-2012	407-045-0400	12-1-2011	Amend	1-1-2012
334-010-0010	1-1-2012	Amend	1-1-2012	407-045-0400(T)	12-1-2011	Repeal	1-1-2012
334-010-0012	1-1-2012	Amend	1-1-2012	407-045-0410	12-1-2011	Repeal	1-1-2012
334-010-0015	1-1-2012	Amend	1-1-2012	407-045-0420	12-1-2011	Repeal	1-1-2012
334-010-0017	1-1-2012	Amend	1-1-2012	407-045-0430	12-1-2011	Repeal	1-1-2012
334-010-0018	1-1-2012	Adopt	1-1-2012	407-045-0440	12-1-2011	Repeal	1-1-2012
334-010-0025	1-1-2012	Amend	1-1-2012	407-045-0450	12-1-2011	Repeal	1-1-2012
334-010-0027	1-1-2012	Adopt	1-1-2012	407-045-0460	12-1-2011	Repeal	1-1-2012
334-010-0033	1-1-2012	Amend	1-1-2012	407-045-0470	12-1-2011	Repeal	1-1-2012
334-010-0046	1-1-2012	Amend	1-1-2012	407-045-0480	12-1-2011	Repeal	1-1-2012
334-010-0050	1-1-2012	Amend	1-1-2012	407-045-0490	12-1-2011	Repeal	1-1-2012
334-020-0015	1-1-2012	Amend	1-1-2012	407-045-0500	12-1-2011	Repeal	1-1-2012
334-030-0001	1-1-2012	Amend	1-1-2012	407-045-0510	12-1-2011	Repeal	1-1-2012
334-030-0005	1-1-2012	Amend	1-1-2012	407-045-0520	12-1-2011	Repeal	1-1-2012
334-040-0001	1-1-2012	Amend	1-1-2012	407-120-0100	12-27-2011	Amend	2-1-2012
334-040-0010	1-1-2012	Amend	1-1-2012	407-120-0100(T)	12-27-2011	Repeal	2-1-2012
337-010-0030	1-12-2012	Amend	2-1-2012	407-120-0112	12-27-2011	Amend	2-1-2012
340-045-0100	11-18-2011	Amend	1-1-2012	407-120-0112(T)	12-27-2011	Repeal	2-1-2012
340-200-0040	12-21-2011	Amend	2-1-2012	407-120-0114	12-27-2011	Amend	2-1-2012
340-204-0010	12-21-2011	Amend	2-1-2012	407-120-0114(T)	12-27-2011	Repeal	2-1-2012
				407-120-0150	12-27-2011	Amend	2-1-2012

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407-120-0200	12-27-2011	Amend	2-1-2012	410-125-0085	1-1-2012	Amend	1-1-2012
407-120-0200(T)	12-27-2011	Repeal	2-1-2012	410-125-0140	1-1-2012	Amend	1-1-2012
409-045-0000	1-11-2012	Adopt(T)	2-1-2012	410-125-0195	1-1-2012	Amend(T)	2-1-2012
409-050-0110	12-1-2011	Amend	1-1-2012	410-125-0220	1-1-2012	Amend	1-1-2012
409-050-0110(T)	12-1-2011	Repeal	1-1-2012	410-125-0450	1-1-2012	Amend(T)	2-1-2012
409-050-0120	12-1-2011	Amend	1-1-2012	410-127-0060	1-1-2012	Amend	1-1-2012
409-050-0120(T)	12-1-2011	Repeal	1-1-2012	410-130-0000	1-1-2012	Amend	2-1-2012
409-050-0130	12-22-2011	Amend	2-1-2012	410-130-0200	1-1-2012	Amend	2-1-2012
409-050-0130(T)	12-22-2011	Repeal	2-1-2012	410-130-0220	1-1-2012	Amend	2-1-2012
410-050-0861	1-1-2012	Amend(T)	2-1-2012	410-130-0255	1-1-2012	Amend	2-1-2012
410-120-0000	1-1-2012	Amend	1-1-2012	410-130-0368	1-1-2012	Amend	2-1-2012
410-120-0006	1-1-2012	Amend	1-1-2012	410-130-0595	1-1-2012	Amend	2-1-2012
410-120-0006	1-13-2012	Amend(T)	2-1-2012	410-130-0595(T)	1-1-2012	Repeal	2-1-2012
410-120-0006	1-26-2012	Amend(T)	3-1-2012	410-131-0040	1-1-2012	Amend	1-1-2012
410-120-0006	1-31-2012	Amend(T)	3-1-2012	410-131-0060	1-1-2012	Repeal	1-1-2012
410-120-0006	2-1-2012	Amend(T)	3-1-2012	410-131-0080	1-1-2012	Amend	1-1-2012
410-120-0006(T)	1-1-2012	Repeal	1-1-2012	410-131-0100	1-1-2012	Amend	1-1-2012
410-120-0006(T)	1-26-2012	Suspend	3-1-2012	410-131-0120	1-1-2012	Amend	1-1-2012
410-120-1160	1-1-2012	Amend	1-1-2012	410-131-0140	1-1-2012	Repeal	1-1-2012
410-120-1200	1-1-2012	Amend	1-1-2012	410-131-0160	1-1-2012	Amend	1-1-2012
410-120-1210	1-1-2012	Amend	1-1-2012	410-131-0180	1-1-2012	Repeal	1-1-2012
410-120-1340	1-1-2012	Amend	1-1-2012	410-131-0200	1-1-2012	Repeal	1-1-2012
410-120-1340(T)	1-1-2012	Repeal	1-1-2012	410-131-0270	1-1-2012	Repeal	1-1-2012
410-120-1510	1-1-2012	Amend	1-1-2012	410-131-0275	1-1-2012	Repeal	1-1-2012
410-120-1860	2-1-2012	Amend(T)	3-1-2012	410-131-0280	1-1-2012	Repeal	1-1-2012
410-120-1920	1-1-2012	Amend	1-1-2012	410-140-0080	12-6-2011	Amend	1-1-2012
410-120-1960	1-1-2012	Amend	1-1-2012	410-140-0260	12-6-2011	Amend	1-1-2012
410-121-0000	1-1-2012	Amend	2-1-2012	410-140-0400	12-6-2011	Amend	1-1-2012
410-121-0030	1-1-2012	Amend	2-1-2012	410-141-0070	11-21-2011	Amend(T)	1-1-2012
410-121-0032	1-1-2012	Amend	2-1-2012	410-141-0080	1-1-2012	Amend(T)	1-1-2012
410-121-0040	1-1-2012	Amend	2-1-2012	410-141-0264	2-7-2012	Amend(T)	3-1-2012
410-121-0061	1-1-2012	Amend	2-1-2012	410-141-0420	1-1-2012	Amend(T)	2-1-2012
410-121-0146	1-1-2012	Amend	2-1-2012	410-141-0520	12-23-2011	Amend	2-1-2012
410-121-0147	1-1-2012	Amend	2-1-2012	410-141-0520	1-1-2012	Amend(T)	2-1-2012
410-121-0160	1-1-2012	Amend	2-1-2012	410-141-0520(T)	12-23-2011	Repeal	2-1-2012
410-121-0160(T)	1-1-2012	Repeal	2-1-2012	410-142-0020	1-1-2012	Amend	1-1-2012
410-121-0185	1-1-2012	Amend	2-1-2012	410-142-0040	1-1-2012	Amend	1-1-2012
410-121-0190	1-1-2012	Amend	2-1-2012	410-148-0060	1-1-2012	Amend	1-1-2012
410-122-0186	1-1-2012	Amend	2-1-2012	410-500-0000	1-31-2012	Adopt(T)	3-1-2012
410-122-0186(T)	1-1-2012	Repeal	2-1-2012	410-500-0010	1-31-2012	Adopt(T)	3-1-2012
410-122-0188	1-1-2012	Adopt	2-1-2012	410-500-0020	1-31-2012	Adopt(T)	3-1-2012
410-122-0520	1-1-2012	Amend	2-1-2012	410-500-0030	1-31-2012	Adopt(T)	3-1-2012
410-122-0630	1-1-2012	Amend	2-1-2012	410-500-0040	1-31-2012	Adopt(T)	3-1-2012
410-122-0630(T)	1-1-2012	Repeal	2-1-2012	410-500-0050	1-31-2012	Adopt(T)	3-1-2012
410-123-1000	1-1-2012	Amend	2-1-2012	410-500-0060	1-31-2012	Adopt(T)	3-1-2012
410-123-1060	1-1-2012	Amend	2-1-2012	411-040-0000	12-20-2011	Amend(T)	2-1-2012
410-123-1060	1-1-2012	Amend	2-1-2012	411-320-0020	1-1-2012	Amend	2-1-2012
410-123-1220	1-1-2012	Amend	2-1-2012	411-320-0080	1-1-2012	Amend	2-1-2012
410-123-1220	1-1-2012	Amend	2-1-2012	411-320-0090	12-28-2011	Amend	2-1-2012
410-123-1260	1-1-2012	Amend	2-1-2012	411-320-0090(T)	12-28-2011	Repeal	2-1-2012
410-123-1260	1-1-2012	Amend	2-1-2012	411-320-0110	12-28-2011	Amend	2-1-2012
410-123-1490	1-1-2012	Amend	2-1-2012	411-320-0110(T)	12-28-2011	Repeal	2-1-2012
410-123-1490	1-1-2012	Amend	2-1-2012	411-320-0175	1-1-2012	Amend(T)	2-1-2012
410-125-0045	1-1-2012	Amend	1-1-2012	411-320-0190	1-1-2012	Amend	2-1-2012
410-125-0047	1-1-2012	Amend	1-1-2012	411-323-0010	1-6-2012	Amend	2-1-2012

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411-323-0020	1-6-2012	Amend	2-1-2012	411-335-0030	1-6-2012	Amend	2-1-2012
411-323-0020(T)	1-6-2012	Repeal	2-1-2012	411-335-0030(T)	1-6-2012	Repeal	2-1-2012
411-323-0030	1-6-2012	Amend	2-1-2012	411-335-0050	1-6-2012	Repeal	2-1-2012
411-323-0030(T)	1-6-2012	Repeal	2-1-2012	411-335-0060	1-6-2012	Amend	2-1-2012
411-323-0035	1-6-2012	Adopt	2-1-2012	411-335-0060(T)	1-6-2012	Repeal	2-1-2012
411-323-0035(T)	1-6-2012	Repeal	2-1-2012	411-335-0070	1-6-2012	Repeal	2-1-2012
411-323-0040	1-6-2012	Amend	2-1-2012	411-335-0080	1-6-2012	Repeal	2-1-2012
411-323-0040(T)	1-6-2012	Repeal	2-1-2012	411-335-0090	1-6-2012	Repeal	2-1-2012
411-323-0050	1-6-2012	Amend	2-1-2012	411-335-0100	1-6-2012	Repeal	2-1-2012
411-323-0050(T)	1-6-2012	Repeal	2-1-2012	411-335-0110	1-6-2012	Repeal	2-1-2012
411-323-0060	1-6-2012	Amend	2-1-2012	411-335-0120	1-6-2012	Amend	2-1-2012
411-323-0060(T)	1-6-2012	Repeal	2-1-2012	411-335-0140	1-6-2012	Repeal	2-1-2012
411-323-0070	1-6-2012	Amend	2-1-2012	411-335-0230	1-6-2012	Amend	2-1-2012
411-323-0070(T)	1-6-2012	Repeal	2-1-2012	411-335-0300	1-6-2012	Repeal	2-1-2012
411-325-0020	1-6-2012	Amend	2-1-2012	411-335-0310	1-6-2012	Amend	2-1-2012
411-325-0020(T)	1-6-2012	Repeal	2-1-2012	411-335-0310(T)	1-6-2012	Repeal	2-1-2012
411-325-0025	1-6-2012	Adopt	2-1-2012	411-335-0370	1-6-2012	Repeal	2-1-2012
411-325-0025(T)	1-6-2012	Repeal	2-1-2012	411-335-0380	1-6-2012	Repeal	2-1-2012
411-325-0060	1-6-2012	Amend	2-1-2012	411-335-0390	1-6-2012	Repeal	2-1-2012
411-325-0060(T)	1-6-2012	Repeal	2-1-2012	411-340-0020	12-28-2011	Amend	2-1-2012
411-325-0080	1-6-2012	Repeal	2-1-2012	411-340-0100	12-28-2011	Amend	2-1-2012
411-325-0100	1-6-2012	Repeal	2-1-2012	411-340-0100(T)	12-28-2011	Repeal	2-1-2012
411-325-0110	1-6-2012	Amend	2-1-2012	411-340-0110	12-28-2011	Amend	2-1-2012
411-325-0150	1-6-2012	Amend	2-1-2012	411-340-0110(T)	12-28-2011	Repeal	2-1-2012
411-325-0160	1-6-2012	Repeal	2-1-2012	411-340-0120	12-28-2011	Amend	2-1-2012
411-325-0210	1-6-2012	Repeal	2-1-2012	411-340-0125	12-28-2011	Adopt	2-1-2012
411-325-0310	1-6-2012	Repeal	2-1-2012	411-340-0130	12-28-2011	Amend	2-1-2012
411-325-0320	1-6-2012	Amend	2-1-2012	411-340-0140	12-28-2011	Amend	2-1-2012
411-325-0320(T)	1-6-2012	Repeal	2-1-2012	411-340-0150	12-28-2011	Amend	2-1-2012
411-325-0430	1-6-2012	Amend	2-1-2012	411-345-0010	1-6-2012	Amend	2-1-2012
411-325-0450	1-6-2012	Repeal	2-1-2012	411-345-0010(T)	1-6-2012	Repeal	2-1-2012
411-325-0460	1-6-2012	Amend	2-1-2012	411-345-0020	1-6-2012	Amend	2-1-2012
411-325-0460(T)	1-6-2012	Repeal	2-1-2012	411-345-0020(T)	1-6-2012	Repeal	2-1-2012
411-328-0560	1-6-2012	Amend	2-1-2012	411-345-0030	1-6-2012	Amend	2-1-2012
411-328-0560(T)	1-6-2012	Repeal	2-1-2012	411-345-0030(T)	1-6-2012	Repeal	2-1-2012
411-328-0570	1-6-2012	Amend	2-1-2012	411-345-0050	1-6-2012	Amend	2-1-2012
411-328-0570(T)	1-6-2012	Repeal	2-1-2012	411-345-0050(T)	1-6-2012	Repeal	2-1-2012
411-328-0580	1-6-2012	Repeal	2-1-2012	411-345-0080	1-6-2012	Repeal	2-1-2012
411-328-0590	1-6-2012	Repeal	2-1-2012	411-345-0090	1-6-2012	Amend	2-1-2012
411-328-0600	1-6-2012	Repeal	2-1-2012	411-345-0100	1-6-2012	Amend	2-1-2012
411-328-0610	1-6-2012	Repeal	2-1-2012	411-345-0100(T)	1-6-2012	Repeal	2-1-2012
411-328-0620	1-6-2012	Amend	2-1-2012	411-345-0110	1-6-2012	Amend	2-1-2012
411-328-0630	1-6-2012	Amend	2-1-2012	411-345-0110(T)	1-6-2012	Repeal	2-1-2012
411-328-0630(T)	1-6-2012	Repeal	2-1-2012	411-345-0130	1-6-2012	Amend	2-1-2012
411-328-0670	1-6-2012	Repeal	2-1-2012	411-345-0130(T)	1-6-2012	Repeal	2-1-2012
411-328-0730	1-6-2012	Repeal	2-1-2012	411-345-0190	1-6-2012	Amend	2-1-2012
411-328-0740	1-6-2012	Amend	2-1-2012	411-345-0190(T)	1-6-2012	Repeal	2-1-2012
411-328-0740(T)	1-6-2012	Repeal	2-1-2012	411-360-0130	12-1-2011	Amend(T)	1-1-2012
411-328-0805	1-6-2012	Repeal	2-1-2012	411-360-0170	12-1-2011	Amend(T)	1-1-2012
411-328-0810	1-6-2012	Repeal	2-1-2012	411-360-0170	12-30-2011	Amend(T)	2-1-2012
411-328-0820	1-6-2012	Repeal	2-1-2012	411-360-0170(T)	12-30-2011	Suspend	2-1-2012
411-328-0830	1-6-2012	Repeal	2-1-2012	411-360-0190	12-1-2011	Amend(T)	1-1-2012
411-335-0010	1-6-2012	Amend	2-1-2012	411-360-0190	12-30-2011	Amend(T)	2-1-2012
411-335-0010(T)	1-6-2012	Repeal	2-1-2012	411-360-0190(T)	12-30-2011	Suspend	2-1-2012
411-335-0020	1-6-2012	Amend	2-1-2012	413-020-0200	12-28-2011	Amend	2-1-2012

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413-020-0230	12-28-2011	Amend	2-1-2012	413-200-0270	12-28-2011	Amend	2-1-2012
413-020-0233	12-28-2011	Amend	2-1-2012	413-200-0272	12-28-2011	Amend	2-1-2012
413-020-0236	12-28-2011	Amend	2-1-2012	413-200-0274	12-28-2011	Amend	2-1-2012
413-020-0240	12-28-2011	Amend	2-1-2012	413-200-0276	12-28-2011	Amend	2-1-2012
413-020-0245	12-28-2011	Amend	2-1-2012	413-200-0278	12-28-2011	Amend	2-1-2012
413-020-0255	12-28-2011	Amend	2-1-2012	413-200-0281	12-28-2011	Amend	2-1-2012
413-070-0063	12-28-2011	Amend	2-1-2012	413-200-0283	12-28-2011	Amend	2-1-2012
413-070-0900	12-28-2011	Amend	2-1-2012	413-200-0285	12-28-2011	Amend	2-1-2012
413-070-0905	12-28-2011	Amend	2-1-2012	413-200-0287	12-28-2011	Amend	2-1-2012
413-070-0909	12-28-2011	Amend	2-1-2012	413-200-0289	12-28-2011	Amend	2-1-2012
413-070-0917	12-28-2011	Amend	2-1-2012	413-200-0292	12-28-2011	Amend	2-1-2012
413-070-0919	12-28-2011	Amend	2-1-2012	413-200-0294	12-28-2011	Amend	2-1-2012
413-070-0925	12-28-2011	Amend	2-1-2012	413-200-0296	12-28-2011	Amend	2-1-2012
413-070-0929	12-28-2011	Repeal	2-1-2012	413-200-0301	12-28-2011	Amend	2-1-2012
413-070-0934	12-28-2011	Amend	2-1-2012	413-200-0305	12-28-2011	Amend	2-1-2012
413-070-0939	12-28-2011	Amend	2-1-2012	413-200-0306	12-28-2011	Amend	2-1-2012
413-070-0944	12-28-2011	Amend	2-1-2012	413-200-0308	12-28-2011	Amend	2-1-2012
413-070-0949	12-28-2011	Amend	2-1-2012	413-200-0314	12-28-2011	Amend	2-1-2012
413-070-0959	12-28-2011	Amend	2-1-2012	413-200-0335	12-28-2011	Amend	2-1-2012
413-070-0964	12-28-2011	Amend	2-1-2012	413-200-0348	12-28-2011	Amend	2-1-2012
413-070-0969	12-28-2011	Amend	2-1-2012	413-200-0352	12-28-2011	Amend	2-1-2012
413-070-0970	12-28-2011	Amend	2-1-2012	413-200-0354	12-28-2011	Amend	2-1-2012
413-070-0974	12-28-2011	Amend	2-1-2012	413-200-0358	12-28-2011	Amend	2-1-2012
413-070-0979	12-28-2011	Repeal	2-1-2012	413-200-0362	12-28-2011	Amend	2-1-2012
413-100-0135	12-28-2011	Amend	2-1-2012	413-200-0371	12-28-2011	Amend	2-1-2012
413-100-0150	12-28-2011	Amend	2-1-2012	413-200-0377	12-28-2011	Amend	2-1-2012
413-100-0900	12-28-2011	Amend	2-1-2012	413-200-0379	12-28-2011	Amend	2-1-2012
413-100-0905	12-28-2011	Amend	2-1-2012	413-200-0383	12-28-2011	Amend	2-1-2012
413-100-0910	12-28-2011	Amend	2-1-2012	413-200-0386	12-28-2011	Amend	2-1-2012
413-100-0915	12-28-2011	Amend	2-1-2012	413-200-0388	12-28-2011	Amend	2-1-2012
413-100-0920	12-28-2011	Amend	2-1-2012	413-200-0390	12-28-2011	Amend	2-1-2012
413-100-0925	12-28-2011	Amend	2-1-2012	413-200-0393	12-28-2011	Amend	2-1-2012
413-100-0930	12-28-2011	Amend	2-1-2012	413-200-0394	12-28-2011	Amend	2-1-2012
413-100-0940	12-28-2011	Amend	2-1-2012	413-200-0395	12-28-2011	Amend	2-1-2012
413-120-0420	12-28-2011	Amend(T)	2-1-2012	413-200-0396	12-28-2011	Amend	2-1-2012
413-120-0460	12-28-2011	Amend(T)	2-1-2012	413-200-0404	1-3-2012	Amend	2-1-2012
413-120-0470	12-28-2011	Suspend	2-1-2012	413-200-0404(T)	1-3-2012	Repeal	2-1-2012
413-130-0000	12-28-2011	Amend	2-1-2012	413-200-0409	1-3-2012	Amend	2-1-2012
413-130-0010	12-28-2011	Amend	2-1-2012	413-200-0409(T)	1-3-2012	Repeal	2-1-2012
413-130-0015	12-28-2011	Adopt	2-1-2012	413-200-0414	1-3-2012	Amend	2-1-2012
413-130-0020	12-28-2011	Amend	2-1-2012	413-200-0414(T)	1-3-2012	Repeal	2-1-2012
413-130-0030	12-28-2011	Am. & Ren.	2-1-2012	413-200-0419	1-3-2012	Amend	2-1-2012
413-130-0040	12-28-2011	Amend	2-1-2012	413-200-0419(T)	1-3-2012	Repeal	2-1-2012
413-130-0045	12-28-2011	Repeal	2-1-2012	413-200-0424	1-3-2012	Amend	2-1-2012
413-130-0050	12-28-2011	Amend	2-1-2012	413-200-0424(T)	1-3-2012	Repeal	2-1-2012
413-130-0055	12-28-2011	Adopt	2-1-2012	415-056-0000	2-9-2012	Repeal	3-1-2012
413-130-0060	12-28-2011	Repeal	2-1-2012	415-056-0005	2-9-2012	Repeal	3-1-2012
413-130-0070	12-28-2011	Amend	2-1-2012	415-056-0010	2-9-2012	Repeal	3-1-2012
413-130-0075	12-28-2011	Amend	2-1-2012	415-056-0015	2-9-2012	Repeal	3-1-2012
413-130-0080	12-28-2011	Amend	2-1-2012	415-056-0020	2-9-2012	Repeal	3-1-2012
413-130-0090	12-28-2011	Amend	2-1-2012	415-056-0025	2-9-2012	Repeal	3-1-2012
413-130-0100	12-28-2011	Amend	2-1-2012	415-056-0030	2-9-2012	Adopt	3-1-2012
413-130-0110	12-28-2011	Amend	2-1-2012	415-056-0035	2-9-2012	Adopt	3-1-2012
413-130-0115	12-28-2011	Repeal	2-1-2012	415-056-0040	2-9-2012	Adopt	3-1-2012
413-130-0125	12-28-2011	Amend	2-1-2012	415-056-0045	2-9-2012	Adopt	3-1-2012

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415-065-0010	2-9-2012	Amend	3-1-2012	437-002-0120	12-8-2011	Amend	1-1-2012
415-065-0015	2-9-2012	Amend	3-1-2012	437-002-0123	12-8-2011	Repeal	1-1-2012
415-065-0025	2-9-2012	Amend	3-1-2012	437-002-0125	12-8-2011	Repeal	1-1-2012
415-065-0030	2-9-2012	Amend	3-1-2012	437-002-0127	12-8-2011	Repeal	1-1-2012
415-065-0035	2-9-2012	Amend	3-1-2012	437-002-0128	12-8-2011	Repeal	1-1-2012
415-065-0040	2-9-2012	Amend	3-1-2012	437-002-0130	12-8-2011	Repeal	1-1-2012
415-065-0045	2-9-2012	Amend	3-1-2012	437-002-0134	12-8-2011	Adopt	1-1-2012
415-065-0050	2-9-2012	Amend	3-1-2012	437-002-0135	12-8-2011	Repeal	1-1-2012
415-065-0055	2-9-2012	Amend	3-1-2012	437-002-0136	12-8-2011	Repeal	1-1-2012
415-065-0060	2-9-2012	Amend	3-1-2012	437-002-0137	12-8-2011	Repeal	1-1-2012
415-065-0065	2-9-2012	Amend	3-1-2012	437-002-0140	12-8-2011	Amend	1-1-2012
416-115-0000	12-14-2011	Repeal	1-1-2012	437-002-0220	12-8-2011	Amend	1-1-2012
416-115-0010	12-14-2011	Amend	1-1-2012	437-002-0340	12-8-2011	Amend	1-1-2012
416-115-0020	12-14-2011	Amend	1-1-2012	437-002-0360	12-8-2011	Amend	1-1-2012
416-115-0025	12-14-2011	Adopt	1-1-2012	437-002-0360	7-1-2012	Amend	1-1-2012
416-115-0030	12-14-2011	Amend	1-1-2012	437-002-0364	12-8-2011	Amend	1-1-2012
416-115-0040	12-14-2011	Repeal	1-1-2012	437-002-1001	7-1-2012	Adopt	1-1-2012
416-115-0050	12-14-2011	Repeal	1-1-2012	437-002-1017	7-1-2012	Adopt	1-1-2012
416-115-0060	12-14-2011	Repeal	1-1-2012	437-002-1018	7-1-2012	Adopt	1-1-2012
416-115-0070	12-14-2011	Repeal	1-1-2012	437-002-1025	7-1-2012	Adopt	1-1-2012
416-115-0080	12-14-2011	Repeal	1-1-2012	437-002-1027	7-1-2012	Adopt	1-1-2012
416-115-0090	12-14-2011	Repeal	1-1-2012	437-002-1028	7-1-2012	Adopt	1-1-2012
416-115-0100	12-14-2011	Repeal	1-1-2012	437-002-1029	7-1-2012	Adopt	1-1-2012
416-115-0110	12-14-2011	Repeal	1-1-2012	437-002-1043	7-1-2012	Adopt	1-1-2012
416-115-0120	12-14-2011	Repeal	1-1-2012	437-002-1044	7-1-2012	Adopt	1-1-2012
416-115-0130	12-14-2011	Repeal	1-1-2012	437-002-1045	7-1-2012	Adopt	1-1-2012
416-115-0140	12-14-2011	Repeal	1-1-2012	437-002-1047	7-1-2012	Adopt	1-1-2012
416-115-0150	12-14-2011	Repeal	1-1-2012	437-002-1048	7-1-2012	Adopt	1-1-2012
416-115-0160	12-14-2011	Repeal	1-1-2012	437-002-1050	7-1-2012	Adopt	1-1-2012
416-115-0170	12-14-2011	Repeal	1-1-2012	437-002-1051	7-1-2012	Adopt	1-1-2012
416-115-0180	12-14-2011	Repeal	1-1-2012	437-002-1052	7-1-2012	Adopt	1-1-2012
416-115-0190	12-14-2011	Repeal	1-1-2012	437-003-0001	12-8-2011	Amend	1-1-2012
416-115-0200	12-14-2011	Repeal	1-1-2012	437-003-0001	7-1-2012	Amend	1-1-2012
416-115-0210	12-14-2011	Repeal	1-1-2012	437-003-0015	12-8-2011	Amend	1-1-2012
416-115-0220	12-14-2011	Repeal	1-1-2012	437-003-0062	7-1-2012	Adopt	1-1-2012
416-115-0230	12-14-2011	Repeal	1-1-2012	437-003-0096	12-8-2011	Amend	1-1-2012
416-115-0240	12-14-2011	Repeal	1-1-2012	437-003-1101	7-1-2012	Adopt	1-1-2012
416-115-0250	12-14-2011	Repeal	1-1-2012	437-003-1127	7-1-2012	Adopt	1-1-2012
416-115-0260	12-14-2011	Repeal	1-1-2012	437-003-3060	7-1-2012	Adopt	1-1-2012
416-115-0270	12-14-2011	Repeal	1-1-2012	437-004-1110	12-8-2011	Amend	1-1-2012
416-115-0280	12-14-2011	Repeal	1-1-2012	437-005-0001	12-8-2011	Amend	1-1-2012
416-170-0000	2-3-2012	Amend	3-1-2012	437-005-0002	12-8-2011	Amend	1-1-2012
416-170-0005	2-3-2012	Amend	3-1-2012	437-005-0003	12-8-2011	Amend	1-1-2012
416-170-0010	2-3-2012	Amend	3-1-2012	441-505-3046	12-15-2011	Amend(T)	1-1-2012
416-170-0020	2-3-2012	Amend	3-1-2012	441-674-0005	1-1-2012	Repeal	2-1-2012
416-170-0030	2-3-2012	Amend	3-1-2012	441-674-0100	1-1-2012	Repeal	2-1-2012
436-009-0080	1-1-2012	Amend	1-1-2012	441-674-0120	1-1-2012	Repeal	2-1-2012
436-010-0210	1-1-2012	Amend	1-1-2012	441-674-0130	1-1-2012	Repeal	2-1-2012
436-010-0230	1-1-2012	Amend	1-1-2012	441-674-0140	1-1-2012	Repeal	2-1-2012
436-010-0280	1-1-2012	Amend	1-1-2012	441-674-0210	1-1-2012	Repeal	2-1-2012
436-015-0008	1-1-2012	Amend	1-1-2012	441-674-0220	1-1-2012	Repeal	2-1-2012
436-030-0003	1-1-2012	Amend	1-1-2012	441-674-0230	1-1-2012	Repeal	2-1-2012
436-030-0036	1-1-2012	Amend	1-1-2012	441-674-0240	1-1-2012	Repeal	2-1-2012
436-030-0145	1-1-2012	Amend	1-1-2012	441-674-0250	1-1-2012	Repeal	2-1-2012
436-030-0165	1-1-2012	Amend	1-1-2012	441-674-0310	1-1-2012	Repeal	2-1-2012

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441-674-0520	1-1-2012	Repeal	2-1-2012	459-005-0620	11-22-2011	Adopt(T)	1-1-2012
441-674-0910	1-1-2012	Repeal	2-1-2012	459-005-0620	2-1-2012	Adopt	3-1-2012
441-674-0915	1-1-2012	Repeal	2-1-2012	459-010-0005	11-23-2011	Repeal	1-1-2012
441-674-0920	1-1-2012	Repeal	2-1-2012	459-014-0030	2-1-2012	Amend	3-1-2012
441-710-0540	12-15-2011	Amend(T)	1-1-2012	459-014-0040	2-1-2012	Adopt	3-1-2012
441-730-0246	12-15-2011	Amend(T)	1-1-2012	459-014-0050	2-1-2012	Adopt	3-1-2012
441-830-0010	11-23-2011	Repeal	1-1-2012	459-015-0005	11-23-2011	Amend	1-1-2012
441-830-0015	11-23-2011	Repeal	1-1-2012	459-060-0020	11-23-2011	Amend	1-1-2012
441-830-0020	11-23-2011	Repeal	1-1-2012	459-075-0060	2-1-2012	Amend	3-1-2012
441-830-0030	11-23-2011	Repeal	1-1-2012	459-076-0005	11-23-2011	Amend	1-1-2012
441-830-0040	11-23-2011	Repeal	1-1-2012	459-080-0010	2-1-2012	Amend	3-1-2012
441-850-0042	12-15-2011	Amend(T)	1-1-2012	461-001-0025	12-29-2011	Amend	2-1-2012
441-880-0005	11-23-2011	Adopt	1-1-2012	461-025-0300	1-31-2012	Amend(T)	3-1-2012
441-880-0006	11-23-2011	Adopt	1-1-2012	461-025-0310	1-31-2012	Amend(T)	3-1-2012
441-880-0007	11-23-2011	Adopt	1-1-2012	461-115-0016	1-1-2012	Adopt	2-1-2012
441-880-0008	11-23-2011	Adopt	1-1-2012	461-115-0016(T)	1-1-2012	Repeal	2-1-2012
441-910-0000	1-1-2012	Amend	1-1-2012	461-115-0030	1-1-2012	Amend	2-1-2012
441-910-0092	1-1-2012	Repeal	1-1-2012	461-115-0030(T)	1-1-2012	Repeal	2-1-2012
442-005-0020	1-13-2012	Amend	2-1-2012	461-115-0050	1-1-2012	Amend	2-1-2012
442-005-0030	1-13-2012	Amend	2-1-2012	461-115-0050(T)	1-1-2012	Repeal	2-1-2012
442-005-0050	1-13-2012	Amend	2-1-2012	461-115-0230	1-1-2012	Amend	2-1-2012
442-005-0070	1-13-2012	Amend	2-1-2012	461-115-0230(T)	1-1-2012	Repeal	2-1-2012
442-010-0020	12-22-2011	Amend	2-1-2012	461-115-0690	1-1-2012	Amend	2-1-2012
442-010-0020(T)	12-22-2011	Repeal	2-1-2012	461-115-0690(T)	1-1-2012	Repeal	2-1-2012
442-010-0030	12-22-2011	Amend	2-1-2012	461-115-0705	1-1-2012	Amend(T)	2-1-2012
442-010-0040	12-22-2011	Amend	2-1-2012	461-130-0327	12-29-2011	Amend	2-1-2012
442-010-0055	12-22-2011	Amend	2-1-2012	461-130-0330	1-1-2012	Amend	2-1-2012
442-010-0060	12-22-2011	Amend	2-1-2012	461-130-0330(T)	1-1-2012	Repeal	2-1-2012
442-010-0060(T)	12-22-2011	Repeal	2-1-2012	461-130-0335	1-1-2012	Amend	2-1-2012
442-010-0065	12-22-2011	Repeal	2-1-2012	461-130-0335(T)	1-1-2012	Repeal	2-1-2012
442-010-0070	12-22-2011	Amend	2-1-2012	461-135-0010	1-13-2012	Amend(T)	2-1-2012
442-010-0075	12-22-2011	Amend	2-1-2012	461-135-0089	1-1-2012	Amend	2-1-2012
442-010-0075(T)	12-22-2011	Repeal	2-1-2012	461-135-0089(T)	1-1-2012	Repeal	2-1-2012
442-010-0080	12-22-2011	Amend	2-1-2012	461-135-0475	12-29-2011	Amend	2-1-2012
442-010-0085	12-22-2011	Amend	2-1-2012	461-135-0485	1-1-2012	Adopt	2-1-2012
442-010-0090	12-22-2011	Amend	2-1-2012	461-135-0485(T)	1-1-2012	Repeal	2-1-2012
442-010-0100	12-22-2011	Amend	2-1-2012	461-135-0780	1-1-2012	Amend	2-1-2012
442-010-0110	12-22-2011	Amend	2-1-2012	461-135-0832	1-1-2012	Amend	2-1-2012
442-010-0120	12-22-2011	Amend	2-1-2012	461-135-0845	1-1-2012	Amend	2-1-2012
442-010-0160	12-22-2011	Amend	2-1-2012	461-135-0950	1-1-2012	Amend	2-1-2012
442-010-0170	12-22-2011	Amend	2-1-2012	461-135-0950(T)	1-1-2012	Repeal	2-1-2012
442-010-0180	12-22-2011	Amend	2-1-2012	461-135-0960	1-1-2012	Repeal	2-1-2012
442-010-0190	12-22-2011	Amend	2-1-2012	461-135-0990	1-1-2012	Amend	2-1-2012
442-010-0200	12-22-2011	Repeal	2-1-2012	461-135-1100	1-1-2012	Amend(T)	2-1-2012
442-010-0210	12-22-2011	Amend	2-1-2012	461-135-1110	1-1-2012	Suspend	2-1-2012
442-010-0215	12-22-2011	Amend	2-1-2012	461-135-1195	1-1-2012	Amend	2-1-2012
442-010-0220	12-22-2011	Amend	2-1-2012	461-135-1195(T)	1-1-2012	Repeal	2-1-2012
442-010-0230	12-22-2011	Amend	2-1-2012	461-145-0130	1-1-2012	Amend	2-1-2012
442-010-0240	12-22-2011	Amend	2-1-2012	461-145-0220	1-1-2012	Amend	2-1-2012
442-010-0250	12-22-2011	Repeal	2-1-2012	461-145-0410	1-1-2012	Amend	2-1-2012
442-010-0260	12-22-2011	Amend	2-1-2012	461-145-0410	1-1-2012	Amend(T)	2-1-2012
443-002-0070	2-6-2012	Amend	3-1-2012	461-145-0410(T)	1-1-2012	Repeal	2-1-2012
443-002-0190	2-6-2012	Amend	3-1-2012	461-155-0030	1-26-2012	Amend(T)	3-1-2012
459-005-0001	2-1-2012	Amend	3-1-2012	461-155-0150	1-1-2012	Amend	2-1-2012
459-005-0525	2-1-2012	Amend	3-1-2012	461-155-0180	1-25-2012	Amend	3-1-2012

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461-155-0250	1-1-2012	Amend	2-1-2012	581-020-0343(T)	12-15-2011	Repeal	1-1-2012
461-155-0250	2-1-2012	Amend(T)	3-1-2012	581-021-00032	1-1-2012	Repeal	1-1-2012
461-155-0270	1-1-2012	Amend	2-1-2012	581-021-0019	2-3-2012	Amend	3-1-2012
461-155-0300	1-1-2012	Amend	2-1-2012	581-021-0034	1-1-2012	Repeal	1-1-2012
461-155-0320	1-1-2012	Amend	2-1-2012	581-021-0035	1-1-2012	Repeal	1-1-2012
461-155-0320(T)	1-1-2012	Repeal	2-1-2012	581-021-0042	1-1-2012	Repeal	1-1-2012
461-155-0360	1-1-2012	Amend	2-1-2012	581-021-0044	1-1-2012	Repeal	1-1-2012
461-155-0528	1-1-2012	Repeal	2-1-2012	581-021-0255	1-1-2012	Amend	1-1-2012
461-155-0575	12-1-2011	Amend(T)	1-1-2012	581-021-0500	2-3-2012	Amend	3-1-2012
461-155-0575(T)	12-1-2011	Suspend	1-1-2012	581-022-1060	1-1-2012	Amend	1-1-2012
461-155-0693	1-1-2012	Repeal	2-1-2012	581-022-1133	2-3-2012	Amend	3-1-2012
461-160-0015	1-1-2012	Amend	2-1-2012	581-022-1134	2-3-2012	Amend	3-1-2012
461-160-0015(T)	1-1-2012	Repeal	2-1-2012	581-022-1135	2-3-2012	Amend	3-1-2012
461-160-0580	1-1-2012	Amend	2-1-2012	581-022-1330	12-15-2011	Amend	1-1-2012
461-160-0620	1-1-2012	Amend	2-1-2012	581-022-1369	1-1-2012	Repeal	1-1-2012
461-175-0210	1-1-2012	Amend(T)	2-1-2012	581-022-1680	1-1-2012	Repeal	1-1-2012
461-175-0290	1-1-2012	Amend	2-1-2012	581-022-1720	12-15-2011	Amend	1-1-2012
461-180-0050	1-1-2012	Amend	2-1-2012	581-022-1723	12-15-2011	Adopt	1-1-2012
461-180-0050(T)	1-1-2012	Repeal	2-1-2012	581-022-1724	12-15-2011	Adopt	1-1-2012
461-180-0070	1-1-2012	Amend	2-1-2012	581-022-1725	12-15-2011	Adopt	1-1-2012
461-180-0070(T)	1-1-2012	Repeal	2-1-2012	581-023-0012	1-1-2012	Repeal	1-1-2012
461-180-0085	1-1-2012	Amend	2-1-2012	581-023-0040	12-15-2011	Amend	1-1-2012
461-180-0130	12-27-2011	Amend	2-1-2012	581-023-0110	1-1-2012	Repeal	1-1-2012
461-180-0130	12-27-2011	Amend(T)	2-1-2012	581-023-0112	1-1-2012	Amend	1-1-2012
471-030-0053	12-5-2011	Amend	1-1-2012	581-040-0000	12-15-2011	Repeal	1-1-2012
471-030-0053(T)	12-5-2011	Repeal	1-1-2012	581-044-0080	12-15-2011	Repeal	1-1-2012
471-030-0230	1-1-2012	Adopt(T)	2-1-2012	581-044-0090	12-15-2011	Repeal	1-1-2012
471-040-0010	2-10-2012	Amend	3-1-2012	581-044-0100	12-15-2011	Repeal	1-1-2012
471-040-0010(T)	2-10-2012	Repeal	3-1-2012	581-044-0110	12-15-2011	Repeal	1-1-2012
471-040-0040	2-10-2012	Amend	3-1-2012	581-044-0120	12-15-2011	Repeal	1-1-2012
471-040-0040(T)	2-10-2012	Repeal	3-1-2012	581-044-0130	12-15-2011	Repeal	1-1-2012
471-040-0041	2-10-2012	Amend	3-1-2012	581-044-0140	12-15-2011	Repeal	1-1-2012
471-040-0041(T)	2-10-2012	Repeal	3-1-2012	581-044-0200	12-15-2011	Repeal	1-1-2012
574-050-0005	1-27-2012	Amend	3-1-2012	581-045-0500	2-3-2012	Repeal	3-1-2012
576-001-0060	12-27-2011	Adopt	2-1-2012	581-045-0505	2-3-2012	Repeal	3-1-2012
576-010-0000	12-27-2011	Amend	2-1-2012	581-045-0510	2-3-2012	Repeal	3-1-2012
576-040-0010	12-27-2011	Amend	2-1-2012	581-045-0515	2-3-2012	Repeal	3-1-2012
576-040-0012	12-27-2011	Amend	2-1-2012	581-045-0520	2-3-2012	Repeal	3-1-2012
576-040-0015	12-27-2011	Amend	2-1-2012	581-045-0522	2-3-2012	Repeal	3-1-2012
576-040-0025	12-27-2011	Repeal	2-1-2012	581-045-0525	2-3-2012	Repeal	3-1-2012
576-040-0030	12-27-2011	Repeal	2-1-2012	581-045-0530	2-3-2012	Repeal	3-1-2012
576-040-0035	12-27-2011	Repeal	2-1-2012	581-045-0535	2-3-2012	Repeal	3-1-2012
579-020-0006	12-1-2011	Amend(T)	1-1-2012	581-045-0538	2-3-2012	Repeal	3-1-2012
580-020-0005	1-12-2012	Amend	2-1-2012	581-045-0540	2-3-2012	Repeal	3-1-2012
580-040-0035	1-12-2012	Amend	2-1-2012	581-045-0545	2-3-2012	Repeal	3-1-2012
581-015-2570	12-15-2011	Amend	1-1-2012	581-045-0550	2-3-2012	Repeal	3-1-2012
581-015-2571	12-15-2011	Amend	1-1-2012	581-045-0555	2-3-2012	Repeal	3-1-2012
581-015-2572	12-15-2011	Amend	1-1-2012	581-045-0560	2-3-2012	Repeal	3-1-2012
581-015-2573	12-15-2011	Amend	1-1-2012	581-045-0565	2-3-2012	Repeal	3-1-2012
581-015-2574	12-15-2011	Amend	1-1-2012	581-045-0570	2-3-2012	Repeal	3-1-2012
581-020-0334	12-15-2011	Amend	1-1-2012	581-045-0580	2-3-2012	Repeal	3-1-2012
581-020-0336	1-1-2012	Amend	1-1-2012	581-045-0586	2-3-2012	Amend	3-1-2012
581-020-0339	12-15-2011	Repeal	1-1-2012	581-060-0005	12-15-2011	Repeal	1-1-2012
581-020-0342	12-15-2011	Adopt	1-1-2012	581-060-0010	12-15-2011	Repeal	1-1-2012
581-020-0342(T)	12-15-2011	Repeal	1-1-2012	581-060-0015	12-15-2011	Repeal	1-1-2012

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581-070-0000	12-15-2011	Repeal	1-1-2012	603-019-0025	12-28-2011	Adopt	2-1-2012
581-070-0010	12-15-2011	Repeal	1-1-2012	603-019-0030	12-28-2011	Adopt	2-1-2012
581-070-0020	12-15-2011	Repeal	1-1-2012	603-019-0035	12-28-2011	Adopt	2-1-2012
581-070-0030	12-15-2011	Repeal	1-1-2012	603-019-0040	12-28-2011	Adopt	2-1-2012
581-070-0040	12-15-2011	Repeal	1-1-2012	603-027-0410	12-14-2011	Amend	1-1-2012
581-070-0050	12-15-2011	Repeal	1-1-2012	603-027-0420	12-14-2011	Amend	1-1-2012
581-070-0060	12-15-2011	Repeal	1-1-2012	603-027-0430	12-14-2011	Amend	1-1-2012
581-070-0070	12-15-2011	Repeal	1-1-2012	603-027-0440	12-14-2011	Amend	1-1-2012
581-070-0080	12-15-2011	Repeal	1-1-2012	603-027-0490	12-14-2011	Amend	1-1-2012
581-070-0090	12-15-2011	Repeal	1-1-2012	603-051-0365	2-9-2012	Amend	3-1-2012
581-070-0110	12-15-2011	Repeal	1-1-2012	603-051-0366	2-9-2012	Adopt	3-1-2012
581-070-0130	12-15-2011	Repeal	1-1-2012	603-051-0370	2-9-2012	Amend	3-1-2012
581-070-0140	12-15-2011	Repeal	1-1-2012	603-051-0375	2-9-2012	Amend	3-1-2012
581-070-0150	12-15-2011	Repeal	1-1-2012	603-051-0380	2-9-2012	Repeal	3-1-2012
581-070-0170	12-15-2011	Repeal	1-1-2012	603-051-0385	2-9-2012	Repeal	3-1-2012
581-070-0180	12-15-2011	Repeal	1-1-2012	603-051-0390	2-9-2012	Amend	3-1-2012
581-070-0190	12-15-2011	Repeal	1-1-2012	603-051-0395	2-9-2012	Amend	3-1-2012
581-070-0200	12-15-2011	Repeal	1-1-2012	603-051-0775	2-1-2012	Adopt	3-1-2012
581-070-0210	12-15-2011	Repeal	1-1-2012	603-051-0777	2-1-2012	Adopt	3-1-2012
581-070-0220	12-15-2011	Repeal	1-1-2012	603-051-0779	2-1-2012	Adopt	3-1-2012
581-070-0230	12-15-2011	Repeal	1-1-2012	603-051-0780	2-1-2012	Adopt	3-1-2012
581-070-0240	12-15-2011	Repeal	1-1-2012	603-051-0785	2-1-2012	Adopt	3-1-2012
581-070-0250	12-15-2011	Repeal	1-1-2012	603-057-0001	1-1-2013	Amend	2-1-2012
581-070-0380	12-15-2011	Repeal	1-1-2012	603-057-0100	1-1-2013	Amend	2-1-2012
581-070-0390	12-15-2011	Repeal	1-1-2012	603-057-0127	1-1-2013	Amend	2-1-2012
581-070-0400	12-15-2011	Repeal	1-1-2012	603-076-0052	12-8-2011	Amend(T)	1-1-2012
581-070-0410	12-15-2011	Repeal	1-1-2012	603-095-0200	1-12-2012	Repeal	2-1-2012
581-070-0420	12-15-2011	Repeal	1-1-2012	603-095-0220	1-12-2012	Repeal	2-1-2012
581-070-0500	12-15-2011	Repeal	1-1-2012	603-095-0240	1-12-2012	Repeal	2-1-2012
581-070-0510	12-15-2011	Repeal	1-1-2012	603-095-0260	1-12-2012	Repeal	2-1-2012
581-071-0005	12-15-2011	Repeal	1-1-2012	603-095-0280	1-12-2012	Repeal	2-1-2012
581-071-0010	12-15-2011	Repeal	1-1-2012	603-095-1400	1-12-2012	Amend	2-1-2012
584-036-0055	2-15-2012	Amend	3-1-2012	603-095-1420	1-12-2012	Amend	2-1-2012
584-042-0008	2-15-2012	Amend	3-1-2012	603-095-1440	1-12-2012	Amend	2-1-2012
584-042-0012	2-15-2012	Amend	3-1-2012	603-095-1460	1-12-2012	Adopt	2-1-2012
584-042-0021	2-15-2012	Amend	3-1-2012	629-035-0105	1-1-2012	Amend	1-1-2012
584-042-0031	2-15-2012	Amend	3-1-2012	632-001-0020	12-14-2011	Adopt	1-1-2012
584-042-0036	2-15-2012	Amend	3-1-2012	635-004-0018	1-1-2012	Amend	2-1-2012
584-042-0044	2-15-2012	Amend	3-1-2012	635-004-0019	1-1-2012	Amend	2-1-2012
584-042-0051	2-15-2012	Amend	3-1-2012	635-004-0027	1-9-2012	Amend(T)	2-1-2012
584-042-0081	2-15-2012	Amend	3-1-2012	635-004-0033	1-1-2012	Amend	2-1-2012
584-060-0051	2-15-2012	Amend(T)	3-1-2012	635-005-0045	12-1-2011	Amend(T)	1-1-2012
584-060-0250	1-15-2012	Adopt	1-1-2012	635-005-0045	12-15-2011	Amend(T)	1-1-2012
589-007-0700	12-9-2011	Amend	1-1-2012	635-005-0045(T)	12-15-2011	Suspend	1-1-2012
589-007-0800	12-9-2011	Adopt	1-1-2012	635-005-0055	12-1-2011	Amend(T)	1-1-2012
603-018-0001	12-28-2011	Adopt(T)	2-1-2012	635-006-0210	1-1-2012	Amend	2-1-2012
603-018-0003	12-28-2011	Adopt(T)	2-1-2012	635-006-0211	1-1-2012	Amend	2-1-2012
603-018-0007	12-28-2011	Adopt(T)	2-1-2012	635-006-0215	1-1-2012	Amend	2-1-2012
603-018-0009	12-28-2011	Adopt(T)	2-1-2012	635-006-0232	1-1-2012	Amend(T)	2-1-2012
603-018-0011	12-28-2011	Adopt(T)	2-1-2012	635-006-0232	2-7-2012	Amend	3-1-2012
603-018-0013	12-28-2011	Adopt(T)	2-1-2012	635-006-0232(T)	2-7-2012	Repeal	3-1-2012
603-019-0001	12-28-2011	Adopt	2-1-2012	635-006-1010	12-1-2011	Amend(T)	1-1-2012
603-019-0005	12-28-2011	Adopt	2-1-2012	635-006-1015	12-1-2011	Amend(T)	1-1-2012
603-019-0010	12-28-2011	Adopt	2-1-2012	635-006-1065	12-1-2011	Amend(T)	1-1-2012
603-019-0015	12-28-2011	Adopt	2-1-2012	635-008-0123	1-1-2012	Amend	1-1-2012

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635-008-0151	2-6-2012	Amend(T)	3-1-2012	635-065-0015	1-1-2012	Amend	1-1-2012
635-008-0155	1-1-2012	Amend	1-1-2012	635-065-0090	1-1-2012	Amend	1-1-2012
635-010-0170	2-6-2012	Amend(T)	3-1-2012	635-065-0401	1-1-2012	Amend	1-1-2012
635-011-0100	1-1-2012	Amend	2-1-2012	635-065-0625	1-1-2012	Amend	1-1-2012
635-012-0020	12-25-2011	Amend(T)	1-1-2012	635-065-0635	1-1-2012	Amend	1-1-2012
635-012-0020(T)	12-25-2011	Suspend	1-1-2012	635-065-0733	1-1-2012	Amend	1-1-2012
635-012-0030	12-25-2011	Suspend	1-1-2012	635-065-0740	1-1-2012	Amend	1-1-2012
635-012-0040	12-25-2011	Suspend	1-1-2012	635-065-0760	1-1-2012	Amend	1-1-2012
635-012-0050	12-25-2011	Suspend	1-1-2012	635-066-0000	1-1-2012	Amend	1-1-2012
635-012-0060	12-25-2011	Suspend	1-1-2012	635-066-0010	1-1-2012	Amend	1-1-2012
635-013-0003	1-1-2012	Amend	2-1-2012	635-067-0000	1-1-2012	Amend	1-1-2012
635-013-0004	1-1-2012	Amend	2-1-2012	635-067-0004	1-1-2012	Amend	1-1-2012
635-014-0080	1-1-2012	Amend	2-1-2012	635-067-0030	1-1-2012	Amend	1-1-2012
635-014-0090	1-1-2012	Amend	2-1-2012	635-067-0040	1-1-2012	Amend	1-1-2012
635-016-0080	1-1-2012	Amend	2-1-2012	635-068-0000	3-1-2012	Amend	3-1-2012
635-016-0090	1-1-2012	Amend	2-1-2012	635-069-0000	2-1-2012	Amend	2-1-2012
635-017-0080	1-1-2012	Amend	2-1-2012	635-072-0000	1-1-2012	Amend	1-1-2012
635-017-0090	1-1-2012	Amend	2-1-2012	635-073-0000	2-1-2012	Amend	2-1-2012
635-017-0090	1-1-2012	Amend(T)	1-1-2012	635-073-0065	2-1-2012	Amend	2-1-2012
635-017-0095	1-1-2012	Amend	2-1-2012	635-073-0070	2-1-2012	Amend	2-1-2012
635-017-0095	2-17-2012	Amend(T)	3-1-2012	635-095-0100	2-10-2012	Adopt	3-1-2012
635-018-0080	1-1-2012	Amend	2-1-2012	635-095-0105	2-10-2012	Adopt	3-1-2012
635-018-0090	1-1-2012	Amend	2-1-2012	635-095-0111	2-10-2012	Adopt	3-1-2012
635-018-0090	1-1-2012	Amend(T)	2-1-2012	635-095-0125	2-10-2012	Adopt	3-1-2012
635-019-0080	1-1-2012	Amend	2-1-2012	656-010-0000	11-30-2011	Amend	1-1-2012
635-019-0090	1-1-2012	Amend	2-1-2012	656-010-0010	11-30-2011	Amend	1-1-2012
635-021-0080	1-1-2012	Amend	2-1-2012	660-007-0000	2-14-2012	Amend	3-1-2012
635-021-0090	1-1-2012	Amend	2-1-2012	660-007-0005	2-14-2012	Amend	3-1-2012
635-023-0080	1-1-2012	Amend	2-1-2012	660-007-0015	2-14-2012	Amend	3-1-2012
635-023-0090	1-1-2012	Amend	2-1-2012	660-007-0018	2-14-2012	Amend	3-1-2012
635-023-0095	1-1-2012	Amend	2-1-2012	660-007-0020	2-14-2012	Amend	3-1-2012
635-023-0095	1-5-2012	Amend(T)	2-1-2012	660-007-0022	2-14-2012	Amend	3-1-2012
635-023-0095	2-7-2012	Amend	3-1-2012	660-007-0030	2-14-2012	Amend	3-1-2012
635-023-0095	2-18-2012	Amend(T)	3-1-2012	660-007-0033	2-14-2012	Amend	3-1-2012
635-023-0095(T)	2-7-2012	Repeal	3-1-2012	660-007-0035	2-14-2012	Amend	3-1-2012
635-023-0125	1-1-2012	Amend	2-1-2012	660-007-0037	2-14-2012	Amend	3-1-2012
635-023-0125	2-15-2012	Amend(T)	3-1-2012	660-007-0045	2-14-2012	Amend	3-1-2012
635-023-0128	1-1-2012	Amend	2-1-2012	660-007-0050	2-14-2012	Amend	3-1-2012
635-023-0130	1-1-2012	Amend	2-1-2012	660-007-0060	2-14-2012	Amend	3-1-2012
635-023-0134	1-1-2012	Amend	2-1-2012	660-008-0000	2-14-2012	Amend	3-1-2012
635-039-0080	1-1-2012	Amend	2-1-2012	660-008-0005	2-14-2012	Amend	3-1-2012
635-039-0090	12-1-2011	Amend(T)	1-1-2012	660-008-0010	2-14-2012	Amend	3-1-2012
635-039-0090	12-15-2011	Amend(T)	1-1-2012	660-008-0015	2-14-2012	Amend	3-1-2012
635-039-0090	1-1-2012	Amend	2-1-2012	660-008-0020	2-14-2012	Amend	3-1-2012
635-039-0090(T)	12-1-2011	Suspend	1-1-2012	660-008-0025	2-14-2012	Amend	3-1-2012
635-039-0090(T)	12-15-2011	Suspend	1-1-2012	660-008-0030	2-14-2012	Amend	3-1-2012
635-041-0045	2-1-2012	Amend(T)	3-1-2012	660-008-0035	2-14-2012	Amend	3-1-2012
635-041-0065	2-1-2012	Amend(T)	3-1-2012	660-008-0040	2-14-2012	Amend	3-1-2012
635-042-0135	1-30-2012	Amend(T)	3-1-2012	660-012-0005	1-1-2012	Amend	2-1-2012
635-042-0145	2-12-2012	Amend(T)	3-1-2012	660-012-0060	1-1-2012	Amend	2-1-2012
635-042-0160	2-12-2012	Amend(T)	3-1-2012	660-018-0005	2-14-2012	Amend	3-1-2012
635-042-0180	2-12-2012	Amend(T)	3-1-2012	660-018-0010	2-14-2012	Amend	3-1-2012
635-043-0051	12-30-2011	Amend(T)	2-1-2012	660-018-0020	1-1-2012	Amend(T)	2-1-2012
635-053-0035	12-21-2011	Amend(T)	2-1-2012	660-018-0020	2-14-2012	Amend	3-1-2012
635-060-0046	2-10-2012	Amend(T)	3-1-2012	660-018-0020(T)	2-14-2012	Repeal	3-1-2012

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660-018-0021	1-1-2012	Amend(T)	2-1-2012	690-013-0100	2-1-2012	Amend	3-1-2012
660-018-0021	2-14-2012	Amend	3-1-2012	690-013-0310	2-1-2012	Amend	3-1-2012
660-018-0021(T)	2-14-2012	Repeal	3-1-2012	690-018-0050	2-1-2012	Amend	3-1-2012
660-018-0022	1-1-2012	Amend(T)	2-1-2012	690-019-0080	2-1-2012	Amend	3-1-2012
660-018-0022	2-14-2012	Amend	3-1-2012	690-053-0015	2-1-2012	Amend	3-1-2012
660-018-0022(T)	2-14-2012	Repeal	3-1-2012	690-053-0030	2-1-2012	Amend	3-1-2012
660-018-0025	2-14-2012	Amend	3-1-2012	690-053-0035	2-1-2012	Amend	3-1-2012
660-018-0030	2-14-2012	Repeal	3-1-2012	690-077-0029	2-1-2012	Amend	3-1-2012
660-018-0035	2-14-2012	Amend	3-1-2012	690-077-0031	2-1-2012	Amend	3-1-2012
660-018-0040	1-1-2012	Amend(T)	2-1-2012	690-077-0039	2-1-2012	Amend	3-1-2012
660-018-0040	2-14-2012	Amend	3-1-2012	690-077-0077	2-1-2012	Amend	3-1-2012
660-018-0040(T)	2-14-2012	Repeal	3-1-2012	690-240-0010	2-2-2012	Amend	3-1-2012
660-018-0045	2-14-2012	Amend	3-1-2012	690-240-0035	2-2-2012	Amend	3-1-2012
660-018-0050	2-14-2012	Amend	3-1-2012	690-240-0040	2-2-2012	Adopt	3-1-2012
660-018-0055	2-14-2012	Amend	3-1-2012	690-240-0043	2-2-2012	Adopt	3-1-2012
660-018-0060	2-14-2012	Amend	3-1-2012	690-240-0046	2-2-2012	Adopt	3-1-2012
660-018-0085	2-14-2012	Amend	3-1-2012	690-240-0049	2-2-2012	Adopt	3-1-2012
660-018-0140	2-14-2012	Repeal	3-1-2012	690-300-0010	2-1-2012	Amend	3-1-2012
660-018-0150	2-14-2012	Amend	3-1-2012	690-310-0020	2-1-2012	Amend	3-1-2012
660-025-0010	2-14-2012	Amend	3-1-2012	690-310-0050	2-1-2012	Amend	3-1-2012
660-025-0020	2-14-2012	Amend	3-1-2012	690-310-0080	2-1-2012	Amend	3-1-2012
660-025-0030	2-14-2012	Amend	3-1-2012	690-310-0090	2-1-2012	Amend	3-1-2012
660-025-0035	2-14-2012	Amend	3-1-2012	690-310-0100	2-1-2012	Amend	3-1-2012
660-025-0040	2-14-2012	Amend	3-1-2012	690-310-0150	2-1-2012	Amend	3-1-2012
660-025-0050	2-14-2012	Amend	3-1-2012	690-315-0050	2-1-2012	Amend	3-1-2012
660-025-0060	2-14-2012	Amend	3-1-2012	690-330-0010	2-1-2012	Amend	3-1-2012
660-025-0070	2-14-2012	Amend	3-1-2012	690-380-2260	2-1-2012	Amend	3-1-2012
660-025-0080	2-14-2012	Amend	3-1-2012	690-380-3100	2-1-2012	Amend	3-1-2012
660-025-0085	2-14-2012	Amend	3-1-2012	690-380-4000	2-1-2012	Amend	3-1-2012
660-025-0090	2-14-2012	Amend	3-1-2012	690-380-4020	2-1-2012	Amend	3-1-2012
660-025-0100	2-14-2012	Amend	3-1-2012	690-380-6040	2-1-2012	Amend	3-1-2012
660-025-0110	2-14-2012	Amend	3-1-2012	690-382-0600	2-1-2012	Amend	3-1-2012
660-025-0130	2-14-2012	Amend	3-1-2012	690-382-0800	2-1-2012	Amend	3-1-2012
660-025-0140	2-14-2012	Amend	3-1-2012	690-385-4100	2-1-2012	Amend	3-1-2012
660-025-0150	2-14-2012	Amend	3-1-2012	690-385-4600	2-1-2012	Amend	3-1-2012
660-025-0160	2-14-2012	Amend	3-1-2012	690-385-7600	2-1-2012	Amend	3-1-2012
660-025-0170	2-14-2012	Amend	3-1-2012	731-035-0020	12-22-2011	Amend	2-1-2012
660-025-0175	2-14-2012	Amend	3-1-2012	731-035-0040	12-22-2011	Amend	2-1-2012
660-025-0180	2-14-2012	Amend	3-1-2012	731-035-0050	12-22-2011	Amend	2-1-2012
660-025-0210	2-14-2012	Amend	3-1-2012	731-035-0060	12-22-2011	Amend	2-1-2012
660-025-0220	2-14-2012	Amend	3-1-2012	731-035-0070	12-22-2011	Amend	2-1-2012
660-025-0230	2-14-2012	Amend	3-1-2012	731-035-0080	12-22-2011	Amend	2-1-2012
660-025-0250	2-14-2012	Amend	3-1-2012	731-146-0010	1-1-2012	Amend	2-1-2012
660-027-0070	2-14-2012	Amend	3-1-2012	731-146-0015	1-1-2012	Amend	2-1-2012
660-028-0010	2-14-2012	Amend	3-1-2012	731-146-0020	1-1-2012	Amend	2-1-2012
660-028-0020	2-14-2012	Amend	3-1-2012	731-146-0025	1-1-2012	Amend	2-1-2012
660-028-0030	2-14-2012	Amend	3-1-2012	731-146-0030	1-1-2012	Amend	2-1-2012
660-033-0030	12-20-2011	Amend	2-1-2012	731-146-0050	1-1-2012	Amend	2-1-2012
660-033-0030	2-14-2012	Amend	3-1-2012	731-146-0060	1-1-2012	Amend	2-1-2012
660-033-0045	2-14-2012	Adopt	3-1-2012	731-147-0010	1-1-2012	Amend	2-1-2012
660-033-0100	2-14-2012	Amend	3-1-2012	731-147-0040	1-1-2012	Amend	2-1-2012
660-033-0120	11-23-2011	Amend	1-1-2012	731-147-0060	1-1-2012	Repeal	2-1-2012
660-033-0120	2-14-2012	Amend	3-1-2012	731-148-0010	1-1-2012	Amend	2-1-2012
660-033-0130	11-23-2011	Amend	1-1-2012	731-148-0020	1-1-2012	Repeal	2-1-2012
660-033-0130	2-14-2012	Amend	3-1-2012	731-149-0010	1-1-2012	Amend	2-1-2012
660-033-0135	2-14-2012	Amend	3-1-2012	734-005-0005	1-1-2012	Adopt	2-1-2012

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734-005-0015	1-1-2012	Adopt	2-1-2012	734-051-1070	1-1-2012	Adopt(T)	2-1-2012
734-020-0005	12-22-2011	Amend	2-1-2012	734-051-2010	1-1-2012	Adopt(T)	2-1-2012
734-020-0018	1-27-2012	Adopt	3-1-2012	734-051-2020	1-1-2012	Adopt(T)	2-1-2012
734-020-0019	1-27-2012	Adopt	3-1-2012	734-051-2030	1-1-2012	Adopt(T)	2-1-2012
734-020-0055	12-22-2011	Repeal	2-1-2012	734-051-3010	1-1-2012	Adopt(T)	2-1-2012
734-026-0010	1-1-2012	Adopt	2-1-2012	734-051-3020	1-1-2012	Adopt(T)	2-1-2012
734-026-0020	1-1-2012	Adopt	2-1-2012	734-051-3030	1-1-2012	Adopt(T)	2-1-2012
734-026-0030	1-1-2012	Adopt	2-1-2012	734-051-3040	1-1-2012	Adopt(T)	2-1-2012
734-026-0040	1-1-2012	Adopt	2-1-2012	734-051-3050	1-1-2012	Adopt(T)	2-1-2012
734-026-0045	1-1-2012	Adopt	2-1-2012	734-051-3060	1-1-2012	Adopt(T)	2-1-2012
734-051-0010	1-1-2012	Suspend	2-1-2012	734-051-3070	1-1-2012	Adopt(T)	2-1-2012
734-051-0020	1-1-2012	Suspend	2-1-2012	734-051-3080	1-1-2012	Adopt(T)	2-1-2012
734-051-0035	1-1-2012	Suspend	2-1-2012	734-051-3090	1-1-2012	Adopt(T)	2-1-2012
734-051-0040	1-1-2012	Suspend	2-1-2012	734-051-3100	1-1-2012	Adopt(T)	2-1-2012
734-051-0045	1-1-2012	Suspend	2-1-2012	734-051-3110	1-1-2012	Adopt(T)	2-1-2012
734-051-0070	1-1-2012	Suspend	2-1-2012	734-051-4010	1-1-2012	Adopt(T)	2-1-2012
734-051-0080	1-1-2012	Suspend	2-1-2012	734-051-4020	1-1-2012	Adopt(T)	2-1-2012
734-051-0085	1-1-2012	Suspend	2-1-2012	734-051-4030	1-1-2012	Adopt(T)	2-1-2012
734-051-0095	1-1-2012	Suspend	2-1-2012	734-051-4040	1-1-2012	Adopt(T)	2-1-2012
734-051-0105	1-1-2012	Suspend	2-1-2012	734-051-4050	1-1-2012	Adopt(T)	2-1-2012
734-051-0115	1-1-2012	Suspend	2-1-2012	734-051-5010	1-1-2012	Adopt(T)	2-1-2012
734-051-0125	1-1-2012	Suspend	2-1-2012	734-051-5020	1-1-2012	Adopt(T)	2-1-2012
734-051-0135	1-1-2012	Suspend	2-1-2012	734-051-5030	1-1-2012	Adopt(T)	2-1-2012
734-051-0145	1-1-2012	Suspend	2-1-2012	734-051-5040	1-1-2012	Adopt(T)	2-1-2012
734-051-0155	1-1-2012	Suspend	2-1-2012	734-051-5050	1-1-2012	Adopt(T)	2-1-2012
734-051-0165	1-1-2012	Suspend	2-1-2012	734-051-5060	1-1-2012	Adopt(T)	2-1-2012
734-051-0175	1-1-2012	Suspend	2-1-2012	734-051-5070	1-1-2012	Adopt(T)	2-1-2012
734-051-0185	1-1-2012	Suspend	2-1-2012	734-051-5080	1-1-2012	Adopt(T)	2-1-2012
734-051-0195	1-1-2012	Suspend	2-1-2012	734-051-5090	1-1-2012	Adopt(T)	2-1-2012
734-051-0205	1-1-2012	Suspend	2-1-2012	734-051-5100	1-1-2012	Adopt(T)	2-1-2012
734-051-0215	1-1-2012	Suspend	2-1-2012	734-051-5110	1-1-2012	Adopt(T)	2-1-2012
734-051-0225	1-1-2012	Suspend	2-1-2012	734-051-5120	1-1-2012	Adopt(T)	2-1-2012
734-051-0245	1-1-2012	Suspend	2-1-2012	734-051-6010	1-1-2012	Adopt(T)	2-1-2012
734-051-0255	1-1-2012	Suspend	2-1-2012	734-051-6020	1-1-2012	Adopt(T)	2-1-2012
734-051-0265	1-1-2012	Suspend	2-1-2012	734-051-6030	1-1-2012	Adopt(T)	2-1-2012
734-051-0275	1-1-2012	Suspend	2-1-2012	734-051-6040	1-1-2012	Adopt(T)	2-1-2012
734-051-0285	1-1-2012	Suspend	2-1-2012	734-051-6050	1-1-2012	Adopt(T)	2-1-2012
734-051-0295	1-1-2012	Suspend	2-1-2012	734-051-6060	1-1-2012	Adopt(T)	2-1-2012
734-051-0305	1-1-2012	Suspend	2-1-2012	734-051-6070	1-1-2012	Adopt(T)	2-1-2012
734-051-0315	1-1-2012	Suspend	2-1-2012	734-051-7010	1-1-2012	Adopt(T)	2-1-2012
734-051-0325	1-1-2012	Suspend	2-1-2012	734-070-0010	1-27-2012	Amend	3-1-2012
734-051-0335	1-1-2012	Suspend	2-1-2012	734-075-0005	1-27-2012	Amend	3-1-2012
734-051-0345	1-1-2012	Suspend	2-1-2012	734-075-0008	1-27-2012	Amend	3-1-2012
734-051-0355	1-1-2012	Suspend	2-1-2012	734-075-0010	1-27-2012	Amend	3-1-2012
734-051-0500	1-1-2012	Suspend	2-1-2012	734-075-0011	1-27-2012	Amend	3-1-2012
734-051-0510	1-1-2012	Suspend	2-1-2012	734-075-0015	1-27-2012	Amend	3-1-2012
734-051-0520	1-1-2012	Suspend	2-1-2012	734-075-0020	1-27-2012	Amend	3-1-2012
734-051-0530	1-1-2012	Suspend	2-1-2012	734-075-0022	1-27-2012	Amend	3-1-2012
734-051-0540	1-1-2012	Suspend	2-1-2012	734-075-0025	1-27-2012	Amend	3-1-2012
734-051-0550	1-1-2012	Suspend	2-1-2012	734-075-0035	1-27-2012	Amend	3-1-2012
734-051-0560	1-1-2012	Suspend	2-1-2012	734-075-0036	1-27-2012	Amend	3-1-2012
734-051-1010	1-1-2012	Adopt(T)	2-1-2012	734-075-0037	1-27-2012	Amend	3-1-2012
734-051-1020	1-1-2012	Adopt(T)	2-1-2012	734-075-0040	1-27-2012	Amend	3-1-2012
734-051-1030	1-1-2012	Adopt(T)	2-1-2012	734-075-0041	1-27-2012	Amend	3-1-2012
734-051-1050	1-1-2012	Adopt(T)	2-1-2012	734-075-0045	1-27-2012	Amend	3-1-2012

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734-075-0085	1-27-2012	Amend	3-1-2012	736-004-0020	2-15-2012	Amend	3-1-2012
734-076-0065	1-27-2012	Amend	3-1-2012	736-004-0025	2-15-2012	Amend	3-1-2012
734-076-0075	1-27-2012	Amend	3-1-2012	736-004-0030	2-15-2012	Amend	3-1-2012
734-076-0105	1-27-2012	Amend	3-1-2012	736-004-0045	2-15-2012	Amend	3-1-2012
734-076-0115	1-27-2012	Amend	3-1-2012	736-004-0060	2-15-2012	Amend	3-1-2012
734-076-0135	1-27-2012	Amend	3-1-2012	736-004-0062	2-15-2012	Amend	3-1-2012
734-076-0145	1-27-2012	Amend	3-1-2012	736-004-0085	2-15-2012	Amend	3-1-2012
734-076-0155	1-27-2012	Amend	3-1-2012	736-004-0090	2-15-2012	Amend	3-1-2012
734-076-0165	1-27-2012	Amend	3-1-2012	736-004-0095	2-15-2012	Amend	3-1-2012
734-076-0175	1-27-2012	Amend	3-1-2012	736-004-0100	2-15-2012	Amend	3-1-2012
734-082-0021	1-27-2012	Amend	3-1-2012	736-004-0105	2-15-2012	Amend	3-1-2012
735-001-0030	12-22-2011	Repeal	2-1-2012	736-004-0115	2-15-2012	Amend	3-1-2012
735-001-0050	1-30-2012	Amend	3-1-2012	736-004-0120	2-15-2012	Amend	3-1-2012
735-010-0030	1-30-2012	Amend	3-1-2012	736-004-0125	2-15-2012	Amend	3-1-2012
735-016-0080	12-22-2011	Repeal	2-1-2012	736-004-0130	2-15-2012	Adopt	3-1-2012
735-030-0330	1-1-2012	Amend	2-1-2012	736-015-0010	11-28-2011	Amend	1-1-2012
735-040-0030	1-1-2012	Amend	2-1-2012	736-015-0020	11-28-2011	Amend	1-1-2012
735-050-0090	12-22-2011	Repeal	2-1-2012	736-015-0026	11-28-2011	Amend	1-1-2012
735-062-0002	1-30-2012	Amend	3-1-2012	736-015-0030	11-28-2011	Amend	1-1-2012
735-062-0005	1-1-2012	Amend	2-1-2012	740-055-0010	12-22-2011	Amend	2-1-2012
735-062-0007	1-30-2012	Amend	3-1-2012	740-055-0100	11-23-2011	Amend	1-1-2012
735-062-0010	1-1-2012	Amend	2-1-2012	740-100-0100	1-1-2012	Amend	2-1-2012
735-062-0015	1-1-2012	Amend	2-1-2012	740-300-0010	11-23-2011	Amend	1-1-2012
735-062-0016	11-23-2011	Amend	1-1-2012	741-040-0010	1-27-2012	Adopt	3-1-2012
735-062-0032	1-1-2012	Amend	2-1-2012	741-040-0020	1-27-2012	Adopt	3-1-2012
735-062-0033	1-1-2012	Amend	2-1-2012	741-040-0030	1-27-2012	Adopt	3-1-2012
735-062-0080	1-30-2012	Amend	3-1-2012	741-040-0040	1-27-2012	Adopt	3-1-2012
735-062-0085	1-30-2012	Amend	3-1-2012	741-040-0050	1-27-2012	Adopt	3-1-2012
735-062-0090	1-30-2012	Amend	3-1-2012	741-040-0060	1-27-2012	Adopt	3-1-2012
735-062-0110	1-30-2012	Amend	3-1-2012	741-040-0070	1-27-2012	Adopt	3-1-2012
735-062-0120	1-1-2012	Amend	2-1-2012	800-010-0015	2-1-2012	Amend	3-1-2012
735-062-0125	1-1-2012	Amend	2-1-2012	800-010-0040	2-1-2012	Amend	3-1-2012
735-062-0135	1-1-2012	Amend	2-1-2012	800-015-0005	2-1-2012	Amend	3-1-2012
735-062-0200	1-30-2012	Amend	3-1-2012	800-015-0010	2-1-2012	Amend	3-1-2012
735-063-0000	1-30-2012	Amend	3-1-2012	800-015-0015	2-1-2012	Amend	3-1-2012
735-063-0050	1-30-2012	Amend	3-1-2012	800-015-0020	2-1-2012	Amend	3-1-2012
735-063-0060	1-30-2012	Amend	3-1-2012	800-015-0030	2-1-2012	Amend	3-1-2012
735-063-0065	1-30-2012	Amend	3-1-2012	800-020-0015	2-1-2012	Amend	3-1-2012
735-063-0067	1-30-2012	Adopt	3-1-2012	800-020-0022	2-1-2012	Amend	3-1-2012
735-064-0085	12-22-2011	Repeal	2-1-2012	800-020-0025	2-1-2012	Amend	3-1-2012
735-064-0220	1-1-2012	Amend	2-1-2012	800-025-0020	2-1-2012	Amend	3-1-2012
735-070-0004	11-23-2011	Amend	1-1-2012	800-025-0027	2-1-2012	Amend	3-1-2012
735-070-0010	1-1-2012	Amend	2-1-2012	801-001-0035	1-1-2012	Amend	2-1-2012
735-070-0054	11-23-2011	Amend	1-1-2012	801-001-0045	1-1-2012	Adopt	2-1-2012
735-072-0035	1-1-2012	Amend	2-1-2012	801-005-0010	1-1-2012	Amend	2-1-2012
735-074-0140	1-1-2012	Amend	2-1-2012	801-005-0300	1-1-2012	Amend	2-1-2012
735-076-0020	1-1-2012	Amend	2-1-2012	801-010-0010	1-1-2012	Amend	2-1-2012
735-152-0000	1-1-2012	Amend	2-1-2012	801-010-0040	1-1-2012	Amend	2-1-2012
735-152-0005	1-1-2012	Amend	2-1-2012	801-010-0050	1-1-2012	Amend	2-1-2012
735-152-0020	1-1-2012	Amend	2-1-2012	801-010-0065	1-1-2012	Amend	2-1-2012
735-152-0040	1-1-2012	Amend	2-1-2012	801-010-0073	1-1-2012	Amend	2-1-2012
735-152-0050	1-1-2012	Amend	2-1-2012	801-010-0075	1-1-2012	Amend	2-1-2012
735-152-0060	1-1-2012	Amend	2-1-2012	801-010-0079	1-1-2012	Amend	2-1-2012
736-004-0005	2-15-2012	Amend	3-1-2012	801-010-0080	1-1-2012	Amend	2-1-2012
736-004-0010	2-15-2012	Amend	3-1-2012	801-010-0085	1-1-2012	Amend	2-1-2012

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801-010-0110	1-1-2012	Amend	2-1-2012	836-053-0410	12-19-2011	Amend	2-1-2012
801-010-0115	1-1-2012	Amend	2-1-2012	836-053-0415	12-19-2011	Adopt	2-1-2012
801-010-0120	1-1-2012	Amend	2-1-2012	836-053-0825	12-19-2011	Adopt	2-1-2012
801-010-0125	1-1-2012	Amend	2-1-2012	836-053-0830	12-19-2011	Adopt	2-1-2012
801-010-0130	1-1-2012	Amend	2-1-2012	836-053-0851	12-19-2011	Amend	2-1-2012
801-010-0190	1-1-2012	Am. & Ren.	2-1-2012	836-053-0856	12-19-2011	Repeal	2-1-2012
801-010-0340	1-1-2012	Amend	2-1-2012	836-053-0857	12-19-2011	Adopt	2-1-2012
801-010-0345	1-1-2012	Amend	2-1-2012	836-053-0861	12-19-2011	Repeal	2-1-2012
801-040-0010	1-1-2012	Amend	2-1-2012	836-053-0862	12-19-2011	Adopt	2-1-2012
801-040-0020	1-1-2012	Amend	2-1-2012	836-053-0866	12-19-2011	Repeal	2-1-2012
801-040-0090	1-1-2012	Amend	2-1-2012	836-053-1000	12-19-2011	Amend	2-1-2012
801-040-0100	1-1-2012	Amend	2-1-2012	836-053-1030	12-19-2011	Amend	2-1-2012
801-040-0160	1-1-2012	Amend	2-1-2012	836-053-1033	12-19-2011	Adopt	2-1-2012
801-050-0010	1-1-2012	Amend	2-1-2012	836-053-1035	12-19-2011	Adopt	2-1-2012
801-050-0020	1-1-2012	Amend	2-1-2012	836-053-1060	12-19-2011	Amend	2-1-2012
801-050-0040	1-1-2012	Amend	2-1-2012	836-053-1070	12-19-2011	Amend	2-1-2012
806-010-0045	1-4-2012	Amend	2-1-2012	836-053-1080	12-19-2011	Amend	2-1-2012
808-002-0020	1-1-2012	Amend	2-1-2012	836-053-1100	12-19-2011	Amend	2-1-2012
808-002-0390	1-1-2012	Adopt	2-1-2012	836-053-1110	12-19-2011	Amend	2-1-2012
808-002-0625	1-1-2012	Amend	2-1-2012	836-053-1140	12-19-2011	Amend	2-1-2012
808-003-0015	1-1-2012	Amend	2-1-2012	836-053-1310	12-19-2011	Amend	2-1-2012
808-003-0025	1-1-2012	Amend	2-1-2012	836-053-1340	12-19-2011	Amend	2-1-2012
808-003-0030	1-1-2012	Amend	2-1-2012	836-053-1342	12-19-2011	Amend	2-1-2012
808-003-0040	1-1-2012	Amend	2-1-2012	836-053-1350	12-19-2011	Amend	2-1-2012
808-003-0065	1-1-2012	Amend	2-1-2012	836-071-0500	1-1-2012	Amend	2-1-2012
808-003-0090	1-1-2012	Amend	2-1-2012	836-071-0501	1-1-2012	Adopt	2-1-2012
808-003-0126	1-1-2012	Adopt	2-1-2012	836-071-0550	1-1-2012	Adopt	2-1-2012
808-003-0130	1-1-2012	Amend	2-1-2012	836-071-0560	1-1-2012	Adopt	2-1-2012
808-003-0620	1-1-2012	Adopt	2-1-2012	836-071-0565	1-1-2012	Adopt	2-1-2012
808-004-0320	1-1-2012	Amend	2-1-2012	836-071-0570	1-1-2012	Adopt	2-1-2012
808-005-0020	1-1-2012	Amend	2-1-2012	836-200-0250	1-1-2012	Adopt	1-1-2012
808-040-0020	1-1-2012	Amend	2-1-2012	836-200-0255	1-1-2012	Adopt	1-1-2012
808-040-0080	1-1-2012	Amend	2-1-2012	836-200-0300	1-1-2012	Adopt	1-1-2012
812-002-0260	1-1-2012	Amend	1-1-2012	836-200-0305	1-1-2012	Adopt	1-1-2012
812-005-0800	1-1-2012	Amend	1-1-2012	836-200-0310	1-1-2012	Adopt	1-1-2012
812-008-0000	1-1-2012	Amend	1-1-2012	836-200-0315	1-1-2012	Adopt	1-1-2012
812-008-0020	1-1-2012	Amend	1-1-2012	837-012-0515	2-6-2012	Amend(T)	3-1-2012
812-008-0030	1-1-2012	Amend	1-1-2012	837-020-0080	1-24-2012	Amend	3-1-2012
812-021-0005	1-13-2012	Amend(T)	2-1-2012	837-020-0085	1-24-2012	Amend	3-1-2012
812-021-0015	11-18-2011	Amend(T)	1-1-2012	837-020-0115	1-24-2012	Amend	3-1-2012
812-021-0025	2-9-2012	Amend(T)	3-1-2012	837-035-0000	1-24-2012	Amend	3-1-2012
812-021-0030	2-9-2012	Amend(T)	3-1-2012	837-035-0060	1-24-2012	Amend	3-1-2012
812-021-0031	2-9-2012	Amend(T)	3-1-2012	837-035-0080	1-24-2012	Amend	3-1-2012
818-001-0087	1-27-2012	Amend	3-1-2012	837-035-0100	1-24-2012	Amend	3-1-2012
833-120-0011	12-15-2011	Amend	1-1-2012	837-035-0160	1-24-2012	Amend	3-1-2012
833-120-0021	12-15-2011	Amend	1-1-2012	837-035-0200	1-24-2012	Amend	3-1-2012
833-120-0031	12-15-2011	Amend	1-1-2012	837-035-0220	1-24-2012	Amend	3-1-2012
833-120-0041	12-15-2011	Amend	1-1-2012	837-035-0240	1-24-2012	Amend	3-1-2012
836-010-0000	1-1-2012	Amend	2-1-2012	837-040-0020	2-10-2012	Amend(T)	3-1-2012
836-010-0011	1-1-2012	Amend	2-1-2012	837-040-0020	3-1-2012	Amend	3-1-2012
836-010-0012	1-1-2012	Repeal	2-1-2012	839-001-0300	1-1-2012	Adopt	2-1-2012
836-011-0000	2-7-2012	Amend	3-1-2012	839-001-0560	1-1-2012	Amend	2-1-2012
836-052-0508	2-14-2012	Amend	3-1-2012	839-002-0001	1-1-2012	Amend	2-1-2012
836-052-0768	2-14-2012	Adopt	3-1-2012	839-002-0002	1-1-2012	Amend	2-1-2012
836-052-0770	2-14-2012	Adopt	3-1-2012	839-002-0005	1-1-2012	Amend	2-1-2012
836-052-0900	1-13-2012	Suspend	2-1-2012	839-002-0015	1-1-2012	Amend	2-1-2012

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839-002-0020	1-1-2012	Amend	2-1-2012	839-011-0072	1-3-2012	Amend	2-1-2012
839-002-0025	1-1-2012	Amend	2-1-2012	839-011-0074	1-3-2012	Amend	2-1-2012
839-002-0030	1-1-2012	Amend	2-1-2012	839-011-0082	1-3-2012	Amend	2-1-2012
839-002-0035	1-1-2012	Amend	2-1-2012	839-011-0084	1-3-2012	Amend	2-1-2012
839-002-0040	1-1-2012	Amend	2-1-2012	839-011-0088	1-3-2012	Amend	2-1-2012
839-002-0045	1-1-2012	Amend	2-1-2012	839-011-0090	1-3-2012	Amend	2-1-2012
839-002-0050	1-1-2012	Amend	2-1-2012	839-011-0140	1-3-2012	Amend	2-1-2012
839-002-0055	1-1-2012	Amend	2-1-2012	839-011-0141	1-3-2012	Amend	2-1-2012
839-002-0060	1-1-2012	Amend	2-1-2012	839-011-0142	1-3-2012	Amend	2-1-2012
839-002-0065	1-1-2012	Amend	2-1-2012	839-011-0143	1-3-2012	Amend	2-1-2012
839-002-0070	1-1-2012	Amend	2-1-2012	839-011-0145	1-3-2012	Amend	2-1-2012
839-002-0075	1-1-2012	Amend	2-1-2012	839-011-0162	1-3-2012	Amend	2-1-2012
839-002-0080	1-1-2012	Amend	2-1-2012	839-011-0175	1-3-2012	Amend	2-1-2012
839-005-0033	1-1-2012	Renumber	2-1-2012	839-011-0265	1-3-2012	Amend	2-1-2012
839-005-0033	2-8-2012	Am. & Ren.	3-1-2012	839-011-0270	1-3-2012	Amend	2-1-2012
839-005-0075	1-1-2012	Adopt	2-1-2012	839-011-0290	1-3-2012	Amend	2-1-2012
839-005-0075	2-8-2012	Adopt	3-1-2012	839-011-0310	1-3-2012	Amend	2-1-2012
839-005-0130	1-1-2012	Adopt	2-1-2012	839-011-0320	1-3-2012	Amend	2-1-2012
839-005-0130	2-8-2012	Adopt	3-1-2012	839-011-0334	1-3-2012	Amend	2-1-2012
839-005-0135	1-1-2012	Adopt	2-1-2012	839-025-0700	1-1-2012	Amend	2-1-2012
839-005-0135	2-8-2012	Adopt	3-1-2012	839-050-0040	1-1-2012	Amend	2-1-2012
839-005-0160	1-1-2012	Amend	2-1-2012	839-050-0310	1-1-2012	Amend	2-1-2012
839-005-0160	2-8-2012	Amend	3-1-2012	839-050-0340	1-1-2012	Amend	2-1-2012
839-005-0170	1-1-2012	Amend	2-1-2012	845-005-0425	1-1-2012	Amend	1-1-2012
839-005-0170	2-8-2012	Amend	3-1-2012	845-009-0135	1-1-2012	Amend	1-1-2012
839-006-0440	1-1-2012	Amend	2-1-2012	845-015-0101	1-1-2012	Amend	1-1-2012
839-006-0440	2-8-2012	Amend	3-1-2012	845-015-0120	1-1-2012	Amend	1-1-2012
839-006-0450	1-1-2012	Amend	2-1-2012	845-015-0185	1-1-2012	Amend	1-1-2012
839-006-0450	2-8-2012	Amend	3-1-2012	845-015-0190	1-1-2012	Amend	1-1-2012
839-006-0455	1-1-2012	Amend	2-1-2012	845-015-0196	1-1-2012	Amend	1-1-2012
839-006-0455	2-8-2012	Amend	3-1-2012	845-015-0210	1-1-2012	Adopt	1-1-2012
839-006-0470	1-1-2012	Amend	2-1-2012	847-001-0000	2-7-2012	Amend(T)	3-1-2012
839-006-0470	2-8-2012	Amend	3-1-2012	847-001-0005	2-7-2012	Amend(T)	3-1-2012
839-006-0480	1-1-2012	Amend	2-1-2012	847-001-0007	2-10-2012	Adopt	3-1-2012
839-006-0480	2-8-2012	Amend	3-1-2012	847-001-0010	2-7-2012	Amend(T)	3-1-2012
839-009-0325	1-1-2012	Amend	2-1-2012	847-001-0015	2-7-2012	Amend(T)	3-1-2012
839-009-0325	2-8-2012	Amend	3-1-2012	847-001-0020	2-7-2012	Amend(T)	3-1-2012
839-009-0330	1-1-2012	Amend	2-1-2012	847-001-0022	2-7-2012	Amend(T)	3-1-2012
839-009-0330	2-8-2012	Amend	3-1-2012	847-001-0025	2-7-2012	Amend(T)	3-1-2012
839-009-0340	1-1-2012	Amend	2-1-2012	847-001-0030	2-7-2012	Amend(T)	3-1-2012
839-009-0340	2-8-2012	Amend	3-1-2012	847-005-0005	1-1-2012	Amend(T)	2-1-2012
839-009-0345	1-1-2012	Amend	2-1-2012	847-005-0005	2-10-2012	Amend	3-1-2012
839-009-0345	2-8-2012	Amend	3-1-2012	847-005-0005(T)	2-10-2012	Repeal	3-1-2012
839-009-0355	1-1-2012	Amend	2-1-2012	847-008-0040	1-1-2012	Amend(T)	1-1-2012
839-009-0355	2-8-2012	Amend	3-1-2012	847-008-0040	2-10-2012	Amend	3-1-2012
839-009-0360	1-1-2012	Amend	2-1-2012	847-008-0040(T)	2-10-2012	Repeal	3-1-2012
839-009-0360	2-8-2012	Amend	3-1-2012	847-020-0155	2-10-2012	Amend	3-1-2012
839-009-0362	1-1-2012	Amend	2-1-2012	847-020-0155(T)	2-10-2012	Repeal	3-1-2012
839-009-0362	2-8-2012	Amend	3-1-2012	847-035-0020	2-10-2012	Amend	3-1-2012
839-009-0365	1-1-2012	Amend	2-1-2012	847-050-0005	1-1-2012	Amend(T)	1-1-2012
839-009-0365	2-8-2012	Amend	3-1-2012	847-050-0005	2-10-2012	Amend	3-1-2012
839-011-0020	1-3-2012	Amend	2-1-2012	847-050-0005(T)	2-10-2012	Repeal	3-1-2012
839-011-0050	1-3-2012	Amend	2-1-2012	847-050-0010	1-1-2012	Amend(T)	1-1-2012
839-011-0051	1-3-2012	Amend	2-1-2012	847-050-0010	2-10-2012	Amend	3-1-2012
839-011-0060	1-3-2012	Amend	2-1-2012	847-050-0010(T)	2-10-2012	Repeal	3-1-2012
839-011-0070	1-3-2012	Amend	2-1-2012	847-050-0015	1-1-2012	Amend(T)	1-1-2012

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847-050-0015	2-10-2012	Amend	3-1-2012	847-050-0065	1-1-2012	Amend(T)	1-1-2012
847-050-0015(T)	2-10-2012	Repeal	3-1-2012	847-050-0065	2-10-2012	Amend	3-1-2012
847-050-0020	1-1-2012	Amend(T)	1-1-2012	847-050-0065(T)	2-10-2012	Repeal	3-1-2012
847-050-0020	2-10-2012	Amend	3-1-2012	847-070-0045	2-10-2012	Amend	3-1-2012
847-050-0020(T)	2-10-2012	Repeal	3-1-2012	848-010-0015	3-1-2012	Amend	3-1-2012
847-050-0023	1-1-2012	Amend(T)	1-1-2012	848-010-0020	3-1-2012	Amend	3-1-2012
847-050-0023	2-10-2012	Amend	3-1-2012	848-010-0026	3-1-2012	Amend	3-1-2012
847-050-0023(T)	2-10-2012	Repeal	3-1-2012	848-010-0035	3-1-2012	Amend	3-1-2012
847-050-0025	1-1-2012	Amend(T)	1-1-2012	848-035-0030	3-1-2012	Amend	3-1-2012
847-050-0025	2-10-2012	Amend	3-1-2012	848-035-0040	3-1-2012	Amend	3-1-2012
847-050-0025(T)	2-10-2012	Repeal	3-1-2012	848-040-0125	3-1-2012	Amend	3-1-2012
847-050-0026	1-1-2012	Amend(T)	1-1-2012	848-045-0010	3-1-2012	Amend	3-1-2012
847-050-0026	2-10-2012	Amend	3-1-2012	850-050-0120	12-23-2011	Amend	1-1-2012
847-050-0026(T)	2-10-2012	Repeal	3-1-2012	850-060-0215	12-23-2011	Amend	1-1-2012
847-050-0027	1-1-2012	Amend(T)	1-1-2012	851-002-0000	11-22-2011	Amend	1-1-2012
847-050-0027	2-10-2012	Amend	3-1-2012	853-001-0000	1-1-2012	Repeal	1-1-2012
847-050-0027(T)	2-10-2012	Repeal	3-1-2012	853-001-0005	1-1-2012	Repeal	1-1-2012
847-050-0029	1-1-2012	Amend(T)	1-1-2012	853-001-0020	1-1-2012	Repeal	1-1-2012
847-050-0029	2-10-2012	Amend	3-1-2012	853-001-0025	1-1-2012	Repeal	1-1-2012
847-050-0029(T)	2-10-2012	Repeal	3-1-2012	853-001-0030	1-1-2012	Repeal	1-1-2012
847-050-0035	1-1-2012	Amend(T)	1-1-2012	853-010-0010	1-1-2012	Repeal	1-1-2012
847-050-0035	2-10-2012	Amend	3-1-2012	853-010-0015	1-1-2012	Repeal	1-1-2012
847-050-0035(T)	2-10-2012	Repeal	3-1-2012	853-010-0017	1-1-2012	Repeal	1-1-2012
847-050-0037	1-1-2012	Amend(T)	1-1-2012	853-010-0020	1-1-2012	Repeal	1-1-2012
847-050-0037	2-10-2012	Amend	3-1-2012	853-010-0025	1-1-2012	Repeal	1-1-2012
847-050-0037(T)	2-10-2012	Repeal	3-1-2012	853-010-0035	1-1-2012	Repeal	1-1-2012
847-050-0038	1-1-2012	Amend(T)	1-1-2012	853-010-0040	1-1-2012	Repeal	1-1-2012
847-050-0038	2-10-2012	Amend	3-1-2012	853-010-0045	1-1-2012	Repeal	1-1-2012
847-050-0038(T)	2-10-2012	Repeal	3-1-2012	853-010-0050	1-1-2012	Repeal	1-1-2012
847-050-0040	1-1-2012	Amend(T)	1-1-2012	853-010-0055	1-1-2012	Repeal	1-1-2012
847-050-0040	2-10-2012	Amend	3-1-2012	853-010-0060	1-1-2012	Repeal	1-1-2012
847-050-0040(T)	2-10-2012	Repeal	3-1-2012	853-010-0065	1-1-2012	Repeal	1-1-2012
847-050-0041	1-1-2012	Amend(T)	1-1-2012	853-010-0070	1-1-2012	Repeal	1-1-2012
847-050-0041	2-10-2012	Amend	3-1-2012	853-010-0074	1-1-2012	Repeal	1-1-2012
847-050-0041(T)	2-10-2012	Repeal	3-1-2012	853-010-0075	1-1-2012	Repeal	1-1-2012
847-050-0042	1-1-2012	Amend(T)	1-1-2012	853-010-0076	1-1-2012	Repeal	1-1-2012
847-050-0042	2-10-2012	Amend	3-1-2012	853-010-0077	1-1-2012	Repeal	1-1-2012
847-050-0042(T)	2-10-2012	Repeal	3-1-2012	853-010-0078	1-1-2012	Repeal	1-1-2012
847-050-0043	1-1-2012	Amend(T)	1-1-2012	853-010-0079	1-1-2012	Repeal	1-1-2012
847-050-0043	2-10-2012	Amend	3-1-2012	853-010-0080	1-1-2012	Repeal	1-1-2012
847-050-0043(T)	2-10-2012	Repeal	3-1-2012	853-020-0000	1-1-2012	Adopt	1-1-2012
847-050-0046	1-1-2012	Amend(T)	1-1-2012	853-030-0000	1-1-2012	Adopt	1-1-2012
847-050-0046	2-10-2012	Amend	3-1-2012	853-030-0010	1-1-2012	Adopt	1-1-2012
847-050-0046(T)	2-10-2012	Repeal	3-1-2012	853-030-0020	1-1-2012	Adopt	1-1-2012
847-050-0050	1-1-2012	Amend(T)	1-1-2012	853-030-0030	1-1-2012	Adopt	1-1-2012
847-050-0050	2-10-2012	Amend	3-1-2012	853-030-0040	1-1-2012	Adopt	1-1-2012
847-050-0050(T)	2-10-2012	Repeal	3-1-2012	853-030-0050	1-1-2012	Adopt	1-1-2012
847-050-0055	1-1-2012	Amend(T)	1-1-2012	853-030-0060	1-1-2012	Adopt	1-1-2012
847-050-0055	2-10-2012	Amend	3-1-2012	853-030-0070	1-1-2012	Adopt	1-1-2012
847-050-0055(T)	2-10-2012	Repeal	3-1-2012	853-040-0000	1-1-2012	Adopt	1-1-2012
847-050-0060	1-1-2012	Amend(T)	1-1-2012	853-050-0000	1-1-2012	Adopt	1-1-2012
847-050-0060	2-10-2012	Amend	3-1-2012	853-050-0010	1-1-2012	Adopt	1-1-2012
847-050-0060(T)	2-10-2012	Repeal	3-1-2012	853-060-0000	1-1-2012	Adopt	1-1-2012
847-050-0063	1-1-2012	Amend(T)	1-1-2012	853-060-0010	1-1-2012	Adopt	1-1-2012
847-050-0063	2-10-2012	Amend	3-1-2012	855-019-0260	1-1-2012	Amend	2-1-2012
847-050-0063(T)	2-10-2012	Repeal	3-1-2012	855-019-0280	1-1-2012	Amend	2-1-2012

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855-019-0290	1-1-2012	Amend	2-1-2012	860-036-0708	1-1-2012	Adopt	2-1-2012
855-031-0010	1-1-2012	Amend	2-1-2012	860-036-0710	1-1-2012	Amend	2-1-2012
855-031-0020	1-1-2012	Amend	2-1-2012	860-036-0715	1-1-2012	Amend	2-1-2012
855-031-0026	1-1-2012	Adopt	2-1-2012	860-036-0737	1-1-2012	Amend	2-1-2012
855-031-0045	1-1-2012	Amend	2-1-2012	860-036-0739	1-1-2012	Amend	2-1-2012
855-041-0095	1-1-2012	Amend	2-1-2012	860-036-0740	1-1-2012	Amend	2-1-2012
855-060-0004	1-1-2012	Adopt	2-1-2012	860-036-0745	1-1-2012	Amend	2-1-2012
855-080-0100	12-15-2011	Amend(T)	1-1-2012	860-036-0750	1-1-2012	Amend	2-1-2012
855-080-0100(T)	12-15-2011	Suspend	1-1-2012	860-036-0756	1-1-2012	Amend	2-1-2012
855-080-0103(T)	12-15-2011	Suspend	1-1-2012	860-036-0757	1-1-2012	Amend	2-1-2012
855-110-0005	12-15-2011	Amend	1-1-2012	860-036-0815	1-1-2012	Amend	2-1-2012
855-110-0007	12-15-2011	Amend	1-1-2012	860-036-0816	1-1-2012	Adopt	2-1-2012
855-110-0010	12-15-2011	Amend	1-1-2012	875-005-0005	12-12-2011	Amend(T)	1-1-2012
856-010-0015	12-30-2011	Amend	2-1-2012	875-040-0005	12-12-2011	Adopt(T)	1-1-2012
856-010-0027	12-30-2011	Adopt	2-1-2012	877-001-0020	12-29-2011	Amend	2-1-2012
858-010-0010	2-15-2012	Amend(T)	3-1-2012	877-010-0015	12-29-2011	Amend	2-1-2012
858-010-0011	2-15-2012	Amend(T)	3-1-2012	877-010-0020	12-29-2011	Amend	2-1-2012
858-010-0012	2-15-2012	Amend(T)	3-1-2012	877-015-0105	12-29-2011	Amend	2-1-2012
858-010-0013	2-15-2012	Amend(T)	3-1-2012	877-015-0108	12-29-2011	Amend	2-1-2012
858-010-0016	2-15-2012	Amend(T)	3-1-2012	877-015-0136	12-29-2011	Amend	2-1-2012
858-010-0017	2-15-2012	Amend(T)	3-1-2012	877-020-0005	12-29-2011	Amend	2-1-2012
859-030-0005	2-3-2012	Amend(T)	3-1-2012	877-020-0008	12-29-2011	Amend	2-1-2012
859-030-0010	2-3-2012	Amend(T)	3-1-2012	877-020-0010	12-29-2011	Amend	2-1-2012
859-070-0040	2-3-2012	Adopt(T)	3-1-2012	877-020-0016	12-29-2011	Amend	2-1-2012
859-200-0001	12-22-2011	Adopt(T)	2-1-2012	877-020-0036	12-29-2011	Amend	2-1-2012
859-300-0050	12-13-2011	Amend	1-1-2012	877-025-0006	12-29-2011	Amend	2-1-2012
859-300-0050(T)	12-13-2011	Repeal	1-1-2012	877-025-0011	12-29-2011	Amend	2-1-2012
860-023-0080	1-1-2012	Repeal	1-1-2012	877-040-0050	12-29-2011	Amend	2-1-2012
860-023-0090	1-1-2012	Repeal	1-1-2012	918-098-1000	1-1-2012	Amend	2-1-2012
860-023-0100	1-1-2012	Repeal	1-1-2012	918-098-1620	1-1-2012	Amend	2-1-2012
860-023-0110	1-1-2012	Repeal	1-1-2012	918-225-0240	1-1-2012	Amend	2-1-2012
860-023-0120	1-1-2012	Repeal	1-1-2012	918-225-0430	1-1-2012	Amend	2-1-2012
860-023-0130	1-1-2012	Repeal	1-1-2012	918-225-0435	1-1-2012	Amend	2-1-2012
860-023-0140	1-1-2012	Repeal	1-1-2012	918-225-0570	1-1-2012	Amend	2-1-2012
860-023-0150	1-1-2012	Repeal	1-1-2012	918-225-0600	1-1-2012	Amend	2-1-2012
860-023-0160	1-1-2012	Repeal	1-1-2012	918-225-0600	1-1-2012	Amend	2-1-2012
860-036-0001	1-1-2012	Amend	2-1-2012	918-225-0606	1-1-2012	Adopt	2-1-2012
860-036-0010	1-1-2012	Amend	2-1-2012	918-225-0609	1-1-2012	Adopt	2-1-2012
860-036-0015	1-1-2012	Amend	2-1-2012	918-225-0612	1-1-2012	Adopt	2-1-2012
860-036-0030	1-1-2012	Amend	2-1-2012	918-225-0615	1-1-2012	Adopt	2-1-2012
860-036-0040	1-1-2012	Amend	2-1-2012	918-225-0618	1-1-2012	Adopt	2-1-2012
860-036-0050	1-1-2012	Amend	2-1-2012	918-225-0620	1-1-2012	Amend	2-1-2012
860-036-0060	1-1-2012	Amend	2-1-2012	918-400-0455	1-1-2012	Amend	2-1-2012
860-036-0065	1-1-2012	Amend	2-1-2012	918-400-0458	1-1-2012	Amend	2-1-2012
860-036-0097	1-1-2012	Amend	2-1-2012	918-440-0012	1-1-2012	Amend	2-1-2012
860-036-0130	1-1-2012	Amend	2-1-2012	918-460-0015	1-1-2012	Amend	2-1-2012
860-036-0405	1-1-2012	Amend	2-1-2012	918-460-0015	2-1-2012	Amend	3-1-2012
860-036-0407	1-1-2012	Repeal	2-1-2012	918-460-0510	1-1-2012	Amend	2-1-2012
860-036-0425	1-1-2012	Adopt	2-1-2012	943-014-0300	12-1-2011	Adopt	1-1-2012
860-036-0505	1-1-2012	Amend	2-1-2012	943-014-0300(T)	12-1-2011	Repeal	1-1-2012
860-036-0605	1-1-2012	Amend	2-1-2012	943-014-0305	12-1-2011	Adopt	1-1-2012
860-036-0610	1-1-2012	Amend	2-1-2012	943-014-0305(T)	12-1-2011	Repeal	1-1-2012
860-036-0615	1-1-2012	Amend	2-1-2012	943-014-0310	12-1-2011	Adopt	1-1-2012
860-036-0625	1-1-2012	Am. & Ren.	2-1-2012	943-014-0310(T)	12-1-2011	Repeal	1-1-2012
860-036-0640	1-1-2012	Amend	2-1-2012	943-014-0315	12-1-2011	Adopt	1-1-2012
860-036-0705	1-1-2012	Amend	2-1-2012	943-014-0315(T)	12-1-2011	Repeal	1-1-2012

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943-014-0320(T)	12-1-2011	Repeal	1-1-2012	943-045-0400(T)	12-23-2011	Repeal	2-1-2012
943-045-0000	12-4-2011	Adopt	1-1-2012	943-045-0410	12-23-2011	Adopt	2-1-2012
943-045-0000(T)	12-4-2011	Repeal	1-1-2012	943-045-0410(T)	12-23-2011	Repeal	2-1-2012
943-045-0250	12-5-2011	Adopt	1-1-2012	943-045-0420	12-23-2011	Adopt	2-1-2012
943-045-0250(T)	12-5-2011	Repeal	1-1-2012	943-045-0420(T)	12-23-2011	Repeal	2-1-2012
943-045-0260	12-5-2011	Adopt	1-1-2012	943-045-0430	12-23-2011	Adopt	2-1-2012
943-045-0260(T)	12-5-2011	Repeal	1-1-2012	943-045-0430(T)	12-23-2011	Repeal	2-1-2012
943-045-0280	12-5-2011	Adopt	1-1-2012	943-045-0440	12-23-2011	Adopt	2-1-2012
943-045-0280(T)	12-5-2011	Repeal	1-1-2012	943-045-0440(T)	12-23-2011	Repeal	2-1-2012
943-045-0290	12-5-2011	Adopt	1-1-2012	943-045-0450	12-23-2011	Adopt	2-1-2012
943-045-0290(T)	12-5-2011	Repeal	1-1-2012	943-045-0450(T)	12-23-2011	Repeal	2-1-2012
943-045-0300	12-5-2011	Adopt	1-1-2012	943-045-0460	12-23-2011	Adopt	2-1-2012
943-045-0300(T)	12-5-2011	Repeal	1-1-2012	943-045-0460(T)	12-23-2011	Repeal	2-1-2012
943-045-0310	12-5-2011	Adopt	1-1-2012	943-045-0470	12-23-2011	Adopt	2-1-2012
943-045-0310(T)	12-5-2011	Repeal	1-1-2012	943-045-0470(T)	12-23-2011	Repeal	2-1-2012
943-045-0320	12-5-2011	Adopt	1-1-2012	943-045-0480	12-23-2011	Adopt	2-1-2012
943-045-0320(T)	12-5-2011	Repeal	1-1-2012	943-045-0480(T)	12-23-2011	Repeal	2-1-2012
943-045-0330	12-5-2011	Adopt	1-1-2012	943-045-0490	12-23-2011	Adopt	2-1-2012
943-045-0330(T)	12-5-2011	Repeal	1-1-2012	943-045-0490(T)	12-23-2011	Repeal	2-1-2012
943-045-0340	12-5-2011	Adopt	1-1-2012	943-045-0500	12-23-2011	Adopt	2-1-2012
943-045-0340(T)	12-5-2011	Repeal	1-1-2012	943-045-0500(T)	12-23-2011	Repeal	2-1-2012
943-045-0350	12-5-2011	Adopt	1-1-2012	943-045-0510	12-23-2011	Adopt	2-1-2012
943-045-0350(T)	12-5-2011	Repeal	1-1-2012	943-045-0510(T)	12-23-2011	Repeal	2-1-2012
943-045-0360	12-5-2011	Adopt	1-1-2012	943-045-0520	12-23-2011	Adopt	2-1-2012
943-045-0360(T)	12-5-2011	Repeal	1-1-2012	943-045-0520(T)	12-23-2011	Repeal	2-1-2012
943-045-0370	12-5-2011	Adopt	1-1-2012	951-004-0003	1-1-2012	Amend	1-1-2012
943-045-0370(T)	12-5-2011	Repeal	1-1-2012	951-004-0004	1-1-2012	Amend	1-1-2012