

# OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

**Volume 43, No. 7**  
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For May 17, 2004–June 15, 2004



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**BILL BRADBURY**  
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 *Oregon Bulletin*. The Oregon Administrative Rules Compilation is an annual publication containing the complete text of the Oregon Administrative Rules at the time of publication. The *Oregon Bulletin* is a monthly publication which updates rule text found in the annual compilation and provides notice of intended rule action, Executive Orders of the Governor and Opinions of the Attorney General.

## Background on Oregon Administrative Rules

The *Oregon Attorney General's Administrative Law Manual* defines "rule" to include "directives, standards, regulations or statements of general applicability that implement, interpret or prescribe law or policy or describe the agency's procedure or practice requirements." ORS 183.310(8) Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit, Archives Division, Secretary of State assists agencies with the notification, filing and publication requirements of the administrative rules process. Every Administrative Rule uses the same numbering sequence of a 3 digit agency chapter number followed by a 3 digit division number and ending with a 4 digit rule number. (000-000-0000)

## How to Cite

Citation of the Oregon Administrative Rules is made by chapter and rule number. Example: Oregon Administrative Rules, chapter 164, rule 164-001-0005 (short form: OAR 164-001-0005).

## 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 the changes to individual rules, and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed a "history" for each rule which is located at the end of rule text. An Administrative Rule "history" outlines the statutory authority, statutes being implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify the agency, filing number, year, filing date and effective date in an abbreviated format. For example: "OSA 4-1993, f. & cert. ef. 11-10-93; Renumbered from 164-001-0005" documents a rule change made by the Oregon State Archives (OSA). The history notes that 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 rule was renumbered by this rule change and was formerly known as rule 164-001-0005. 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 annual, bound *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual Administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

## Locating Administrative Rules Unit Publications

The Oregon Administrative Rules Compilation and the Oregon Bulletin are available in electronic and printed formats. Electronic versions are available through the Oregon State Archives Website at <http://arcweb.sos.state.or.us> Printed copies of these publications are deposited in Oregon's Public Documents Depository Libraries listed in OAR 543-070-0000 and may be ordered by contacting: Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701 - ext. 240, Julie.A.Yamaka@state.or.us

## 2003-2004 Oregon Bulletin Publication Schedule

The Administrative Rule Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m. at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged to set the time and place for a hearing in the Notice of Proposed Rulemaking, and submit their filings early in the month to meet the following publication deadlines.

### Submission Deadline — Publishing Date

December 15, 2003	January 1, 2004
January 15, 2004	February 1, 2004
February 13, 2004	March 1, 2004
March 15, 2004	April 1, 2004
April 15, 2004	May 1, 2004
May 14, 2004	June 1, 2004
June 15, 2004	July 1, 2004
July 15, 2004	August 1, 2004
August 13, 2004	September 1, 2004
September 15, 2004	October 1, 2004
October 15, 2004	November 1, 2004
November 15, 2004	December 1, 2004

## 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 910-1997, 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 915-1997. 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 ARC 910-1997 and ARC 915-1997 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the complete text of permanent and temporary rules may be obtained from the adopting agency or from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701.

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### OREGON DEPARTMENT OF AGRICULTURE EMERGENCY QUARANTINE ORDER: COLUMBIA COUNTY NURSERY STOCK, POTTING MEDIA AND COMPOST

The Oregon Department of Agriculture has detected *Phytophthora ramorum* (sudden oak death) in nursery stock, potting media containing compost and plants in a landscape in Columbia County.

*P. ramorum* causes mortality in susceptible oak (*Quercus*) and tanoak (*Lithocarpus*) species, and can cause injury to rhododendron, camellia, viburnum, and many other species important to natural and horticultural landscapes in Oregon and the state's nursery industry.

Shipment and sale of infected nursery stock, potting media and compost may be ongoing which makes it impossible to follow the quarantine process provided in ORS 561.510 to 561.530 without serious danger to the health of Oregon's nursery industry and forest environment.

Therefore, in accordance with ORS 561.560, the Director of the Oregon Department of Agriculture issues the following EMERGENCY QUARANTINE ORDER:

#### ORDER

**(1) Area under quarantine.** Columbia County, Oregon.

**(2) Commodities covered.** All plants, plant parts, and processed products of the following plant genera: *Acer*, *Aesculus*, *Arbutus*, *Arctostaphylos*, *Camellia*, *Hamamelis*, *Heteromeles*, *Lithocarpus*, *Lonicera*, *Pieris*, *Pseudotsuga*, *Quercus*, *Rhamnus*, *Rhododendron*, *Rosa*, *Sequoia*, *Trientalis*, *Umbellularia*, *Vaccinium*, and *Viburnum* and any other plant species such as *Abies grandis*, *Castanea sativa*, *Corylus cornuta*, *Fagus sylvatica*, *Kalmia latifolia*, *Leucothoe fontanesiana*, *Pittosporum undulatum*, *Pyracantha koidzumii*, *Rubus spectabilis*, *Syringa vulgaris*, *Taxus baccata*, and *Toxicodendron diversiloba* found to be naturally infected with *P. ramorum*; potting media and compost containing or associated with any of the plants listed above; and any other product or article that an official inspector determines to present a risk of spreading *P. ramorum*. All life stages of *Phytophthora ramorum*.

**(3) Prohibitions.**

(a) Nursery stock of *P. ramorum* host plants (see (2)) grown in the quarantined area shall not be eligible for sale or shipment unless

(i) The nursery or growing area has been inspected and tested for the presence of *P. ramorum* as described in section (4);

(ii) Each shipment of covered nursery stock intended for sale and shipment has been inspected for symptoms of *P. ramorum* infection prior to shipment as described in section (5);

(iii) The grounds immediately surrounding the nursery or growing area and all host plants within 100-meter radius of the nursery or growing area have been officially surveyed for *P. ramorum* using the national survey guidelines developed by the United States Department of Agriculture Animal and Plant Health Inspection Service ([www.aphis.usda.gov](http://www.aphis.usda.gov)) and Forest Service ([www.fs.fed.us](http://www.fs.fed.us)) and have been found free of the pathogen.

(iv) The nursery stock is accompanied by an official certificate that verifies the nursery stock came from a nursery that has met the above requirements (see (4) (a) (b)). The official certificate must include the following additional declaration: "The (covered commodity) has met the *Phytophthora ramorum* quarantine requirements for shipment from Columbia County, Oregon".

(b) Potting media and compost containing covered plants (2) produced in the quarantined area shall not be eligible for sale or shipment unless

(i) the commercial facility producing the potting media or compost is tested by the Department and found free of *P. ramorum*, and

(ii) it can be shown that bark and green waste for use in potting media did not come from the generally infested, USDA-quarantined counties in California or the quarantined area in Curry Co., Oregon.

(c) Commercially-produced compost containing any plant material listed above (see (2)) must not be sold to nurseries unless it is sterilized by a method approved by the Department.

**(4) Quarantine Inspection Requirements.**

(a) For the quarantine inspection, the official inspector must collect symptomatic samples from a minimum of 40 host plants. Samples may be collected from asymptomatic plants only if no symptomatic plants are present.

(b) Samples must be tested using federally-approved laboratory methods. If any host plants within the nursery or growing area are found to be infected with *P. ramorum* by any federally-approved laboratory method, shipment of covered commodities from that nursery or growing area is prohibited until such time as an official inspector can determine that the nursery or growing area is free of *P. ramorum* according to procedures outlined in USDA's Confirmed Nursery Protocol.

**(5) Inspection of Shipments.**

(a) If symptomatic plants are found upon inspection, the official inspector will collect samples from each symptomatic plant.

(b) Samples must be tested using federally approved laboratory methods and found free of *P. ramorum* prior to movement of any host plants (2). If any host plants in the shipment are infected with *P. ramorum*, shipment of covered commodities from that nursery or growing area is prohibited until such time as an official inspector can determine that the nursery or growing area is free of *P. ramorum* according to procedures outlined in USDA's Confirmed Nursery Protocol.

(c) The Department may approve monthly inspections for *P. ramorum* as a substitute for individual shipment inspections at nurseries that make large numbers of shipments.

**(6) Violation of quarantine.**

Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, Chapter 390, Section 2. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

Signed this 4th day of June, 2004.

/s/ Katy Coba  
Katy Coba, Director  
Oregon Department of Agriculture

#### A CHANCE TO COMMENT ON PROPOSED CONSENT DECREE FOR REMEDIAL ACTION COSTS AT THE FORMER VAN OSTEN POST AND POLE IN BEND, OREGON

**COMMENTS DUE:** July 31, 2004

**PROJECT LOCATION:** 21372 East Highway 20, Bend, Oregon.  
**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Decree regarding a portion of DEQ's remedial action costs (cleanup costs) at the former Van Osten Post and Pole site in Bend, Oregon. The Decree is with Tom and Barbara Hicks, formerly doing business as Northwest Pine Products.

**HIGHLIGHTS:** The former Van Osten Post and Pole site was the site of a post and pole treating operation. During wood treating operations, hazardous substances were released into the ground and air at the property and adjacent properties. The Hicks' leased or owned and operated wood treating operations at the site from approximately 1984 to the early 1990's. DEQ has conducted removal and remedial actions at the Van Osten property and adjacent properties and has incurred substantial remedial action costs. This Decree will fully settle DEQ's claims against Tom and Barbara Hicks.

## OTHER NOTICES

**HOW TO COMMENT:** Written comments concerning the Consent Decree should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm July 31, 2004. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Decree may be reviewed at DEQ's Headquarters' Office and at the DEQ Office in Bend by contacting Cliff Walkey at (541) 388-6146.

Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments.

**THE NEXT STEP:** DEQ will consider all public comments. A final decision concerning the Consent Decrees will be made after consideration of public comments.

### PROPOSED APPROVAL OF CLEANUP AT REDI-STRIP, 9940 N VANCOUVER WAY PORTLAND, OREGON

**COMMENTS DUE:** July 30, 2004

**PROJECT LOCATION:** 9940 N Vancouver Way, Portland, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on the "No Further Action" (NFA) determination proposed for the onsite portion of the cleanup of contaminated soil at the former Redi-Strip site in Portland, Oregon.

**HIGHLIGHTS:** The subject property has been used for industrial purposes since the 1950s, with diesel repair shops located on the western half of the site and paint stripping operations on the eastern portion since 1979.

Environmental investigations began in 1988 and continue under a 2000 DEQ Order to complete an evaluation of the nature and extent of soil and groundwater contamination associated with historical waste management practices at the facility. The investigations show that soil contaminated with lead, chromium, zinc, and cyanide is present in the NE corner of the site. Groundwater with the same contaminants is present in the northern 2/3 of the property. The investigation also identified contaminated sediment in a ditch at NE 6th Drive. Storm water from the Redi-Strip facility and adjacent properties drains to this ditch and eventually to the Columbia Slough. Redi-Strip conducted a limited cleanup of ditch sediments but contaminated sediments remain. The Multnomah County Drainage District is planning ditch widening in the coming years and cleanup should be accomplished at that time.

A risk assessment was completed for the onsite soil and groundwater. The results indicated that there is potential risk to excavation workers who might contact contaminated groundwater on the northern portion of the property. DEQ proposes to close the site with a deed restriction requiring health and safety training for any future site excavation workers. The remaining cyanide and metal-contaminated soil does not pose an unacceptable risk to human health and the environment.

DEQ has concluded that risks for human receptors that may be exposed to groundwater contamination at the site can be properly managed with a deed restriction, and that further removal or remediation is not warranted. The property owner will maintain liability for cleanup work in the NE 6th Avenue ditch. The onsite cleanup action is considered protective of human health and the environment, and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** DEQ's Staff Report, dated April 13, 2004, and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll

free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at Williams.robert.k@deq.state.or.us. DEQ must receive written comments by 5 pm on July 30, 2004. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

**THE NEXT STEP:** DEQ will consider all public comments received by the July 30, 2004 deadline. In the absence of comments, DEQ will issue the No Further Action Determination.

### PROPOSED APPROVAL OF CLEANUP AT FORMER STAR AUTO WRECKING/CHANS GARDEN 9711 SE 82ND STREET, CLACKAMAS, OREGON

**COMMENTS DUE:** July 30, 2004

**PROJECT LOCATION:** 9711 SE 82nd Street, Clackamas, Oregon  
**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on the "No Further Action" (NFA) determination proposed for the cleanup of petroleum-contaminated soils at the former Star Auto Wrecking/Chan's Garden site in Clackamas, Oregon.

**HIGHLIGHTS:** In a 1999 pre-sale investigation four test pits were excavated and sampled to assess contaminated soils at the site. Surface petroleum staining was observed throughout the site. Petroleum hydrocarbons were found in analysis of site soil. Following this investigation the site buildings were demolished and the site was cleared of vehicles.

In the fall of 2003 a soil cleanup was undertaken and approximately 757 tons of petroleum-contaminated soil was excavated from the site and trucked to Hillsboro Landfill. The excavation included removal of a storm water dry well. A risk assessment was completed following soil removal. The results indicated that the remaining petroleum soil contamination does not pose an unacceptable risk to human health and the environment.

DEQ has concluded that there are no unacceptable risks for human receptors that may be exposed to contamination present in soil on the site, and that further removal or remediation is not warranted. The cleanup action is considered protective of human health and the environment, and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** DEQ's Staff Report, dated June 9, 2004, and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at Williams.robert.k@deq.state.or.us. DEQ must receive written comments by 5 pm on July 30, 2004. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

**THE NEXT STEP:** DEQ will consider all public comments received by the July 30, 2004 deadline. In the absence of comments, DEQ will issue the No Further Action Determination.

## OTHER NOTICES

### PROPOSED REMEDIAL ACTION FOR FORMER MODOC LUMBER FACILITY KLAMATH FALLS, OR

**COMMENTS DUE:** July 31, 2004

**PROJECT LOCATION:** 4th and Oak Streets, Klamath Falls, OR  
**PROPOSAL:** The Department of Environmental Quality is proposing to issue a decision regarding cleanup activities at the above referenced site based on approval of an investigation conducted to date and a proposed remedy. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** The subject property was operated as several lumber mills until 1994. All of the structures associated with the mill operations have been demolished and removed. Based on initial assessment of soil and groundwater further investigation was conducted at approximately two dozen locations across the site where hazardous substances were detected in either the soil or shallow groundwater. Eight of the locations have conducted groundwater monitoring and six locations conducted limited soil removal actions. The compounds detected include, various petroleum products used at the site, including gasoline, diesel, and heavy oils and their hazardous constituents, poly-nuclear aromatic hydrocarbons (PAHs). In addition, pentachlorophenol (PCP) and dioxin (an impurity in the manufacturing of PCP) and lead and arsenic have also been detected at discrete locations. Some of these compounds are suspected carcinogens. Removals at three locations (Sawmill, Re-saw and Mill Storm Drain (MSD) D and E) resulted in acceptable levels in the soil. Levels of PAHs and TPH exceed acceptable residential uses at MSD C, the Truck Stop UST Area, and the former City Truck Storage. Lead and arsenic exceed acceptable levels at the Truck Shop/Steam Clean Area. PCP exceeds acceptable levels at the former Dip Trench Area and at the MSD-C Area. Groundwater has been adversely impacted in these areas.

Based on the findings to date DEQ is proposing a remedy consisting of 1) land use restrictions to prohibit residential uses and groundwater uses and 2) a soil management plan be in place during redevelopment of the areas identified above with unacceptable risks in soil. The areas subject to this remedy are included in Block 88 of Tax Lot 100 32DB, and Block 111 of Tax Lot 800 32DA. If implemented as proposed it is believed that this alternative will achieve protective conditions at the site as defined in OAR-340-122-040.

Additional investigation is ongoing at the Log Slip Debarker for PCP and PAHs and with the nearshore sediments near the debarker and the Truck Shop.

**COMMENT:** The staff report recommending the proposed remedial actions may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246.

Written comments should be sent by July 31, 2004 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

**NEXT STEP:** DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

### PROPOSED REMEDIAL ACTION AT THE FORMER CHEVRON BULK PLANT NO. 100-1916 AND PIPELINE TERMINAL BAKER CITY, OREGON

**COMMENTS DUE:** July 30, 2004

**PROJECT LOCATION:** 3370 17th Street, Baker City, OR  
**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to approve a remedial action for the groundwater consumption or exposure pathway at the Former Chevron Bulk Plant #100-1916 and Chevron Pipeline Terminal located at 3370 17th Street in Baker City, Oregon.

**HIGHLIGHTS:** The DEQ Voluntary Cleanup Program has reviewed the information gathered during the site investigation and groundwater monitoring activities performed at the site. With the closure of bulk plant and pipeline terminal operations, the removal of the storage tanks, and re-routing of the pipeline, future releases are unlikely. Approximately 7,300 cubic yards of petroleum contaminated soil was excavated, treated and re-used on site. Extensive groundwater data has been collected since 1990. Based on the current and reasonable likely future land use within the vicinity of the site, the potential exposed populations evaluated were on-site workers, trench workers, and off-site residents. The primary exposure routes included groundwater ingestion, dermal exposure to groundwater and inhalation of volatiles from groundwater. The risk assessment concluded that unacceptable risks and hazards for on-site workers and off-site residents are present if groundwater is used for domestic use (i.e. drinking water). The primary drivers are benzene and naphthalene. All other exposure routes evaluated were determined to be acceptable, although subsequent sampling has demonstrated a need for additional assessment of the inhalation pathway at one adjacent residence.

An institutional control (i.e. deed restriction) in the form of an Easement and Equitable Servitude (E&ES) is the proposed remedy for the site. This alternative relies on natural degradation and specifies deed restrictions on the site and specific properties in the vicinity of the site. The deed restriction will prohibit property owners from using existing wells or installing new wells for the purpose of domestic use. Groundwater would be monitored on an annual basis. The site will remain listed on the Confirmed Release List and Inventory of Hazardous Substances.

This proposed remedy does not address the potentially complete inhalation pathway present at one adjacent residence. Additional monitoring will be necessary prior to determining if remedial measures are necessary to address inhalation concerns at the residence. If remedial measures are necessary to address the inhalation pathway, an additional staff report and Record of Decision will be prepared to address the specific issues and remedies for this pathway.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be sent by July 30, 2004 to Katie Robertson at the address listed above.

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

**THE NEXT STEP:** DEQ will consider all public comments received before issuing a record of decision for the site.

### PROPOSED NO FURTHER ACTION DETERMINATION UPRR WYETH SITE HOOD RIVER COUNTY, OREGON

**COMMENTS DUE:** August 2, 2004

**PROJECT LOCATION:** South shore of the Columbia River, about 10 miles west of the town of Hood River.

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes to issue a No Further Action determination following cleanup of contamination at the Wyeth tie treating site, owned by Union Pacific Railroad (UPRR). Public notification is required by ORS 465.320.

**HIGHLIGHTS:** The Wyeth site covers about 20 acres in the Columbia River Gorge. UPRR and/or its predecessor, Oregon Railroad & Navigational Company used the site for railroad tie-treating operations from the 1880s to 1920s.

UPRR plans to transfer the land to the State of Oregon, for use by the Oregon Parks and Recreation Department (OPRD). OPRD plans to develop the central portion of the property as a park for day use

## OTHER NOTICES

and river access. OPRD also plans to transfer the western portion of the site to Native American tribal interests to provide river access for fishing.

Contamination extends over an area about 100 feet by 200 feet in the central portion of the property. The No Further Action recommendation is based on implementation of the following remedial activities:

1. Excavation and removal of concrete structures and soil contaminated with zinc chloride and creosote as a result of historic tie treating activities.
2. Backfilling excavated areas with clean soil.
3. Placing a cap over remaining contaminated soil as part of development of the property as a park.
4. Implementation of a deed restriction that restricts groundwater use without DEQ approval, disturbance of backfilled and capped soil areas, and use of portions of the property for residential or agricultural purposes

The No Further Action (NFA) determination would be issued to facilitate transfer of the property from UPRR to the State of Oregon. UPRR will implement remedial items 1, 2 and 4 before the NFA determination is issued. Item 3 will be implemented by OPRD after the NFA determination is issued and the land ownership is transferred. Placement and maintenance of the cap are conditions of the deed restriction, and are therefore conditions of the NFA determination.

This recommended action was selected following completion of a risk assessment conducted under Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 010 to 115.

**HOW TO COMMENT:** Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager  
Phone: 541-298-7255, ext. 30  
Fax: 541-298-7330  
Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Monday, August 2, 2004.

**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.

### **PROPOSED NO FURTHER ACTION DETERMINATION MASTERBRAND CABINETS FACILITY, ECSI # 3375 GRANTS PASS, OREGON**

**COMMENTS DUE:** August 2, 2004

**PROJECT LOCATION:** 550 SE Mill St., Grants Pass, Oregon

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes to issue a No Further Action determination following cleanup of contamination at the MasterBrand Cabinets facility in Grants Pass. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** MasterBrand Cabinets, Inc. operates a cabinet manufacturing plant on a 10.2-acre piece of property in Grants Pass. In April 2002, MasterBrand discovered soil and groundwater contamination during parking lot construction immediately south of the warehouse. Evidence of past waste disposal included old timbers, solid waste, stained soil, asphalt, wood scraps, brick pieces, paint-like material. Approximately 429 tons of soil was excavated and disposed of at Coffin Butte Landfill in Corvallis, Oregon on June 17 and 18, 2002. In addition, 15,750 pounds of the most heavily contaminated material was placed in 24 drums and was disposed of at Chem Waste Management's facility in Arlington, Oregon on July 15 2002.

The excavation area extended about 70 feet east-west, and up to 30 feet north-south. Maximum depth was about 10 feet. Excavation was constrained by the presence of the warehouse building immediately north. Soil and groundwater monitoring indicate that risk-based

screening levels were exceeded for several volatile organic compounds (VOCs), as well as the pesticides aldrin and dieldrin.

Working in cooperation with DEQ, MasterBrand installed additional groundwater monitoring wells and sampled groundwater to define the extent of contamination. They also conducted air sampling in the warehouse to evaluate whether contaminants in groundwater are volatilizing into the building at unsafe levels.

Based on the results of this additional monitoring, DEQ has concluded that remaining contamination does not exceed acceptable levels. DEQ therefore recommends that a No Further Action determination be issued for this site. The NFA will pertain specifically to the area south of the warehouse where contaminated soil and debris had been removed.

This recommended action was selected following completion of a site investigation conducted under Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 010 to 115.

**HOW TO COMMENT:** Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager  
Phone: 541-298-7255, ext. 30  
Fax: 541-298-7330  
Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Monday, August 2, 2004.

**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.

### **DEQ SEEKS COMMENTS ON PROPOSED NO FURTHER ACTION DECISION FOR A METHANOL SPILL CLEANUP AT BORDEN CHEMICAL IN SPRINGFIELD**

**COMMENTS INVITED** through July 31th, 2004

**PROJECT LOCATION:** 470 S. Second Street, Springfield

**PROPOSAL:** The Oregon Department of Environmental Quality is proposing a No Further Action determination for a cleanup at the Borden Chemical (Borden) plant in Springfield. In August 2002, methanol spilled from a storage area and contaminated soil, shallow groundwater and the Willamette River. Borden has completed cleanup activities required by the DEQ Cleanup Program.

**HIGHLIGHTS:** Borden operates a plant in Springfield that primarily produces glues for the wood products industry. This process involves the use of several chemicals, including methanol. In August 2002, about 34,000 gallons of methanol leaked from a storage area near the Willamette River. Borden cooperated with DEQ's emergency response staff to take initial abatement and cleanup actions. Soil saturated with methanol was excavated from the storage area and the methanol remaining in the storage tank was transferred to a safe location. While the leak occurred within a storage area with secondary containment, the containment system failed and methanol leaked into the soil, shallow groundwater, and eventually into the Willamette River. DEQ issued Borden a civil penalty in May 2003 for failure to take faster action on the release.

DEQ's Environmental Cleanup Program has supervised the continued cleanup and monitoring of the spill since October 2002. To date, over 11,000 pounds of methanol have been pumped from the shallow groundwater beneath the former storage area and recycled. Methanol was detected in the Willamette river near the spill site, but it has not been detected downstream of the site. Concentrations of methanol found in the river adjacent to the spill site have decreased over time, and currently there is no detectable methanol in the river water. Efforts to intercept contaminated groundwater to minimize impacts to the river were considered early in 2003, but it was determined by DEQ and the City of Springfield that evasive actions on

## OTHER NOTICES

the river bank would be more detrimental to water quality and worker safety than the short term release of methanol to the river.

DEQ toxicologists assessed the threat to human health and ecological receptors in the river and found that the risks posed to the limited and short term release of methanol were below DEQ's cleanup standards. Borden has also capped the spill area with a new concrete secondary containment structure, which should eliminate any further infiltration and flushing of residual methanol in the soil. Borden recently completed a final spill report that assesses the risks posed by the remaining methanol in the soil and groundwater. The residual risks are below DEQ's cleanup standards. DEQ is proposing a No Further Action decision for the spill project.

**HOW TO COMMENT:** Information about the project is available for review at the DEQ Eugene office located at 1102 Lincoln, Suite 210, Eugene, OR 97401. To schedule an appointment, call the Eugene office of DEQ at (541) 686-7838, ext. 241. Please send written comments to Don Hanson in the DEQ Eugene office or by email at [hanson.don@deq.state.or.us](mailto:hanson.don@deq.state.or.us). For more information, call Don Hanson at (541) 686-7838, ext. 241.

**FINAL DECISION:** DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination for the site.

### **PROPOSED NO FURTHER ACTION DETERMINATION UNDERGROUND STORAGE TANKS AT BROOKLYN YARD, PORTLAND, OREGON**

**COMMENTS DUE:** August 2, 2004

**PROJECT LOCATION:** Southeast Portland, bounded on the south by Highway 99E (SE McLoughlin Boulevard) and on the west by SE 17th Avenue.

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a No Further Action determination regarding the cleanup of three underground diesel storage tanks at Union Pacific Railroad's Brooklyn Yard. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** Union Pacific Railroad (UPRR) is conducting an environmental investigation of Brooklyn Yard. While this investigation continues, UPRR has requested a No Further Action determination specifically regarding three 10,000-gallon underground diesel storage tanks that were removed from the site in 1989. The tanks were on the west side of the rail yard, in an area formerly operated by Superior Cartage, a company that operated a small trucking and transfer operation. Groundwater was not encountered during the removal. Soil contamination does not exceed safe levels. DEQ therefore proposes to issue a No Further Action determination concerning the removal of these three tanks.

**HOW TO COMMENT:** Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

Email: [Schwarz.bob@deq.state.or.us](mailto:Schwarz.bob@deq.state.or.us)

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Monday, August 2, 2004.

**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.

# 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 listed below.

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 pm on the Last Day for Comment listed below. Written and oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

ORS 183.335(2)(b)(G) requests 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.

A public rulemaking 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 by the Last Date for Comment as printed in the Notice of Proposed Rulemaking in the Oregon Bulletin. If sufficient hearing requests are received by an agency, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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**Board of Chiropractic Examiners**  
**Chapter 811**

Date:	Time:	Location:
7-22-04	1 p.m.	OBCE Large Conf. Rm. 3218 Pringle Rd. SE Salem, OR 97302

**Hearing Officer:** Dave McTeague, Exec. Director  
**Stat. Auth.:** ORS 684.100 & 684.155; Other Auth.: ORS 684.100(1)(g)(A) & 684.155

**Stats. Implemented:** ORS 684.100(1)(g)(A)

**Proposed Amendments:** 811-035-0015

**Last Date for Comment:** 7-22-04

**Summary:** 811-035-0015 - Proposed language adds charging clearly excessive fees as unprofessional conduct and lists criteria to determine what is an excessive fee.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Dave McTeague  
**Address:** Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311  
**Telephone:** (503) 378-5816, ext. 23

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**Board of Geologist Examiners**  
**Chapter 809**

**Stat. Auth.:** ORS 183, 192 & 672  
**Stats. Implemented:** ORS 183.341, 183.355, 183, 192 & 672  
**Proposed Amendments:** 809-003-0000  
**Last Date for Comment:** 8-1-04

**Summary:** The Board is revising the definition of the term "misconduct."

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

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**Stat. Auth.:** ORS 182.466, 670.310 & 672.705  
**Stats. Implemented:** ORS 672.705  
**Proposed Amendments:** 809-010-0001  
**Last Date for Comment:** 8-1-04

**Summary:** The Board is adding a \$25.00 fee for maintaining files and processing paperwork in verifying passing scores on national examinations to other states for candidates that are not registered with the Oregon Board.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

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**Stat. Auth.:** ORS 183, 192, 670.310 & 672.555(2)(b)(D)  
**Stats. Implemented:** ORS 672.555  
**Proposed Amendments:** 809-030-0015  
**Last Date for Comment:** 8-1-04

**Summary:** This rule identifies the standards required of applicants. In addition to minor grammatical changes, the revision of the rule allows for evaluating the experience of university professors, outside of teaching and administering, who may wish to seek registration. It will allow for their research and publication to be considered as experience toward the required years.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

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**Stat. Auth.:** ORS 183, 192 & 672  
**Stats. Implemented:**  
**Proposed Amendments:** 809-050-0000  
**Last Date for Comment:** 8-1-04

**Summary:** This rule revision allows for the use of electronic stamps on geology documents when those documents are submitted electronically.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

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**Board of Massage Therapists**  
**Chapter 334**

Date:	Time:	Location:
8-12-04	10:30 a.m.	Board Office 748 Hawthorne Ave NE Salem, OR 97301

**Hearing Officer:** Michael Jordan  
**Stat. Auth.:** ORS 183, 687.121 & SB 1127  
**Stats. Implemented:** Sec. 6, (1) & (2)  
**Proposed Amendments:** 334-010-0033, 334-010-0050  
**Last Date for Comment:** 8-11-04, 4:30 p.m.  
**Summary:** 334-010-0033, Fees: Increases some of the fees in order to meet expense demands.

334-010-0050, Continuing Education: To make permanent the January 1, 2005 effective date which mandates continuing education providers/classes be approved by an outside professional accrediting agency, Oregon Department of Education, or the Oregon Board of Massage Therapists.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Michelle Sherman  
**Address:** Board of Massage Therapists, 748 Hawthorne Ave. NE, Salem, OR 97301  
**Telephone:** (503) 365-8657

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**Board of Naturopathic Examiners**  
**Chapter 850**

**Stat. Auth.:** ORS 685.125  
**Stats. Implemented:** ORS 685.160  
**Proposed Adoptions:** 850-010-0175  
**Last Date for Comment:** 7-30-04

# NOTICES OF PROPOSED RULEMAKING

**Summary:** Assures that no more than three member terms expire in one year.

**Rules Coordinator:** Anne Walsh

**Address:** Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232

**Telephone:** (503) 731-4045

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## **Board of Parole and Post-Prison Supervision Chapter 255**

**Stat. Auth.:** ORS 144.050, 144.140, 144.346, 163.105 & 163.115;  
Other Auth.: OAR 213-005-0004

**Stats. Implemented:**

**Proposed Amendments:** 255-075-0079

**Last Date for Comment:** 8-2-04

**Summary:** The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

**Rules Coordinator:** Michael R. Washington

**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301

**Telephone:** (503) 945-8978

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## **Bureau of Labor and Industries Chapter 839**

**Stat. Auth.:** ORS 183

**Stats. Implemented:** ORS 183.335

**Proposed Amendments:** 839-002-0002

**Last Date for Comment:** 7-21-04

**Summary:** The proposed amendment clarifies that the agency will give notice in the Secretary of State's Bulletin, to persons on the agency's mailing list, and to the general public on the agency's website, prior to the permanent adoption, amendment or repeal of any rule. This amendment is "housekeeping" in nature.

**Rules Coordinator:** Marcia Ohlemiller

**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

**Telephone:** (503) 731-4212

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**Stat. Auth.:** ORS 651.060(4), 652, 653, 658.407(3) & 279; Other Auth.: ORS 183.335

**Stats. Implemented:** ORS 652, 658.705 - 658.850, 658.405 - 658.503, 279.348 - 279.380 & 653.010 - 653.370

**Proposed Amendments:** 839-001-0000, 839-014-0020, 839-015-0000, 839-016-0000, 839-020-0000

**Last Date for Comment:** 7-21-04

**Summary:** The proposed amendments clarify that the agency will give notice in the Secretary of State's Bulletin, to persons on the agency's mailing list, and to the general public on the agency's website, prior to the permanent adoption, amendment or repeal of any rule. These amendments are "housekeeping" in nature. The proposed amendments also correct errors in statutory authority and statutes implemented.

**Rules Coordinator:** Marcia Ohlemiller

**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

**Telephone:** (503) 731-4212

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**Stat. Auth.:** ORS 659A.805

**Stats. Implemented:** ORS 30.670 - 30.685, 654.062, 659A.820, 29 CFR Part 15(d)(3)

**Proposed Amendments:** 839-003-0025

**Last Date for Comment:** 7-21-04

**Summary:** The proposed rule conforms the agency's rule to the provisions of ORS 659A.820(1) relating to administrative actions for unlawful discrimination, whereby, except as provided in ORS 654.062, a complaint filed for unlawful discrimination under this section must be filed no later than one year after the alleged unlawful practice.

**Rules Coordinator:** Marcia Ohlemiller

**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

**Telephone:** (503) 731-4212

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## **Department of Agriculture, Oregon Hazelnut Commission Chapter 623**

**Date:**  
7-26-04

**Time:**  
8:30 a.m.

**Location:**  
21595 A Dolores Way NE  
Aurora, OR

**Hearing Officer:** Polly Owen

**Stat. Auth.:** ORS 576

**Stats. Implemented:** ORS 576

**Proposed Amendments:** 623-010-0010

**Last Date for Comment:** 7-26-04, close of hearing

**Summary:** Proposed amendment to OAR 623-010-0010 will decrease the assessment to hazelnut producers by \$1 per ton. In 2003 the assessment was increased by \$3 per ton to pay for an anti-dumping suit. The suit has been dropped and thus the assessment is being decreased.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Polly Owen

**Address:** Department of Agriculture, Oregon Hazelnut Commission, 21595 A Dolores Way NE, Aurora, OR 97002-9738

**Telephone:** (503) 678-6823

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## **Department of Corrections Chapter 291**

**Date:**  
7-27-04

**Time:**  
9:30 a.m.

**Location:**  
Department of Corrections  
Brentwood Bldg.  
Birch Conference Rm.  
1793 13th St. SE  
Salem, OR 97302

**Hearing Officer:** Birdie Worley

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-127-0200 - 291-127-0260, 291-127-0280 - 291-127-0330

**Proposed Repeals:** 291-127-0270

**Last Date for Comment:** 8-5-04

**Summary:** These rule amendments are necessary to revise and update the department's guidelines that govern the visitation programs in its facilities. Major modifications include establishing a review process for reconsideration of visitors who are ineligible to visit, expanding the definition of immediate family member, clarifying the process for facilitating professional and therapeutic/programming visits, updating approved visitors lists, and revising visiting room protocol for inmates and visitors to enhance the visiting experience.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-061-0005 - 291-061-0310

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 8-5-04

**Summary:** These rule amendments are necessary to update the department's rules relating to food handling and preparation to changes from the Department of Human Services, Public Health, and to reflect minor operational changes within the department.

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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**Stat. Auth.:** ORS 179.040, 421.084, 423.020, 423.030, 423.075 & 423.085

**Stats. Implemented:** ORS 179.040, 421.084, 423.020, 423.030, 423.075 & 423.085

**Proposed Amendments:** 291-113-0010

**Last Date for Comment:** 8-5-04

**Summary:** This rule amendment is necessary to change the definition of functional literacy to align with that of ORS 421.084. The department has received a report from the Legislative Counsel Committee that the rule goes beyond the intent and scope of the enabling legislation because the definition of functional literacy in the rule is not the same as the statutory definition.

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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**Stat. Auth.:** ORS 179.040, 179.610 - 179.770, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 179.610 - 179.770, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-203-0020

**Last Date for Comment:** 8-5-04

**Summary:** This rule amendment is necessary to change the definition of authorized representative to align with that of ORS 179.610(2). The department has received a report from the Legislative Counsel Committee that the rule goes beyond the intent and scope of the enabling legislation because the definition of authorized representative in the rule is not the same as the statutory definition.

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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## Department of Environmental Quality Chapter 340

**Stat. Auth.:** ORS 468.020; Other Auth.: ORS 468.165

**Stats. Implemented:**

**Proposed Amendments:** 340-016-0055

**Last Date for Comment:** 7-15-04

**Summary:** This rulemaking would permanently adopt the Pollution Control Tax Credit temporary rule adopted by the Environmental Quality Commission on May 21, 2004. The proposed rule amends filing deadlines and sunset dates which were changed by the Legislative Assembly in 2001.

To submit comments or request additional information, please contact Maggie Vandehey at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave., Portland, Oregon 97204-1390 toll free in Oregon at 800-452-4011 or 503-229-6878, vandehey.maggie@deq.state.or.us, fax 503-229-6730, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

**Rules Coordinator:** Roberta Young

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204

**Telephone:** (503) 229-6408

## Department of Fish and Wildlife Chapter 635

**Date:**  
8-6-04

**Time:**  
8 a.m.

**Location:**  
City of Gresham  
Council Chambers  
1333 NW Eastman Parkway  
Gresham, OR 97030

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162

**Stats. Implemented:** ORS 496.012, 496.138, 496.146 & 496.162

**Proposed Adoptions:** Rules in 635-135

**Last Date for Comment:** 8-6-04

**Summary:** Adopt rules relating to the Oregon Wild Turkey Management Plan.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Katie Thiel

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

**Telephone:** (503) 947-6033

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**Date:**  
8-6-04

**Time:**  
8 a.m.

**Location:**  
City of Gresham  
Council Chambers  
1333 NW Eastman Parkway  
Gresham, OR 97030

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.232 & 497.112

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.232 & 497.112

**Proposed Amendments:** Rules in 635-045, 051, 052, 053, 054, 060

**Last Date for Comment:** 8-6-04

**Summary:** Amend rules regarding the harvest of game birds, including 2004-05 season dates, open areas, and bag limits, and proposed 2005-2010 Upland Game Bird Frameworks.

Lastly, housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Katie Thiel

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

**Telephone:** (503) 947-6033

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## Department of Human Services, Child Welfare Programs Chapter 413

**Date:**  
7-22-04

**Time:**  
1:30 p.m.

**Location:**  
Rm. 257  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 418.005

**Proposed Amendments:** 413-015-0100 - 413-015-0125, 413-015-0200 - 413-015-0225, 413-015-0300 - 413-015-0310, 413-015-0400 - 413-015-0410, 413-015-0500 - 413-015-0510, 413-015-0700 - 413-015-0740

**Last Date for Comment:** 7-22-04

**Summary:** There are several language changes being made to Child Protective Services (CPS) rules in order to clarify the intent of existing CPS rules and guide best practice. In achieving this outcome, some definitions were modified and/or expanded. This includes clarification of time lines and an increase from three to five days for one documentation requirement. In addition, there is a deletion of a dated reference to a form that is no longer used. These rules will also be amended to reflect new Department terminology and to correct formatting, punctuation, and spelling.

# NOTICES OF PROPOSED RULEMAKING

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Annette Tesch  
**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, OR 97301-1066  
**Telephone:** (503) 945-6067

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**Department of Human Services,  
Departmental Administration and  
Medical Assistance Programs  
Chapter 410**

**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-141-0000, 410-141-0080, 410-141-0140, 410-141-0280, 410-141-0300, 410-141-0420  
**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Rules 410-141-0000, 410-141-0080, 410-141-0140, 410-141-0280, 410-141-0300, 410-141-0420 were temporarily amended, effective June 1, 2004, to provide immediate clarification for managed care organizations regarding federal requirements imposed under the Balanced Budget Act consistent with changes to the managed care contracts to be in full compliance with federal law. This Notice is to permanently amend these rules effective on or after August 1, 2004.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177  
**Telephone:** (503) 945-6927

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**Date:** 7-18-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0030  
**Last Date for Comment:** 7-18-04, 12 p.m.

**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0030 will be amended, effective August 1, 2004, to add the Beta-blocker class to the Practitioner's-Managed prescription Drug Plan table of drug classes. Long-acting opioids and proton pump inhibitors have also been modified by ongoing review of drug classes per policy.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177  
**Telephone:** (503) 945-6927

.....  
**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-141-0520  
**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Oregon Health Plan (OHP) Services program rules govern Office of Medical Assistance Programs' payment for services provided to clients. Rule 410-141-0520 incorporates in rule by reference the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List), currently dated October 1, 2003. Oregon's 1115 demonstration waiver includes the Prioritized List of Health Services, which is operationalized through OHP program rules. Rule 410-141-0520 is being revised to reflect Centers for Medicare and Medicaid Services (CMS) approval to move the funding line of the list from line 549 to line 546 effective August 1, 2004. The August change in the funding line will be incorporated into the current list dated October 1, 2003.

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**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-120-0000, 410-120-1140, 410-120-1160, 410-120-1260, 410-120-1960  
**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The General Rules program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will revise rules 410-120-1140, 410-120-1160, 410-120-1260 and 410-120-1960 to incorporate changes made to the medical identification card, clarifications regarding billing providers collection. OMAP added further clarification to rules regarding when OMAP can make private health insurance premiums; the process has not changed but the rules required additional details of current practice.

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**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0040, 410-121-0148, 410-121-0160  
**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. 410-121-0040 will be amended to delete prior authorization (PA) on over-the-counter drugs and add brand name PA to this rule. 410-121-0148 will be amended to require the prescription credit of long-term care client (LTC) allowable

## NOTICES OF PROPOSED RULEMAKING

returns. 410-121-0160 will be modified to add a restocking fee for LTC returns to unit dose pharmacies and add clarification for reimbursable compound prescription ingredients.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.110 & 409.010

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-122-0055, 410-123-1670, 410-125-0047, 410-130-0163, 410-146-0380, 410-147-0125

**Proposed Amendments:** 410-120-1210, 410-120-1230, 410-123-1060, 410-123-1085, 410-125-0080, 410-127-0055, 410-129-0195, 410-131-0275, 410-132-0055, 410-140-0115, 410-146-0080, 410-147-0085, 410-147-0120, 410-148-0090

**Proposed Repeals:** 410-125-0055

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** Administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. Rules listed above will be adopted/amended/repealed to implement modifications to the Oregon Health Plan (OHP) Standard Benefit Package as directed by the 2003 Legislative Assembly in HB 2511. Some benefits will be restored while other benefits will be removed. Implementation of these amendments is approved by the Centers for Medicare and Medicaid Services (CMS) and will be effective on or after August 1, 2004.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-123-1240, 410-123-1260, 410-123-1490

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Dental Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rules 410-123-1240, 410-123-1260 and 410-123-1490 are being revised to better reflect the intent and support the limitation on dental services. These proposed rule amendments are necessary to add more direct language to assure that the intended dental services are provided, clarify rule language and take care of necessary housekeeping corrections.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Repeals:** 410-127-0100, 410-127-0120

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Home Health Care Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rules 410-127-0100 and 410-127-0120 will be repealed to remove billing instructions that are unnecessary in rule.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** 414.065

**Proposed Amendments:** 410-129-0080, 410-129-0100

**Proposed Repeals:** 410-129-0120, 410-129-0140

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Speech-Language Pathology, Audiology and Hearing Aid Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-129-0080 will be amended to correct a typographical error. Rule 410-129-0100 will be amended to clarify reimbursement for services for Medicaid fee-for-service clients with Medicare. Proposed adopted language is consistent with General Rules. There is no change in the amount of reimbursement. Rules 410-129-0120 and 410-129-0140 will be repealed to eliminate redundancy. This is supplemental information, available on OMAP's website.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-130-0160, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0245, 410-130-0255, 410-130-0580, 410-130-0595

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Medical-Surgical Services program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will amend the following rules as indicated: Rule 410-130-0160: to remove language regarding the grace period for use of deleted CPT/HCPCS codes. Rule 410-130-0200: to change the contact for prior authorization of transplants; remove PA requirements for breast reconstruction codes and add code for ventricular assist device insertions. Rule 410-130-0220: to

## NOTICES OF PROPOSED RULEMAKING

add new codes. Rule 410-130-0240: to clarify language regarding massage covered only when performed in conjunction with other modalities. Rule 410-130-0245: to add scheduling for lead testing. Rule 410-130-0255: to clarify language regarding immunizations and vaccines. Rule 410-130-0580: to remove language regarding parents' signature on consent form for children under age 15. Rule 410-130-0595: to add requirements to review 5 A's at every visit and restrict initial assessment to licensed providers only.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-131-0120, 410-131-0160, 410-131-0200, 410-131-0280

**Proposed Repeals:** 410-131-0220, 410-131-0240

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Physical and Occupational Therapy Services program rules governs the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rule 410-131-0120 will be amended to place a limitation on massage therapy to establish consistency with other medical programs. Rule 410-131-0160 will be amended to eliminate payment authorization requirement for OMAP fee-for-service clients, who also have Medicare, for physical and occupational therapy services covered by Medicare. Rule 410-131-0200 will be amended to reference OMAP's General Rules to clarify OMAP reimbursement for services provided to OMAP fee-for-service clients who also have Medicare. There is no change in the reimbursement methodology. Rule 410-131-0280 will be amended to delete coverage of CPT 97537, community/work integration training, since this procedure is not for treatment of diagnosis of a medical condition. Rules 410-131-0220 and 410-131-0240 will be repealed to eliminate duplicated information that is not necessary in rule. This supplemental information is available on OMAP's website.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-136-0040, 410-136-0160, 410-136-0200, 410-136-0240, 410-136-0440, 410-136-0800

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Medical Transportation Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rules 410-136-0040, 410-136-0160, 410-136-0200, 410-136-0240, 410-136-0440, and 410-136-0800 will be amended to prevent dual billing by med-

ical transportation providers within contracted transportation brokerage areas; update codes for billing; define client sanctions in non-brokerage areas and bring them into line with brokerage areas; clarify the definition of Emergency Medical Transportation; allow Department of Human Services, Mental Health and Developmental Disability Services rules to supersede OMAP rules in secured transportation standards and enforcement and allow for brokerages to authorize reimbursement of mileage, per diem and lodging.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-140-0060, 410-140-0080, 410-140-0115, 410-140-0160, 410-140-0380

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Visual Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rule 410-140-0060 will be amended to clarify billing procedures and eliminate duplicated information that is not necessary in rule. This supplemental information is available on OMAP's website. Rule 410-140-0080 will be amended to clarify reimbursement for services for Medicaid fee-for-service clients with Medicare and to reference General Rules. There is no change in reimbursement amount. Rule 410-140-0115 will be amended to remove text regarding copayments for Standard Benefit Package pursuant to Spry, et al. v. Thompson, et al, court order. Rule 410-140-0380 will be amended to show where to find information on Administrative Examination; references other appropriate rules. The remaining rules listed above will be amended to make necessary housekeeping corrections.

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-141-0065, 410-141-0410

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Oregon Health Plan (OHP) Administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rule 410-141-0065 will be amended to remove active TPR as an exception to the pharmacy management program. Clients with TPR will need to choose one pharmacy to have their prescriptions filled. Rule 410-141-0410 will be amended to update criteria. With this amendment, OMAP will remove private medical insurance as an exemption for enrollment and address pharmacy requirements for TPR billing following the elimination of "pay and chase."

# NOTICES OF PROPOSED RULEMAKING

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Date:	Time:	Location:
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-142-0300

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Hospice Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rule 410-142-0300 will be amended to update OMAP's website address and to clarify billing information.

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Date:	Time:	Location:
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-146-0400, 410-146-0420, 410-146-0440, 410-146-0460

**Proposed Amendments:** 410-146-0000, 410-146-0020, 410-146-0021, 410-146-0025, 410-146-0040, 410-146-0120

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The American Indian/Alaska Native Services program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will adopt rules 410-146-0400, 410-146-0420, 410-146-0440 and 410-146-0460 to include text from the Tribal Urban Clinic rules in the Federally Qualified Health Centers/Rural Health Clinics (FQHC/RHC) Services program rules. OMAP will also add specific information regarding payment methodology and reimbursement for Outstationed Eligibility Workers (outreach). OMAP will revise rules 410-146-0000, 410-146-0020, 410-146-0021, 410-146-0025, 410-146-0040, and 410-146-0120 to provide language clarification, remove unnecessary language and take care of necessary housekeeping corrections.

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Date:	Time:	Location:
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-147-0000, 410-147-0060, 410-147-0140, 410-147-0200, 410-147-0220, 410-147-0320, 410-147-0340, 410-147-0360, 410-147-0610

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will revise rules 410-147-0000, 410-147-0060, 410-147-0220 and 410-147-0610 to provide language clarification, remove unnecessary language and take care of necessary housekeeping corrections. OMAP will revise rules 410-147-0140, 410-147-0200, 410-147-0320, 410-147-0340 and 410-147-0360 to reflect change in encounter rate determination process, clarify when multiple encounters are allowed and to refer to other program rules.

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**Telephone:** (503) 945-6927

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Date:	Time:	Location:
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & ORS 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-148-0020, 410-148-0080, 410-148-0100

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Home EPIV program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rules 410-148-0020, 410-148-0080, and 410-148-0100 are being revised to clarify rule language and to take care of necessary housekeeping corrections.

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Date:	Time:	Location:
7-16-04	10:30 a.m.-12 p.m.	500 Summer St. NE Rm. 137 D Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-122-0010, 410-122-0190

**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Durable Medical Equipment and Medical Supplies (DMEPOS) Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Effective January 30, 2004, OMAP removed the prior authorization requirement for A4649 and E1399 when billing for equipment and supplies under \$50.00. Rule 410-122-0190 will be amended to reflect this change. Rule 410-122-0010 will be amended to add the definition of "home."

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# NOTICES OF PROPOSED RULEMAKING

**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Adoptions:** 410-138-0530  
**Proposed Amendments:** 410-138-0000, 410-138-0080, 410-138-0300, 410-138-0360, 410-138-0380, 410-138-0500, 410-138-0560  
**Proposed Repeals:** 410-138-0100, 410-138-0400  
**Last Date for Comment:** 7-16-04, 12 p.m.

**Summary:** The Targeted Case Management Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Rules listed above will be adopted/amended to create a contractual relationship between providers and OMAP using the Provider Enrollment Application as the authorizing document. This will eliminate the need for multiple contracts. These changes will clarify the differences between the various Targeted Case Management programs and will update the codes used for billing. Rules 410-138-0100 and 410-138-0400 will be repealed to remove unnecessary text from rule.

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**Rules Coordinator:** Darlene Nelson  
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**Telephone:** (503) 945-6927

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**Date:** 8-4-04      **Time:** 9 a.m.-12 p.m.      **Location:** HSB  
Rm. 137 A-B  
Salem, OR

**Hearing Officer:** Nora Leibowitz  
**Stat. Auth.:** ORS 409; Other Auth.: April 15, 2004 and May 27, 2004 letters from Centers for Medicare and Medicaid Services (CMS) to DHS.

**Stats. Implemented:** OL 2003, Ch. 736, §§ 37 - 51  
**Proposed Adoptions:** 410-050-0100, 410-050-0110, 410-050-0120, 410-050-0130, 410-050-0140, 410-050-0150, 410-050-0160, 410-050-0170, 410-050-0180, 410-050-0190, 410-050-0200, 410-050-0210, 410-050-0220, 410-050-0230, 410-050-0240, 410-050-0250

**Last Date for Comment:** 8-4-04, 5 p.m.  
**Summary:** Oregon Administrative Rules 410-050-0100 through 410-050-0250, the Medicaid Managed Care Provider Tax, establish the taxation of Prepaid Health Plans that contract with the Department of Human Services to provide health care coverage to Oregon Health Plan (OHP) enrollees. The rules implement the tax required in HB 2747.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Patricia Bougher  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E22, Salem, OR 97301-1099  
**Telephone:** (503) 945-5844

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**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
Rm. 137 D  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Adoptions:** 410-122-0085

**Proposed Amendments:** 410-122-0080, 410-122-0202, 410-122-0530

**Last Date for Comment:** 7-16-04, 12 p.m.  
**Summary:** The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. New rule, 410-122-0085, will be adopted to establish rules for dispensing supplies and equipment. Rule 410-122-0080 will be amended to clarify OMAP's reimbursement rate; rule 410-122-0202 will be amended to extend initial CPAP rental period to three months; rule 410-122-0530 will be amended to add language regarding identifying and labeling clients supplies. *\*Auxiliary aids for persons with disabilities are available upon advance request.*

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**Date:** 7-16-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Summer St. NE  
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Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-125-0000, 410-125-0020, 410-125-0030, 410-125-0040, 410-125-0041, 410-125-0045, 410-125-0050, 410-125-0085, 410-125-0100, 410-125-0101, 410-125-0102, 410-125-0103, 410-125-0120, 410-125-0121, 410-125-0124, 410-125-0140, 410-125-0150, 410-125-0165, 410-125-0220, 410-125-0360, 410-125-0620, 410-125-0640, 410-125-0641, 410-125-0720, 410-125-2000, 410-125-2020, 410-125-2030, 410-125-2040, 410-125-2060, 410-125-2080

**Proposed Repeals:** 410-125-0055, 410-125-0240, 410-125-0260, 410-125-0500, 410-125-0580, 410-125-0680, 410-125-0700

**Last Date for Comment:** 7-16-04, 12 p.m.  
**Summary:** The Hospital Services administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services rendered to clients. OMAP will amend and repeal the above rules to take care of necessary housekeeping corrections. There have been no substantive changes made to the rules. The content of the repealed rules is informational and/or instructional and is not considered to be necessary in rule. This information will be placed in OMAP's Hospital Services Supplemental Information that supports the Hospital Services administrative rules.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Darlene Nelson  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177  
**Telephone:** (503) 945-6927

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## Department of Human Services, Mental Health and Developmental Disability Services Chapter 309

**Stat. Auth.:** ORS 430.041, 430.610, 430.630 & 430.670  
**Stats. Implemented:** ORS 430.610, 430.630 & 430.670  
**Proposed Repeals:** 309-047-0020  
**Last Date for Comment:** 7-22-04  
**Summary:** Certification Expiration, Termination of Operations, Certificate Returns of the Employment and Alternative to Employment Services for Individuals with Developmental Disabilities, OAR 309-047-0020, is proposed for permanent repeal effective 08/01/2004. This rule is duplicated and now appears in 411-345-0060 and was effective 12/28/2003.

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Mental Health and Developmental Disability Services, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

.....  
**Department of Human Services,  
Public Health  
Chapter 333**

Date:	Time:	Location:
7-22-04	10 a.m.	Portland State Office Bldg. Rm. 612 800 NE Oregon St. Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 431.120(6) & 442.315  
**Stats. Implemented:** ORS 431.120(6) & 442.315  
**Proposed Amendments:** 333-560-0110, 333-560-0120  
**Last Date for Comment:** 7-22-04, 5 p.m.

**Summary:** Amends OAR 333-560-0110 to modify some of the requirements that must be met before a Certificate of Need will be approved under the expedited review process. Amends OAR 333-560-0120 to modify the procedures for expedited review. Expedited Certificate of Need review may be available when long term care beds are relocated or replaced.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (503) 731-4405

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**Stat. Auth.:** ORS 433.855  
**Stats. Implemented:** ORS 433.835 - 433.875 & 433.990(4)  
**Proposed Adoptions:** 333-015-0065, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0085, 333-015-0090  
**Proposed Amendments:** 333-015-0025, 333-015-0030, 333-015-0034, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0050, 333-015-0060, 333-015-0060  
**Proposed Repeals:** 333-015-0055  
**Last Date for Comment:** 7-22-04

**Summary:** Retroactively adopts 333-015-0065, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0085, 333-015-0090; amends 333-015-0025, 333-015-0030, 333-015-0034, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0050, 333-015-0060; and repeals 333-015-0055. These rule changes were previously submitted to the Secretary of State's office and became effective on August 27, 2002. Excepting one new rule regarding the effective date, these rules entail only minor grammatical changes made to the rules previously filed with the Secretary of State's office on August 27, 2002.

These rules relate to House Bill 2828 (2001 Legislative Session) which amends statutes 433.835 through 433.875 and 433.990(4) to broaden the application of Oregon's previous Clean Air Act to prohibit smoking in places of employment.

The rules provide definitions of enclosed area, place of employment, employer, restaurant, bar or tavern, bowling center, local government, local public health authority, minors, person in charge of a public place, public places regularly inspected by the Department of Human Services (DHS), Health Services, and hotel and motel rooms that pertain to the provisions of the new statute. The definition for "public place" is amended. The places that are not required to be smoke free are outlined and signage required in workplaces is described. Ventilation requirements for employee smoking lounges are also described as well as the provisions concerning waivers. Clarification of the relationship between the new state law and laws passed in local jurisdictions prior to July 1, 2001, is provided. The rules describe steps and procedures through which complaints of violation will be addressed as well as what constitutes a violation. The

respective roles of DHS, Health Services and Local Public Health Authorities are described, as well as determining action needed if a violation is noted during a regularly scheduled inspection by these agencies. Also outlined are steps to be followed in establishing a remediation plan for employers found to be in violation, and who is authorized to issue citations if the plan is not followed.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (503) 731-4405

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

Date:	Time:	Location:
7-22-04	9 a.m.	500 Summer St. Rm. 137D Salem, OR

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 410.090  
**Stats. Implemented:** ORS 443.450  
**Proposed Amendments:** 411-055-0039, 411-055-0151  
**Last Date for Comment:** 7-22-04

**Summary:** OAR Chapter 411, Division 055, Rules 0039 and 0151 are proposed for permanent amendment effective 8/01/2004. These rules will add the requirement for a policy on the possession of firearms and ammunition in **Residential Care Facilities**. Policy is to be disclosed in writing to existing residents and potential residents and also must be communicated in one other manner commonly used by these individuals.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

.....  
**Date:** 7-22-04  
**Time:** 9 a.m.  
**Location:** 500 Summer St.  
Rm. 137D  
Salem, OR

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 410.090  
**Stats. Implemented:** ORS 443.450  
**Proposed Amendments:** 411-056-0010, 411-056-0018, 411-056-0030  
**Last Date for Comment:** 7-22-04

**Summary:** OAR Chapter 411, Division 056, Rules 0010 and 0030 are proposed for permanent amendment effective 08/01/2004. These rules will add the requirement for a policy on the possession of firearms and ammunition in **Assisted Living Facilities**. Policy is to be disclosed in writing to existing residents and potential residents and also must be communicated in one other manner commonly used by these individuals. Additionally, at this time Rules 0010, 0018 and 0030 are temporarily amended to reference DHS criminal history rules that were changed March 1, 2004. This proposal repeals those temporary amendments and will make those changes permanent.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

.....  
**Date:** 7-22-04  
**Time:** 9 a.m.  
**Location:** 500 Summer St.  
Rm. 137D  
Salem, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 410 & 441  
**Stats. Implemented:** ORS 441.055, 441.600, 441.615 & 441.700  
**Proposed Amendments:** Rules in 411-085  
**Last Date for Comment:** 7-22-04

**Summary:** OAR Chapter 411, Division 085, **Nursing Facilities - Generally** are proposed for permanent amendment effective 08/01/2004. These rules will add the requirement for a policy on the possession of firearms and ammunition in Nursing Facilities. Policy is to be disclosed, orally and in writing and documented prior to or at the time of admission. In addition, stylistic changes from 'which' to 'that' and from 'shall' to 'will' or 'must' have been made throughout the document.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

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**Date:** 7-22-04      **Time:** 11 a.m.      **Location:** 500 Summer St.  
Rm. 137D  
Salem, OR

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 410 & 441  
**Stats. Implemented:** ORS 441.055, 441.073 & 441.615  
**Proposed Amendments:** 411-086-0100, 411-086-0250  
**Last Date for Comment:** 7-22-04

**Summary:** OAR 411-086-0100 and OAR 411-086-0250, Nursing Facilities, Administration and Services rules are proposed for permanent amendment effective 08/01/2004. The amendments to these rules will provide for the use of paid Dining Assistants in Oregon's nursing facilities and specifies the following: a) Resident selection criteria, b) scope of duties, c) training, d) qualification of instructors, e) evaluation, f) supervision, g) performance, h) orientation and i) record maintenance.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

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**Date:** 7-22-04      **Time:** 1 p.m.      **Location:** 500 Summer St.  
Rm. 137D  
Salem, OR

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 409.050 & 410.070  
**Stats. Implemented:** 430.610 - 430.670 & 427.005 - 427.007  
**Proposed Amendments:** Rules in 411-320  
**Last Date for Comment:** 7-22-04

**Summary:** Chapter 411, Division 320, Community Developmental Disability Rules are being proposed for permanent amendment, effective 08/01/2004. This rulemaking action is intended to a) make technical adjustment in the abuse definition correcting an existing numbering error; b) clarify the definition of abuse of children for 24-Hour Residential Service providers serving children; c) clarify conditions under which copies of incident reports can be sent to guardians and personal agents; d) clarify conditions under which allegations of abuse of an adult should be reported to law enforcement; e) make technical adjustment to allow service providers to have flexibility in incorporating DHS Balancing Test Form Language into their own forms; and, f) make minor corrections to grammatical and punctuation errors.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

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**Date:** 7-22-04      **Time:** 3 p.m.      **Location:** 500 Summer St. NE  
Rm. 137  
Salem, OR

**Hearing Officer:** Lynda Dyer  
**Stat. Auth.:** ORS 410.070 & 409.050  
**Stats. Implemented:** 443.400 - 443.455  
**Proposed Amendments:** Rules in 411-325  
**Last Date for Comment:** 7-22-04

**Summary:** OAR Chapter 411, Division 325 is being proposed for permanent amendment effective 08/01/2004. This rulemaking amendment is intended to accomplish the following: a) make technical adjustment in the abuse definition to correct an existing numbering error; b) clarify the definition of abuse of children for 24-Hour Residential Service providers serving children; c) clarify conditions under which copies of incident reports can be sent to guardians and personal agents; d) clarify conditions under which allegations of abuse of an adult should be reported to law enforcement; and e) make technical adjustment to allow service providers to have flexibility in incorporating DHS Balancing Test Form language into their own forms.

Additionally, amending these rules will implement system improvements by updating rule language to be consistent with current Oregon Revised Statutes; will strengthen the Department's ability to take sanctioning activity regarding substantiated abuse allegations by correcting numbering error in abuse definition; and will update rule language to be consistent with current practices.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lynda Dyer  
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

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**Department of Human Services,  
Vocational Rehabilitation Services  
Chapter 582**

**Date:** 7-15-04      **Time:** 2 p.m.      **Location:** 625 Marion St. NE  
Rms. C and D  
Salem, OR

**Hearing Officer:** Robert Trachtenberg  
**Stat. Auth.:** ORS 344.530; Other Auth.: 34 CFR 361.13(c), 34 CFR 361.37, 361.48 & 361.49(a)(6)

**Stats. Implemented:** ORS 344.530  
**Proposed Adoptions:** 582-001-0010, 582-010-0021, 582-010-0022, 582-020-0085, 582-050-0005, 582-085-0004, 582-085-0005

**Proposed Amendments:** 582-001-0001, 582-001-0003, 582-001-0005, 582-010-0010, 582-010-0020, 582-010-0025, 582-010-0030, 582-020-0015, 582-020-0030, 582-020-0110, 582-030-0030, 582-030-0040, 582-050-0000, 582-050-0010, 582-050-0020, 582-050-0050, 582-050-0060, 582-060-0010, 582-060-0020, 582-070-0010, 582-070-0020, 582-070-0025, 582-070-0030, 582-070-0040, 582-070-0041, 582-070-0042, 582-070-0043, 582-070-0044, 582-075-0010, 582-075-0020, 582-075-0030, 582-075-0040, 582-080-0010, 582-080-0020, 582-080-0030, 582-080-0040, 582-090-0010, 582-100-0040

**Proposed Repeals:** 582-050-0030, 582-050-0040, 582-070-0005, 582-085-0010, 582-085-0020, 582-085-0040, 582-085-0050, 582-100-0010, 582-100-0020, 582-100-0030

**Last Date for Comment:** 7-22-04

**Summary:** 1. References to disability determination and independent living services are removed from Chapter 582, except that rules specific to independent living funds are established in Division 85.

## NOTICES OF PROPOSED RULEMAKING

2. References to policies and manuals are removed or updated throughout Chapter 582.

3. References to statutes, regulations, administrative rules, employee job classifications, and program names are removed or updated throughout Chapter 582.

4. Rules are amended to make grammatical changes and improvements, remove unintended ambiguity, and incorporate current terminology under the federal regulations.

5. OAR 582-001-0001: Incorporates statutory exceptions to rule amendment notice requirements for technical changes (spelling, grammatical mistakes, statute numbers) and amended filings, and updates the notice timeline consistent with state statute.

6. OAR 582-001-0005 is amended to clarify the relationship among state statutes, the OVRS State Plan, Chapter 582, and the Uniform and Model Rules of Procedure of the Attorney General. The incorporation of the 1997 Model Rules is deleted. Ten of the 2004 Model and Uniform Rules of the Attorney General are adopted: 137-001-0030 (Conduct of Rulemaking Hearings), 137-001-0040 (Rulemaking Record), 137-001-0080 (Temporary Rulemaking Requirements), 137-003-0040 (Conducting Contested Case Hearing), 137-003-0045 (Telephone Hearings), 137-003-0050 (Evidentiary Rules), 137-003-0055 (Ex Parte Communications), 137-003-0615 (Judicial Notice and Official Notice of Facts), 137-004-0010 (Unacceptable Conduct), and 137-004-0800 (Public Records Exemption for Home Address).

7. Adds OAR 582-001-0010 adding definitions that apply throughout Chapter 582. Where these same terms are defined elsewhere in Chapter 582 (OAR 582-010-0010, 582-070-0005) the definition in the other division is removed. Definitions are updated for consistency with 34 CFR 361. The following terms are defined: The Rehabilitation Act; Administrator, Applicant, Assessment for determining eligibility and vocational rehabilitation needs, Assistive technology device, Assistive technology service, CFR, Client Assistance Program or CAP, Client's Representative, Community Rehabilitation Program or CRP, Comparable services and benefits, Competitive employment, DHS, Eligible individual, Employment outcome, Extended employment, Extended services, Extreme medical risk, Family member, Impartial hearing officer, Integrated setting, Maintenance, Mediation, OAR, Ongoing support services, ORS, OVRS, Parent or Guardian, Personal assistance services, Physical and mental restoration services, Physical or mental impairment, Post-employment services, Provider of community rehabilitation services, Qualified and impartial mediator, Rehabilitation engineering, Rehabilitation technology, State plan, Substantial impediment to employment, Supported employment, Supported employment services, Transition services, Transitional employment, Transportation, Vocational rehabilitation services.

8. OAR 582-010-0020 is split into three rules (adding new rules 582-010-0021 and 582-010-0022) for ease of reading and clarification of which rules apply to which vendors. OAR 582-010-0020 is amended to indicate that the CRP Coordinator may exempt an employer from the rules in Division 582-010 for services provided to a specific client that are not services for which the employer would be reimbursed on a routine basis.

9. OAR 582-010-0021 clarifies that OVRS is not requiring criminal history checks of certain listed vendor categories (that are regulated by other agencies). The rule also expressly allows providers of child care who are not eligible to apply for registration with the Child Care Division of the Employment Department to be placed on the Approved Vendor List if they successfully complete a Criminal History Check from either DHS or the Child Care Division of the Employment Department. The rule allows providers of personal assistance services who are not qualified or certified providers for this service under Chapter 411 of the Oregon Administrative Rules to be placed on the Approved Vendor List if they successfully complete a DHS Criminal History Check. Providers of child care and providers of personal assistance services who are required by this rule to satisfy criminal history check requirements are also required

to comply with DHS criminal history check requirements with respect to each new employee or volunteer providing services to an OVRS client.

10. OAR 582-010-0022, 582-010-0025(8), and 582-080-0020(6) add explicit requirements that the following vendor categories comply with DHS criminal history checks (unless these vendors are licensed by a state or federal agency other than OVRS and acting within the scope of their license): Assessment for determining eligibility and vocational needs, including technicians for assessment tests (and excluding assessments by prospective employers of the client); Job development, placement, and retention services; Orientation and mobility services; Extended employment; Supported employment services and extended services; Services to family members (excluding child care) when necessary to the vocational rehabilitation of the individual; vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business or write PASS plans (excluding those with no in-person client contact); tutors; and peer mentors. In addition, within these vendors categories, all employees and volunteers providing services to OVRS clients will be subject to criminal records checks. This requirement is applicable at the time of application or re-application (approvals for the vendor list have a two-year duration). OAR 582-010-0020 is amended to indicate that a provider of community rehabilitation services and any another vendor required under Chapter 582 of the Oregon Administrative Rules to clear a DHS Criminal History Check may be placed temporarily on the Approved Vendor List by the CRP Coordinator if the circumstances justify a temporary approval, and that the temporary approval may be terminated by OVRS at any time and shall expire automatically once DHS completes the criminal history check process.

11. OAR 582-010-0025 is amended to add the requirement that Category B providers fully inform OVRS clients of the purpose and results of all service delivery efforts made on their behalf; and be respectful, inclusive, and accommodating of OVRS clients regardless of disability.

12. OAR 582-010-0030 is amended to add that engaging in any behavior or comments likely to cause public embarrassment to OVRS clients is grounds for suspension or removal from the Approved Vendor List.

13. OAR 582-020-0015 is amended to allow a mediation agreement the option of stating that the agreement will not become part of the casefile record.

14. OAR 582-020-0030 is amended to allow a client the option of withdrawing a hearing request by orally notifying the Impartial Hearing Officer if the Hearing Officer confirms the withdrawal with a written dismissal.

15. OAR 582-020-0085 is added to establish a presumption that a prehearing conference will take place and describe the issues that may be covered.

16. OAR 582-020-0110 is amended to explicitly authorize an Impartial Hearing Officer to dismiss an abandoned request for hearing and to define that term. It is also amended to explicitly authorize a dismissal when the client withdraws a request for hearing either orally or in writing.

17. OAR 582-030-0030(1) is amended to clarify that the restriction on client access to records is not limited to records from public agencies.

18. Throughout Chapter 582, references to "severe" and "most severe" disabilities are changed to "significant" and "most significant" disabilities consistent with current terminology under federal law.

19. Several rules are amended, OAR 582-050-0030 and 582-050-0040 are deleted, and OAR 582-050-0005 is added to make Chapter 582 consistent with current federal regulations on eligibility determinations, presumed eligibility, trial work experiences, and extended evaluations.

20. OAR 582-060-0020 is amended to be consistent with current federal regulations on the termination of successful clients.

# NOTICES OF PROPOSED RULEMAKING

21. OAR 582-070-0020 and 582-070-0030 are amended to be consistent with federal requirements for paying maintenance expenses.

22. OAR 582-070-0020 is amended to clarify that OVRS does not pay for personal care assistance if the client is entitled to payment from another source.

23. OAR 582-070-0025 on vehicle purchases and modifications is amended to improve its internal consistency.

24. OAR 582-070-0030 is amended to clarify that a prescription is one of the requirements for OVRS to support drug expenses if controlled substances are involved.

25. OAR 582-070-0030 is amended to remove the requirement that an independent consultant authorize psychotherapy services, but permitting OVRS to restrict services to those a consultant recommends.

26. OAR 582-070-0030 is amended to be consistent with current federal requirements on funding of physical and mental restoration services.

27. OAR 582-070-0040 is amended to clarify that if a client is closed as other than rehabilitated, or if tools, supplies, equipment, vehicles, etc., funded by OVRS are not needed while a client is receiving plan services or not needed for a client employed at the time of a successful closure, any such non-prescription property is subject to repossession by OVRS.

28. Several rules are amended to delete references to "consumers" and make references to "clients" consistent throughout Chapter 582.

29. OAR 582-075-0030 is amended to clarify that a supplier of records is not entitled to any payments if the supplier fails to provide the records requested within a specific deadline identified in the letter requesting the records, and OVRS is not able to make use of the records as a result.

30. Delete the four current rules in Division 85 on Medical Services Vendor Selection Policies is entirely deleted and merge their text into Division 80 Vendor Selection Policies. OAR 582-080-0000 is amended to clarify vendor selection policies.

31. OAR 582-090-0010 is amended to clarify that there is no mandate for OVRS to provide non-employment certifications to individuals who are not clients.

32. OAR 582-100-0010, 582-100-0020, 582-100-0030 are deleted as unnecessary.

33. OAR 582-100-0040 is amended to clarify, consistent with federal law, that the administrative rules establishing priority for an Order of Selection are superseded by federal law and the OVRS State Plan if there is a conflict.

A copy of the proposed rule changes may be obtained by printout from the link to these amendments at [http://www.dhs.state.or.us/vr/tools\\_for\\_staff/policyadminrules.htm](http://www.dhs.state.or.us/vr/tools_for_staff/policyadminrules.htm). A copy of the proposed rule changes may also be obtained by contacting the Rules Coordinator at DHS - OVRS, 500 Summer St. NE, E87, Salem, Oregon 97301-1120 or at (503) 945-6734.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Robert Trachtenberg

**Address:** Department of Human Services, Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301

**Telephone:** (503) 945-6734

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## Department of Public Safety Standards and Training Chapter 259

**Stat. Auth.:** Other Auth.: ORS 181.640 & 181.667

**Stats. Implemented:**

**Proposed Amendments:** 259-009-0067

**Last Date for Comment:** 7-22-04

**Summary:** Allows Department to lapse a fire service professional's certification if the individual is not utilized as a fire service professional for a period of twelve (12) consecutive months or more.

Rule can be viewed at DPSST web site: [www.dpsst.state.or.us](http://www.dpsst.state.or.us)

**Rules Coordinator:** Bonnie Salle

**Address:** Department of Public Safety Standards and Training, 550 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 378-2431

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

**Date:**  
7-20-04

**Time:**  
10 a.m.

**Location:**  
Dept. of Transportation  
355 Capitol NE  
Rm. 122  
Salem, OR 97301

**Hearing Officer:** David Eyerly

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.140, 819.016 & 821.060

**Stats. Implemented:** ORS 803.015 & 803.420

**Proposed Adoptions:** 735-024-0015, 735-024-0025

**Proposed Amendments:** 735-024-0030

**Proposed Repeals:** 735-024-0010, 735-024-0020, 735-024-0040, 735-024-0045, 735-024-0060, 735-024-0090

**Last Date for Comment:** 7-21-04

**Summary:** This rulemaking is needed to specify and adopt title brands that may be added to an Oregon title pursuant to ORS 803.015; to identify when DMV will issue an Oregon title with a brand, and when a brand may be removed from an Oregon title and vehicle record. This rulemaking is also needed to remove rule language that is either superseded by new rule language or that is outdated and no longer needed. As proposed, the adoption of OAR 735-024-0015 and OAR 735-024-0025 define terms and establish procedures and requirements pertaining to when a title brand is required to be printed on an Oregon title and when a brand may be removed. OAR 735-024-0030 is amended to update definitions pertaining to vehicles and documents for vehicles that have been damaged, altered, or rebuilt. OAR 735-024-0010, 735-024-0020, 735-024-0040, 735-024-0045, 735-024-0060 and 735-024-0090 are repealed because they have either been superseded by OAR 735-024-0015 and 735-024-0025 or have become outdated and are no longer needed.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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**Stat. Auth.:** ORS 184.616, 184.619, 802.010 & 809.480

**Stats. Implemented:** ORS 809.480

**Proposed Amendments:** 735-072-0023, 735-072-0027

**Last Date for Comment:** 7-21-04

**Summary:** OAR 735-072-0023 establishes the Provisional Driver Improvement Program. The proposed amendment specifies that a person suspended under this Program who is required to pass tests as a condition of reinstatement, must pass the required tests even if five years has passed since the suspension. This change is necessary because driver licenses are now issued for an eight-year period. OAR 735-072-0027 establishes the Adult Driver Improvement Program. The proposed amendment clarifies that a person who has previously been suspended under section (4) of this rule will have driving privileges suspended if a subsequent conviction or preventable accident is posted to their driving record, and a review of the record shows the person still has at least four or has more than four driver improvement violations and/or preventable accidents with the 24-month review period.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>.

**Rules Coordinator:** Brenda Trump

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314  
**Telephone:** (503) 945-5278

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**Stat. Auth.:** ORS 183.430, 184.616, 184.619, 802.010, 802.012, 802.031, 802.370, 803.530, 803.600, 803.625, 803.640, 820.560, 821.060, 821.080, 822.005 - 822.080 & 822.084

**Stats. Implemented:** ORS 183.415, 802.031, 802.370, 803.600 - 803.650, 820.560, 821.060, 821.080, 822.005 - 822.084 & 822.310

**Proposed Adoptions:** 735-150-0039, 735-150-0205

**Proposed Amendments:** 735-150-0000 - 735-150-0015, 735-150-0020 - 735-150-0050, 735-150-0060, 735-150-0080, 735-150-0090, 735-150-0105 - 735-150-0160, 735-150-0180, 735-150-0190

**Proposed Repeals:** 735-150-0100

**Last Date for Comment:** 7-21-04

**Summary:** These rules establish procedures and requirements for the administration and enforcement of laws relating to the regulation of Oregon vehicle dealers. The proposed changes bring them into compliance with legislative changes to relevant statutes and provide additional safeguards to Oregon vehicle consumers. The proposed rule changes: establish qualifications for dealers to act as agents of DMV; establish procedures and requirements for closure of a dealership; add an exemption for dealers from satisfying financing within 15 days for inventory financing security interest when a dealer is the debtor and amends dealer record rules to comply with Chapter 332, Oregon Laws 2003 (SB 603); add a specific sanction and penalties for a dealer who acts as a DMV agent when not covered by bond or insurance, Chapter 471, Oregon Laws 2003 (HB 3048); and update terms and definitions and make other non-substantive changes to simplify rule language.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>.

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

## Employment Department Chapter 471

Date:	Time:	Location:
7-16-04	9 a.m.	Empoyment Dept. Auditorium 875 Union NE Salem, OR 97311

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.665 & 657.156

**Proposed Amendments:** 471-020-0010, 471-020-0020, 471-020-0030, 471-020-0035, 471-020-0040

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Department is proposing to amend: OAR 471-020-0010 to update references; OAR 471-020-0020 to update references; OAR 471-020-0030 to update references; OAR 471-020-0035 to update references; and OAR 471-020-0040 to update references.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe

**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311

**Telephone:** (503) 947-1724

.....

Date:	Time:	Location:
7-16-04	8 a.m.	Empoyment Dept. Auditorium 875 Union NE Salem, OR 97311

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 183 & 657

**Stats. Implemented:** ORS 183.335, 183.341, 183.360, 657.665 & 657

**Proposed Amendments:** 471-010-0010, 471-010-0020, 471-010-0050, 471-010-0054

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Department is proposing to amend: OAR 471-010-0010 to update and add to the notice requirements for rules; OAR 471-010-0020 to adopt the latest "Attorney General's Model Rules of Procedure" for rulemaking; OAR 471-010-0050 to add and clarify definitions; OAR 471-010-0054 to update when and what authorized disclosures the Department can make.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe

**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311

**Telephone:** (503) 947-1724

.....

Date:	Time:	Location:
7-16-04	10 a.m.	Empoyment Dept. Auditorium 875 Union NE Salem, OR 97311

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.665 & 657.156

**Proposed Adoptions:** 471-030-0044, 471-030-0054, 471-030-0126

**Proposed Amendments:** 471-030-0023, 471-030-0037, 471-030-0055, 471-030-0065, 471-030-0075

**Proposed Repeals:** 471-030-0200, 471-030-0126(T)

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Department is proposing to adopt: OAR 471-030-0044 to clarify the meaning of "systematic and sustained effort to obtain work"; OAR 471-030-0054 to clarify who may present a written admission; and OAR 471-030-0126 regarding Absence Due to Alcohol or Drug Use.

The Employment Department is proposing to amend: OAR 471-030-0023 to clarify the date when the three-year period for extending a base year begins; OAR 471-030-0037 to clarify the process for deciding prevailing wage rates; OAR 471-030-0055 to update references; OAR 471-030-0065 to update references; and OAR 471-030-0075 to clarify the process for deciding if "reasonable assurance" exists.

The Employment Department is proposing to repeal: OAR 471-030-0200 "Precedent Decisions"; and OAR 471-030-0200 Temporary rule regarding Absence Due to Alcohol or Drug Use.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe

**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311

**Telephone:** (503) 947-1724

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Date:	Time:	Location:
7-16-04	11 a.m.	Empoyment Dept. Auditorium 875 Union NE Salem, OR 97311

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 657.457, 657.610 & 657

**Stats. Implemented:** ORS 657.610, 657.044, 657.457, 657.504 - 657.575, 657.660 & 657.663

**Proposed Amendments:** 471-031-0017, 471-031-0067, 471-031-0080, 471-031-0085, 471-031-0110

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Department is proposing to amend: OAR 471-031-0067 retroactively to correct a filing error; OAR 471-031-0080 retroactively to correct a filing error; OAR 471-031-0085 retroactively to correct a filing error; and OAR 471-031-0110

# NOTICES OF PROPOSED RULEMAKING

retroactively to correct a filing error. These rule changes were previously submitted to the Secretary of State and became effective June 23rd, 2002. These rules are identical to the rules previously filed with the Secretary of State on June 23rd, 2002.

The Employment Department is proposing to amend: OAR 471-031-0017 to clarify a definition.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

.....  
**Date:** 7-16-04      **Time:** 1 p.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657  
**Stats. Implemented:** ORS 657, 657.610, 657.270, 657.280 & 657.485

**Proposed Amendments:** 471-040-0005, 471-040-0015, 471-040-0020, 471-040-0021, 471-040-0023, 471-040-0025, 471-040-0026, 471-040-0030, 471-040-0035, 471-040-0040

**Proposed Repeals:** 471-040-0040(T)

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Department is proposing to amend: OAR 471-040 (all) to update references; and OAR 471-040-0040 to address the procedure that will be followed when the filing party failed to appear at a hearing that led to the decision on appeal.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

.....  
**Date:** 7-16-04      **Time:** 2 p.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610  
**Stats. Implemented:** ORS 657.275 & 657.685

**Proposed Amendments:** 471-041-0060

**Proposed Repeals:** 471-041-0150, 471-041-0060(T)

**Last Date for Comment:** 7-16-04, 5 p.m.

**Summary:** The Employment Appeals Board is proposing to amend: 471-041-0060 to update "Application for Review."

The Employment Appeals Board is proposing to repeal: OAR 471-041-0150; and OAR 471-041-0060 Temporary rule 471-041-0060 regarding "Application for Review."

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

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**Employment Department,  
Child Care Division  
Chapter 414**

**Date:** 7-19-04      **Time:** 8 a.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610  
**Stats. Implemented:** ORS 657A.010

**Proposed Repeals:** 414-005-0000, 414-005-0010, 414-005-0020  
**Last Date for Comment:** 7-19-04, 5 p.m.

**Summary:** The Employment Department, Child Care Division, is proposing to repeal: OAR 414-005-0000, 414-005-0010 & 414-005-0020 as the Children's Trust Fund has been dissolved.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

.....  
**Date:** 7-19-04      **Time:** 9 a.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610  
**Stats. Implemented:** ORS 657A.260, 657A.280, 657A.330, 657A.360, 657A.600 - 657A.640 & 657A.700 - 657A.718

**Proposed Amendments:** 414-050-0000, 414-050-0005

**Last Date for Comment:** 7-19-04, 5 p.m.

**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-050-0000 to adopt the latest "Attorney General's Model Rules of Procedure" for rulemaking; and OAR 414-050-0005 to update and add to the notice requirements for rules.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

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**Date:** 7-19-04      **Time:** 10 a.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610  
**Stats. Implemented:** ORS 657A.030

**Proposed Amendments:** 414-061-0050

**Last Date for Comment:** 7-19-04, 5 p.m.

**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-061-0050 to include a reference to "firearm prohibition orders."

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

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**Date:** 7-19-04      **Time:** 11 a.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610 & 657A.260  
**Stats. Implemented:** ORS 657A.260

**Proposed Amendments:** 414-205-0055

**Last Date for Comment:** 7-19-04, 5 p.m.

**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-205-0055 to remove a phase-in period that has ended.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe

# NOTICES OF PROPOSED RULEMAKING

Address: Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
Telephone: (503) 947-1724

## Office of Energy Chapter 330

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**Date:** 7-19-04      **Time:** 1 p.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Date:** 7-22-04      **Time:** 9:30 a.m.-12 p.m.      **Location:** Oregon Dept. of Energy  
625 Marion St. NE  
Salem, OR

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610, 657A.260 & 657A.280  
**Stats. Implemented:** ORS 657A.260 & 657A.280  
**Proposed Amendments:** 414-350-0010  
**Last Date for Comment:** 7-19-04, 5 p.m.  
**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-350-0010 to edit references, and to add the definition of "sanitizing."  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Hearing Officer:** George Thompson  
**Stat. Auth.:** ORS 469.040, 469.165, 756.040 & 757.600 - 757.687  
**Stats. Implemented:**  
**Proposed Amendments:** 330-140-0010 - 330-140-0140  
**Last Date for Comment:** 7-29-04

**Summary:** The purpose of the proposed rule changes are to:  
1. Change the name from the Oregon Office of Energy to the Oregon Department of Energy and fix typographical errors.  
2. Revise the rules to reflect the correct starting date of the program.  
3. Revise the rules to remove the requirement that the self-direction customer calculate and pay public purpose charges independent of the electric bill.  
4. Revise the rules to remove the annual reporting requirement associated with the monthly calculation and payment of the Public Purpose Charge.  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

**Rules Coordinator:** Kathy Stuttaford  
**Address:** Office of Energy, 625 Marion St. NE, Ste. 1, Salem, OR 97301-3742  
**Telephone:** (503) 378-4128

.....  
**Date:** 7-19-04      **Time:** 2 p.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

## Oregon Economic and Community Development Department Chapter 123

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610  
**Stats. Implemented:** ORS 657A.010  
**Proposed Amendments:** 414-400-0050  
**Last Date for Comment:** 7-19-04, 5 p.m.  
**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-400-0050 to edit references.  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Stat. Auth.:** ORS 183.341(2), 183.415(4), 183.452(2), 183.464(2), 285A.075(5), 285A.110(1), 285C.453(5) & 285C.530(3)  
**Stats. Implemented:** ORS 183.415, 183.452, 183.464, 285C.450 - 285C.480, 285C.503, 285C.506 & 285C.530  
**Proposed Adoptions:** Rules in 123-001, 123-145  
**Proposed Amendments:** Rules in 123-145  
**Proposed Repeals:** Rules in 123-145  
**Proposed Ren. & Amends:** Rules in 123-145  
**Last Date for Comment:** 7-16-04

**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

**Summary:** Generally amend, correct and enhance the administrative rules governing the processes, construal, technical matters and so forth for Vertical Housing Development Zones, including imposition of an application fee for project certification (to receive partial exemption from provided taxes) per new law. This rulemaking is also being utilized to set forth the procedures for handling contested case appeals, in that this program is relatively more likely to entail notices for administrative hearing rights, which are relevant to two other 2001 tax incentives administered by this agency.  
**Rules Coordinator:** Philip A. Johnson, II  
**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280  
**Telephone:** (503) 986-0159

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**Date:** 7-19-04      **Time:** 3 p.m.      **Location:** Employment Dept. Auditorium  
875 Union NE  
Salem, OR 97311

**Hearing Officer:** Richard Luthe  
**Stat. Auth.:** ORS 657.610 & 657A  
**Stats. Implemented:** ORS 657A.100 - 657A.190  
**Proposed Amendments:** 414-500-0010, 414-500-0020, 414-500-0030, 414-500-0050, 414-500-0060, 414-500-0080  
**Last Date for Comment:** 7-19-04, 5 p.m.  
**Summary:** The Employment Department, Child Care Division, is proposing to amend: OAR 414-500-0010; 414-500-0020, 414-500-0030; 414-500-0050; 414-500-0060; & 414-500-0080 retroactively to correct a filing error.

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**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)  
**Stats. Implemented:** ORS 285A.627  
**Proposed Adoptions:** 123-020-0100  
**Proposed Repeals:** 123-020-0050  
**Proposed Ren. & Amends:** 123-020-0005 to 123-020-0105, 123-020-0010 to 123-020-0110, 123-020-0015 to 123-020-0115, 123-020-0020 to 123-020-0120, 123-020-0025 to 123-020-0125, 123-020-0030 to 123-020-0130, 123-020-0035 to 123-020-0135, 123-020-0040 to 123-020-0140  
**Last Date for Comment:** 7-21-04  
**Summary:** This division of administrative rules describes the process for bringing a port formation request to the Economic &

These rules changes were previously submitted to the Secretary of State and became effective June 21st, 2002. These rules are identical to the rules previously filed with the Secretary of State on June 21st, 2002.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*  
**Rules Coordinator:** Richard L. Luthe  
**Address:** Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311  
**Telephone:** (503) 947-1724

## NOTICES OF PROPOSED RULEMAKING

Community Development Department. These amendments are necessary to make permanent the temporary amendments filed on February 3, 2004 as a result of the 2003 Legislative Session, specifically HB 2300. The old rule is more restrictive than the current statutes and the Department of Justice advised the Department to amend its rules to allow application by country order. A copy of the changes is posted on the Department's website at <http://www.econ.state.or.us>

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

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**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)

**Stats. Implemented:** ORS 285A.654 - 285A.660

**Proposed Adoptions:** 123-025-0012

**Proposed Amendments:** 123-025-0010, 123-025-0015, 123-025-0021, 123-025-0023, 123-025-0025, 123-025-0030

**Last Date for Comment:** 7-21-04

**Summary:** This filing is intended to make permanent the temporary rules filed February 3, 2004 and incorporate comments received at the public hearing held March 16, 2004.

This division of administrative rules describes the procedures, standards and criteria for operating the Port Planning and Marketing Fund program. The 2003 Legislature repealed the June 30, 2003 sunset for this program. The Department is amending this division of administrative rules to incorporate the new legislation, to clean up the text, and to rearrange the format of the rule to make it easier to read and understand.

A copy of the rules is available on the Department website at <http://www.econ.state.or.us>.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

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**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)

**Stats. Implemented:** ORS 285A.666 - 285A.723

**Proposed Amendments:** 123-030-0004, 123-030-0010, 123-030-0020, 123-030-0030, 123-030-0040, 123-030-0050

**Last Date for Comment:** 7-21-04

**Summary:** This division of rules describes the procedures, standards and criteria for operating the Port Revolving Fund program. The 2003 legislature made changes to this program and this filing updates this division and incorporates those changes. This filing is intended to make permanent the temporary rules filed on February 3, 2004.

The Oregon Port Revolving Fund provides long-term loans to ports at below-market interest rates. The 23 locally formed Port Districts are the only entities eligible for Port Revolving Fund loans. The variety of projects eligible is very broad. However projects must be located within port district boundaries.

A copy of the rules is available on the Department website at <http://www.econ.state.or.us>.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

.....

**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)

**Stats. Implemented:** ORS 285A.666 - 285A.732

**Proposed Adoptions:** 123-035-0000, 123-035-0005, 123-035-0010

**Last Date for Comment:** 7-21-04

**Summary:** This division describes the procedures and standards for the Ports Representative Group as authorized by the 2003 Legisla-

ture in HB 2300. This filing is intended to make permanent the temporary rules adopted on February 3, 2004.

A copy of the rules is available on the Department website at <http://www.econ.state.or.us>.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

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**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1); Other Auth.: ORS 285B.419

**Stats. Implemented:** ORS 285B.410 - 285B.482

**Proposed Adoptions:** 123-042-0180, 123-042-0190

**Proposed Amendments:** 123-042-0020, 123-042-0030, 123-042-0040, 123-042-0070, 123-042-0080, 123-042-0150, 123-042-0160

**Proposed Repeals:** 123-042-0050, 123-042-0060, 123-042-0075, 123-042-0130, 123-042-0140, 123-042-0170

**Last Date for Comment:** 7-21-04

**Summary:** This division describes the process for administering and distribution of funds under the Special Public Works Fund. The administrative rules are being amended to reflect statutory changes from the 2003 legislative session, specifically HB 2300 and 2011. The changes are necessary because the old rules are more restrictive and not in compliance with the new law.

Temporary rules were issued February 3, 2004. A public hearing was held on March 16, 2004 for comments on the temporary rules. This filing is intended to clean up the language of the temporary rules, make them permanent, and incorporate comments raised at the March meeting.

A copy of the rules is available on the Department website at <http://www.econ.state.or.us>.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

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**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)

**Stats. Implemented:** ORS 285A.654 - 285A.660

**Proposed Adoptions:** 123-027-0055, 123-027-0105, 123-027-0155, 123-027-0160, 123-027-0165, 123-027-0170

**Proposed Amendments:** 123-027-0040, 123-027-0050, 123-027-0060, 123-027-0070

**Proposed Repeals:** 123-027-0080

**Proposed Ren. & Amends:** 123-027-0100 to 123-027-0105, 123-027-0110 to 123-027-0210

**Last Date for Comment:** 7-21-04

**Summary:** This filing is intended to make permanent the temporary rules filed February 3, 2004 and address comments received at the advisory meeting held March 4, 2004. The Department is amending this division to incorporate new legislation from the 2003 session, clean up the text, and rearrange the format to make it easier to read and understand.

The Marine Navigation Fund rules provide procedures, standards and criteria for Oregon ports to receive Federal funding for dredging and dredging-related projects and for non-federal projects that may not qualify for federal funding but qualify under an expanded set of criteria. The 2003 legislature provided funds for non-federal projects for the first time and with that funding provided more detailed requirements.

A copy of the rules is available on the Department website at <http://www.econ.state.or.us>.

**Rules Coordinator:** Philip A. Johnson, II

# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

\*\*\*\*\*

**Stat. Auth.:** ORS 285A.075(5), 285A.110(1) & 285B.236(1)

**Stats. Implemented:** ORS 285B.230 - 285B.269

**Proposed Amendments:** 123-057-0110, 123-057-0130, 123-057-0170, 123-057-0190, 123-057-0210, 123-057-0230, 123-057-0310, 123-057-0330, 123-057-0350, 123-057-0410, 123-057-0430, 123-057-0450, 123-057-0470, 123-057-0510, 123-057-0530, 123-057-0710

**Last Date for Comment:** 7-21-04

**Summary:** These rules govern the use of Regional and Rural Investment funds and outline the required planning and distribution including specific performance criteria for the use of those funds. This filing is intended to replace and make permanent the temporary rules filed February 3, 2004.

In accordance with HB 2300 from the 2003 legislative session, this revision modifies "Regional Investment Plans" to become "Regional Investment Strategy" with expanded purposes to leverage and attract capital investment. This bill directs the Economic & Community Development Commission and Regional Investment Board to establish Regional Performance Measures. The bill establishes criteria for Regional Investment Boards to evaluate the effectiveness of activities funded with Regional and Rural investment Funds.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

\*\*\*\*\*

**Stat. Auth.:** ORS 285A.075(5), 285A.110(1) & 285B.236(1)

**Stats. Implemented:** ORS 285B.230 - 285B.269

**Proposed Amendments:** 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0525, 123-055-0600, 123-055-0620, 123-055-0900

**Last Date for Comment:** 7-21-04

**Summary:** These rules govern the use of Regional and Rural Investment funds and outline the required planning and distribution including specific performance criteria for the use of those funds. This filing is intended to replace and make permanent the temporary rules filed February 3, 2004.

In accordance with HB 2300 from the 2003 legislative session, this revision modifies "Regional Investment Plans" to become "Regional Investment Strategy" with expanded purposes to leverage and attract capital investment. This bill directs the Economic & Community Development Commission and Regional Investment Board to establish Regional Performance Measures. The bill establishes criteria for Regional Investment Boards to evaluate the effectiveness of activities funded with Regional and Rural investment Funds.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

\*\*\*\*\*

**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)

**Stats. Implemented:** ORS 279.051

**Proposed Amendments:** 123-006-0005, 123-006-0015, 123-006-0020, 123-006-0025

**Proposed Repeals:** 123-006-0010

**Last Date for Comment:** 7-21-04

**Summary:** This rule sets forth the Department's personal services contracts screening and selection procedures. This filing is intended to:

1) Clean up the text of the rules and correct the statutory references.

2) Make this division easier to understand and apply.

3) Provide for alternative procedures for work order contracts.

The proposed text will be that contained in the temporary rules filed on June 15, 2004. It can also be found on the Department's website at [http://www.econ.state.or.us/rule\\_review.htm](http://www.econ.state.or.us/rule_review.htm) or contact the Department's Rules Coordinator for a hard copy.

**Rules Coordinator:** Philip A. Johnson, II

**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

**Telephone:** (503) 986-0159

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## Oregon Liquor Control Commission Chapter 845

Date:	Time:	Location:
8-25-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471.730(5)

**Stats. Implemented:** ORS 471.750

**Proposed Amendments:** 845-015-0145

**Last Date for Comment:** 9-8-04

**Summary:** OAR 845-015-0145 addresses relationships between retail sales agents and Full On-Premises Sales licensees. Section (5) of the rule addresses delivery of distilled spirits and related items by retail sales agents to licensees holding Full On-Premises Sales licenses. The Commission intends to amend the rule to remove language which refers to the Commission's Retail Operations Manual. The Commission's Intent is to allow retail sales agents to deliver, but to remove constraints on delivery which are contained in the Retail Operations Manual.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Katie Hilton

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355

**Telephone:** (503) 872-5004

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Date:	Time:	Location:
7-27-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030 & 471.730(1) & (5)

**Stats. Implemented:** ORS 471.313

**Proposed Amendments:** 845-005-0326

**Last Date for Comment:** 8-10-04

**Summary:** This rule describes a variety of public interest or convenience issues for which the Commission may deny a license unless the applicant shows good cause to overcome the criteria.

Section (4)(a) of the rule allows the Commission to refuse an Off-Premises Sales license to the holder of a Full On-Premises sales licensee unless good cause applies. The Commission believes the historic reasons for the prohibition on this combination of licenses no longer exists, and wishes to explore a change in policy through rule-making. The proposal is to amend the rule to remove the refusal basis when this combination of licenses is requested.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Katie Hilton

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355

**Telephone:** (503) 872-5004

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 471, 471.030, 471.040 & 471.730(1) & (5)  
**Stats. Implemented:** ORS 183.335, 183.341(1), 471.166, 471.313, 471.340, 471.345, 471.360, 471.360(1)(b), 471.380, 471.398, 471.445 & 471.750(1)

**Proposed Amendments:** 845-001-0005, 845-001-0007, 845-005-0308, 845-006-0365, 845-009-0010, 845-009-0015, 845-009-0020, 845-010-0920, 845-013-0001, 845-015-0115

**Last Date for Comment:** 8-1-04

**Summary:** These ten rules need minor "housekeeping-type" amendments to correct incorrect internal citations, grammatical errors, etc. None of the amendments make significant changes to the rule.

**Rules Coordinator:** Katie Hilton

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355

**Telephone:** (503) 872-5004

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**Oregon Public Employees Retirement System**  
**Chapter 459**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-19-04	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

**Hearing Officer:** Holly Hayes

**Stat. Auth.:** ORS 238.610, 238.650, 238.157, 238.162 & 238.175  
**Stats. Implemented:** ORS 238.610, 238.157, 238.162, 238.175 & OL 2003 Ch. 105 (Enrolled HB 2401)

**Proposed Amendments:** 459-005-0250

**Last Date for Comment:** 8-20-04

**Summary:** The proposed rule modification adds a new section relating to recovering costs incurred by PERS in processing certain purchases of retirement credit. This new section implements HB 2401's changes to ORS 238.157, ORS 238.162, and ORS 238.175, which relate to purchasing retirement credit for certain periods of military service, out-of-state teaching time, or disability, respectively. These statutes previously stated that a member must pay a lump sum representing the full cost of providing that credit; they now specify that this full cost includes all administrative costs incurred in processing the purchase. The proposed rule modification sets the administrative cost for full cost purchases at \$145 each.

The proposed rule modification is available to any person upon request. The rule is also available at <http://www.pers.state.or.us>. Public comment may be mailed to the above address or sent via email to [yvette.s.elledge@state.or.us](mailto:yvette.s.elledge@state.or.us).

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Yvette S. Elledge

**Address:** Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700

**Telephone:** (503) 603-7713

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**Oregon State Fair and Exposition Center**  
**Chapter 622**

**Stat. Auth.:** ORS 565.060

**Stats. Implemented:** ORS 565.080

**Proposed Amendments:** 622-001-0000, 622-001-0005, 622-030-0005

**Last Date for Comment:** 7-21-04

**Summary:** Amendments to these rules are for housekeeping purposes. Amendments to 622-001 update the rule to reflect the statutory requirements in ORS 183.335 for agency notice of proposed rulemaking. Amendments to 622-030 change the rule to remove the fine for distributing materials without the written consent of the Agency.

Copies of the amendments are available upon request by emailing Alesia Gadach at [Alesia.Gadach@fair.state.or.us](mailto:Alesia.Gadach@fair.state.or.us) or calling 503-947-3204.

**Rules Coordinator:** Alesia Gadach

**Address:** Oregon State Fair and Exposition Center, 2330 - 17th St. NE, Salem, OR 97303-3201

**Telephone:** (503) 947-3204

\*\*\*\*\*  
**Oregon State Library**  
**Chapter 543**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-13-04	11 a.m.	Southern Oregon U Library University Rm. 1250 Siskiyou Blvd. Ashland, OR 97520

**Hearing Officer:** William Sullivan, Board of Trustees Chairperson

**Stat. Auth.:** ORS 357.209

**Stats. Implemented:** ORS 357.206

**Proposed Amendments:** 543-060-0030, 543-060-0040

**Last Date for Comment:** 8-13-04

**Summary:** SB 12, enacted by the 2003 Regular Session of the Oregon Legislative Assembly, eliminates reimbursements to libraries that make interlibrary loans, and establishes matching grants or other assistance for purposes of licensing electronic databases and facilitating statewide ground delivery of library materials. OAR 543-060-0000 through 543-060-0060 was amended and adopted on December 12, 2003. Program changes require amending OAR 543-060-0030 and 543-060-0040.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** James B. Schepcke

**Address:** Oregon State Library, State Library Building  
250 Winter St. NE, Salem, OR 97301

**Telephone:** (503) 378-4243, ext. 243

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**Oregon State Lottery**  
**Chapter 177**

**Stat. Auth.:** OR Const., Art. XV, §4(4) & ORS 461

**Stats. Implemented:** ORS 461.213

**Proposed Adoptions:** 177-090-0057

**Proposed Amendments:** 177-090-0000, 177-090-0005, 177-090-0010, 177-090-0015, 177-090-0020, 177-090-0025, 177-090-0035, 177-090-0040, 177-090-0045, 177-090-0050, 177-090-0055

**Proposed Repeals:** 177-090-0030, 177-090-0060

**Last Date for Comment:** 7-23-04

**Summary:** The proposed language updates the definitions; revises the game description; updates the play dates and times; updates the reference for canceling a ticket according to OAR 177-046-0060; updates the ticket purchase rule; updates the prize pool rule; updates and revises the time for payment of prizes; updates the probability of winning tables; revises the determination of winners rule; adds a new rule entitled "Game Cancellation, Postponement, or Termination"; and repeals the Ticket Accuracy and Governing Law rules for redundancy.

**Rules Coordinator:** Mark W. Hohlt

**Address:** Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

**Telephone:** (503) 540-1417

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**Oregon Student Assistance Commission,**  
**Office of Degree Authorization**  
**Chapter 583**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-30-04	11 a.m.	1500 Valley River Dr. Suite 100 Eugene, OR 97401

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348.594 - 348.615 & 348.992

**Stats. Implemented:** ORS 348.606

**Proposed Amendments:** Rules in 583-030

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 7-30-04

**Summary:** Make substantial changes to state oversight of religious colleges pursuant to advice of Department of Justice. Changes and raises certain fees. Makes technical changes in other college oversight rules.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Sandra Rupe

**Address:** Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr. #100, Eugene, OR 97401

**Telephone:** (541) 687-7409

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## **Oregon University System, Western Oregon University Chapter 574**

**Stat. Auth.:** ORS 351.070 & 351.072

**Stats. Implemented:** ORS 351.070 & 351.072

**Proposed Amendments:** 574-001-0000, 574-010-0005, 574-010-0010, 574-010-0020, 574-010-0030, 574-010-0060, 574-010-0067, 574-010-0068, 574-010-0070, 574-010-0075, 574-010-0080, 574-010-0085, 574-020-0015, 574-040-0001, 574-040-0005, 574-040-0015, 574-040-0025, 574-040-0030, 574-040-0035, 574-050-0005

**Proposed Repeals:** 574-010-0015, 574-010-0025, 574-010-0035, 574-010-0040, 574-010-0045, 574-010-0050, 574-010-0055

**Last Date for Comment:** 7-24-04

**Summary:** Amendments will allow for increases, additions, and revisions of special course fees and general services fees; revisions to the notice rule for rulemaking; revisions to student and unclassified professional employees grievance and discrimination complaint procedures; and revision to faculty records and student records information.

**Rules Coordinator:** Debra L. Charlton

**Address:** Oregon State System of Higher Education, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 838-8175

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## **Oregon Watershed Enhancement Board Chapter 695**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-3-04	1-2 p.m.	State Lands Bldg. Rm. 201 775 Summer St. NE Salem, OR

**Hearing Officer:** Allison Hensey

**Stat. Auth.:** ORS 541.396

**Stats. Implemented:** ORS 541.375(9)

**Proposed Adoptions:** Rules in 695-045

**Last Date for Comment:** 8-12-04, 5 p.m.

**Summary:** The Oregon Watershed Enhancement Board is proposing to adopt new administrative rules governing its provision of competitive grant awards for land acquisition projects. The draft rules propose adoption of ecological priorities for OWEB's land acquisition grant awards, revise the manner in which grant applications are processed and evaluated, and change the manner in which OWEB funding decisions are made. A public comment period for the proposed administrative rules will begin on July 12, 2004, and end at 5:00 p.m. on August 12, 2004. Several public hearings will be held at locations around the state to solicit public comment on the proposed rules, and to answer questions about the proposed rules. The locations, times, and dates for these hearings will be posted on OWEB's website after June 25, 2004, or can be obtained by calling Maribeth Mattson at (503) 986-0202 after June 25, 2004. On July 12, 2004, the proposed rules will be posted on OWEB's website at [www.oweb.state.or.us](http://www.oweb.state.or.us). To request a copy of the proposed rules, please call or email Maribeth Mattson at 503-986-0202 or [maribeth.mattson@state.or.us](mailto:maribeth.mattson@state.or.us) beginning July 12, 2004. You may also mail a request for a copy of the proposed rules to Maribeth Mattson,

OWEB, Acquisition Rules, 775 Summer St. NE, Suite 360, Salem, OR 97301.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Bonnie King

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301-1290

**Telephone:** (503) 986-0181

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## **Oregon Youth Authority Chapter 416**

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 420.100 & 420.105

**Proposed Adoptions:** 416-450-0070

**Proposed Amendments:** 416-450-0000, 416-450-0010, 416-450-0040, 416-450-0050, 416-450-0060

**Last Date for Comment:** 7-21-04

**Summary:** OAR 416-450-0070 is being adopted to provide guidelines for a mentor program. Other rules are being amended to clarify the use of volunteers in OYA facilities and local offices and further clarify the definitions of close custody and offices for purposes of using volunteers. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:**

**Proposed Repeals:** 416-400-0000, 416-400-0010

**Last Date for Comment:** 7-21-04

**Summary:** Language relevant to the Oregon Youth Authority will be moved to more appropriate rules. Definitions will be incorporated into other rules as necessary. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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## **Public Utility Commission Chapter 860**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-21-04	9:30 a.m.	Public Utility Commission Main Hearing Rm. 550 Capitol St. NE Salem, OR

**Hearing Officer:** Kathryn Logan

**Stat. Auth.:** ORS 183, 756 & 757

**Stats. Implemented:** ORS 756.040, 757.600 - 667 & HB 3376

**Proposed Amendments:** 860-038-0005, 860-038-0220, 860-038-0270, 860-038-0480

**Last Date for Comment:** 7-21-04

**Summary:** The amendments proposed in this rulemaking will change the name of the Portfolio Advisory Committee; modify the service period for portfolio options; establish permanent rules for direct access declaration windows; and facilitate better tracking of public purpose charges for self-directing customers.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lauri Salsbury

## NOTICES OF PROPOSED RULEMAKING

**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE,  
Suite 215, Salem, OR 97301-2551  
**Telephone:** (503) 378-4372

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**Secretary of State,  
Archives Division  
Chapter 166**

**Stat. Auth.:** ORS 192 & 357

**Stats. Implemented:** ORS 192.005 - 192.170 & 357.805 - 357.895

**Proposed Adoptions:** 166-115-0010

**Proposed Amendments:** Rules in 166-475

**Last Date for Comment:** 7-22-04

**Summary:** OAR 166-115-0010 Creates a records retention schedule for County Community Correction programs. This schedule was previously noticed in the March 1997 and February 2003 Oregon Bulletins.

OAR 166-475 updates the General Records Retention Schedule for the Oregon University System Records. These schedule updates were previously noticed in the April 2002 Oregon Bulletin.

These rules were filed as permanent rules in February 2003, after going through the administrative rule notice and hearing process, however, they were not sent to Legislative Counsel within 10 days of their February 2003 filing.

**Rules Coordinator:** Julie Yamaka

**Address:** Secretary of State, Archives Division, 800 Summer St. NE,  
Salem, OR 97310

**Telephone:** (503) 373-0701, ext. 240

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**Teacher Standards and Practices Commission  
Chapter 584**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-28-04	9 a.m.	Southern Oregon University Stevenson Union Facility 1250 Siskiyou Blvd. Ashland, OR 97520

**Hearing Officer:** Cathy Gwinn, TSPC Chair

**Stat. Auth.:** ORS 342.165

**Stats. Implemented:** ORS 342.120 - 342.200 & 342.400

**Proposed Adoptions:** 584-052-0030, 584-052-0031, 584-052-0032, 584-052-0033

**Proposed Amendments:** 584-060-0181

**Last Date for Comment:** 7-28-04

**Summary:** Establishes eligibility, procedures and appeal rights for alternative assessment. Places restrictions on the Substitute Teaching License.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Victoria Chamberlain

**Address:** Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

**Telephone:** (503) 373-6813

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Adm. Order No.:** ACLB 2-2004

**Filed with Sec. of State:** 5-25-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 161-002-0000, 161-010-0080, 161-025-0000, 161-025-0005, 161-025-0010, 161-025-0030

**Subject:** Permanent changes to Oregon Administrative Rules 161, Division 2 regarding definitions; Division 10 regarding appraiser assistant registration requirements; and Division 25 regarding scope of practice for licensed and certified appraisers and appraiser assistants.

**Rules Coordinator:** Karen Turnbow—(503) 485-2555

### 161-002-0000

#### Definitions

As used in OAR 161-01-005 to 161-50-050, the following terms (whether capitalized or not) shall have the following meanings:

(1) "Administrator" means the administrator of the Board appointed by the Board.

(2) "Affiliate" means a business organization sharing with a financial institution or insurance company some aspect of common ownership and control.

(3) "Appraisal" or "Real Estate Appraisal" means "appraisal" as defined in USPAP.

(4) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) "Appraisal Report" means "report" as defined in USPAP.

(6) "Appraiser Assistant" means a person who is not licensed or certified as an appraiser, but is registered as an appraiser assistant under ORS 674.310, and who assists with real estate appraisal activity under the direct supervision of a certified or licensed appraiser.

(7) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) established pursuant to the Federal Act.

(8) "Board" or "ACLB" means the Appraiser Certification and Licensure Board established under ORS Chapter 674.

(9) "Certificate" means the document issued by the Board indicating that the person named thereon has satisfied the requirements for certification as a state certified residential or state certified general appraiser.

(10) "Classroom hour" as used in reference to qualifying and continuing education means 50 minutes out of each 60 minute segment.

(11) "Completion" means interpreting, analyzing and reconciling data or compiled data, including reviewing and adopting another person's interpretations and reconciliations as one's own.

(12) "Complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, market conditions, or form of ownership is atypical. For example, atypical factors may include, but are not limited to:

- (a) Architectural style;
- (b) Age of improvements;
- (c) Size of improvements;
- (d) Size of lot;
- (e) Neighborhood land use;
- (f) Potential environmental hazard liability;
- (g) Property interests;
- (h) Limited readily available comparable sales data; or
- (i) Other unusual factors.

(13) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied to renew licensure as a state licensed appraiser or certification as a state certified residential or state certified general appraiser.

(14) "Direct Supervision" of an appraiser assistant means:

(a) Disclosing in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; and

(b) Reviewing the appraiser assistant's appraisal report(s) to ensure research of general and specific data has been adequately conducted and

properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(c) Reviewing the appraiser assistant's work product and discussing with the appraiser assistant any edits, corrections or modifications that need to be made to that work product to satisfy OAR 161-002-0000(14)(b); and

(d) Accepting sole and total responsibility for the appraisal report by signing the appraisal report and certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice.

(15) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(16) "Federal Financial Institution Regulatory Agency" means:

- (a) The Board of Governors of the Federal Reserve System;
- (b) The Federal Deposit Insurance Corporation;
- (c) The Office of the Comptroller of the Currency;
- (d) The Office of Thrift Supervision; or
- (e) The National Credit Union Administration.

(17) "Financial Institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(18) "Issuance" means the act of communicating the opinion of value either in writing or orally.

(19) "License" means the document issued by the Board indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

(20) "Mortgage banker" has the meaning defined in ORS 59.840.

(21) "Non-residential" appraising means to render a value on real property other than one-to-four family residential properties.

(22) "One-to-four family residential property" means a property that includes one to four residential units and is residential in character, i.e., zoning, land use.

(23) "Preparation" means compiling data, including reviewing and adopting such compiled data as one's own.

(24) "Prerequisite education" means the initial qualifying educational requirements to become licensed or certified with the Board.

(25) "Professional real estate activity" has the meaning defined in ORS 696.010.

(26) "Qualifying Education" means education that is creditable toward the education requirements for initial licensure or certification under one or more of the three real estate appraiser classifications.

(27) "Real estate appraisal activity" has the meaning defined in ORS 674.100.

(28) "Real Estate" or "Real Property" means an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(29) "State Certified General Appraiser" means an individual who has been certified as a state certified general appraiser by the Board.

(30) "State Certified Residential Appraiser" means an individual who has been certified as a state certified residential appraiser by the Board.

(31) "State Licensed Appraiser" means an individual who has been licensed as a state licensed appraiser by the Board.

(32) "Transaction Value" means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases and investments in or exchange of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interest in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(d) For determinations of the transaction value of real property or interests in real property in circumstances other than described in the preceding (a) to (c) of this section (36), the market value of the real property interest involved.

(e) In condemnation or partial taking actions, the transaction value is deemed to be the value of the larger parcel before the taking.

(33) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2004.

# ADMINISTRATIVE RULES

(34) "Workfile" means "workfile" as defined in USPAP.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-10-000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## 161-010-0080

### Appraiser Assistant Registration Requirements

(1) In order to gain experience credit, an appraiser assistant must register with the Board. Experience gained prior to registration will not be accepted.

(2) As a prerequisite to registering as an appraiser assistant with the Board, an applicant must:

(a) Complete the mandatory 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, including successful passage of the final examination, within two (2) years preceding the date of application.

(b) Complete no less than 60 hours of other qualifying education, including successful passage of the final examination, as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five (5) year requirement does not apply to licensed or certified appraisers registering as appraiser assistants to upgrade their license;

(c) Obtain one or more supervising appraisers who will directly supervise their appraisal activities; and

(d) Submit a complete Appraiser Assistant Registration signed by all supervising appraisers.

(3) A registered appraiser assistant must renew annually. The renewal must document all qualifying education obtained within the previous year and include an experience log documenting all appraisal activity for the previous year.

(4) An appraiser assistant who remains in this classification in excess of two years shall be required, in the third and successive years, to obtain the equivalent of fourteen classroom hours of instruction for continuing education in courses or seminars for each year preceding the renewal. Continuing education hours may be obtained anytime during the term preceding the annual renewal of the appraiser assistant registration.

(5) During the period beginning on the day following the expiration date of the registration, and ending on the date of the renewal of the registration, an appraiser assistant may not receive experience credit for any experience accrued during the lapse in registration. If the appraiser assistant fails to renew his or her registration within one year from the date of expiration, the status of the registration becomes terminated and he or she must reapply for appraiser assistant registration pursuant to OAR 161-010-0080.

Stat. Auth.: ORS 674.305(8) & ORS 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## 161-025-0000

### State Certified General Appraisers

(1) A state certified general appraiser is certified to perform appraisals for all types of real property.

(2) Only state certified general appraisers, who have been actively certified for at least 24 months, may directly supervise appraiser assistants as defined in OAR 161-002-0000(14), provided that the ratio of supervising appraisers to appraiser assistants does not exceed one supervising appraiser to three appraiser assistants, and that the certified general appraiser approves and signs the report as being independently and impartially prepared, and in compliance with USPAP. A state certified general appraiser supervising greater than three appraiser assistants as of June 1, 2004 may continue to supervise the same assistants until June 1, 2006, but may not supervise any additional or alternative assistants unless and until the ratio of all assistants to be supervised by the state certified general appraiser will not exceed one supervising appraiser to three appraiser assistants. A state certified general appraiser who, as of June 1, 2004, has not been actively licensed or certified for at least 24 months and who is supervising any appraiser assistants may continue to supervise the same assistants but may not supervise any additional or alternative assistants until the state certified

general appraiser has been actively licensed or certified for at least 24 months.

(3) State certified general appraisers who have been disciplined by the Board for violation(s) of ORS Chapter 674 and/or OAR chapter 161 pursuant to a final order of the Board issued after June 1, 2004 may not supervise appraiser assistants as provided by the following presumptive guidelines unless substantial and compelling reasons exist to depart from the following presumptive guidelines as determined by the Administrator:

(a) First Board Action: A state certified general appraiser is not restricted from acting as a supervising appraiser based upon a first board action unless the first board action results in the suspension or revocation of the state certified general appraiser's certificate or the final order in the action otherwise restricts the state certified general appraiser's eligibility to act as a supervising appraiser.

(b) Second Board Action: A state certified general appraiser may not act as a supervising appraiser to any appraiser assistants for twenty-four (24) months immediately following the date the final order in a second board action against the state certified general appraiser is issued by the Board except as otherwise provided in the final order in the action.

(c) Suspension, Revocation or Third Board Action: A state certified general appraiser may not act as a supervising appraiser to any appraiser assistants immediately following the date a final order in an action against the state certified general appraiser imposing suspension or revocation against the state certified general appraiser is issued by the Board or immediately following the date a final order in a third board action against the state certified general appraiser is issued by the Board.

Stat. Auth.: ORS 674.305(8) & ORS 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## 161-025-0005

### State Certified Residential Appraiser

(1) A state certified residential appraiser is certified to appraise:

(a) All types of one-to-four family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one-to-four family residential purposes, and where the highest and best use is for one-to-four family residential purposes;

(b) All other types of real property having a transaction value of less than \$250,000;

(2) The certified residential classification does not include the appraisal of subdivisions wherein a development analysis and/or appraisal is necessary and utilized.

(3) Only state certified residential appraisers, who have been actively certified for at least 24 months, may directly supervise appraiser assistants as defined in OAR 161-002-0000(14), provided that the ratio of supervising appraisers to appraiser assistants does not exceed one supervising appraiser to three appraiser assistants, and that the certified residential appraiser approves and signs the report as being independently and impartially prepared and in compliance with USPAP. A state certified residential appraiser supervising greater than three appraiser assistants as of June 1, 2004 may continue to supervise the same assistants until June 1, 2006, but may not supervise any additional or alternative assistants unless and until the ratio of all assistants to be supervised by the state certified residential appraiser will not exceed one supervising appraiser to three appraiser assistants. A state certified residential appraiser who, as of June 1, 2004, has not been actively licensed or certified for at least 24 months and who is supervising any appraiser assistants may continue to supervise the same assistants but may not supervise any additional or alternative assistants until the state certified residential appraiser has been actively licensed or certified for at least 24 months.

(4) State certified residential appraisers who have been disciplined by the Board for violation(s) of ORS chapter 674 and/or OAR Chapter 161 pursuant to a final order of the Board issued after June 1, 2004 may not supervise appraiser assistants as provided by the following presumptive guidelines unless substantial and compelling reasons exist to depart from the following presumptive guidelines as determined by the Administrator:

(a) First Board Action: A state certified residential appraiser is not restricted from acting as a supervising appraiser based upon a first board action unless the first board action results in the suspension or revocation of the state certified residential appraiser's certificate or the final order in the action otherwise restricts the certified residential appraiser's eligibility to act as a supervising appraiser.

(b) Second Board Action: A state certified residential appraiser may not act as a supervising appraiser to any appraiser assistants for twenty-four

# ADMINISTRATIVE RULES

(24) months immediately following the date the final order in a second board action against the state certified residential appraiser is issued by the Board except as otherwise provided in the final order in the action.

(c) Suspension, Revocation or Third Board Action: A state certified residential appraiser may not act as a supervising appraiser to any appraiser assistants immediately following the date a final order in an action against the state certified residential appraiser imposing suspension or revocation against the certified residential appraiser is issued by the Board or immediately following the date a final order in a third board action against the state certified residential appraiser is issued by the Board.

(5) A state certified residential appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties;

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(6) A state certified residential appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value;

(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(7)(a) The state certified residential appraiser may appraise properties involving partial taking or condemnation actions where the value of the larger parcel is within the scope of practice for the state certified residential appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state certified residential appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's practice.

(b) In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(A) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(B) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(C) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

Stat. Auth.: ORS 674.305(8) & ORS 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## 161-025-0010

### State Licensed Appraiser

(1) A state licensed appraiser is licensed to appraise:

(a) Non-complex, one-to-four family residential units having a transaction value of less than \$1,000,000;

(b) Complex one-to-four family residential units having a transaction value of less than \$250,000; and

(c) All other types of real property having a transaction value of less than \$250,000.

(2) If, during the course of an appraisal assignment of a one-to-four family residential property, the state licensed appraiser identifies factors that would result in the property, market conditions, property characteristics, or form of ownership, to be a complex one-to-four family residential property appraisal having a transaction value of \$250,000 or more, the state licensed appraiser shall inform the regulated institution or client for whom the appraisal is being performed that a state certified appraiser shall either complete the assignment or sign the appraisal report. The same is true for all other types of real property found to have a transaction value of \$250,000 or more.

(3) Only state licensed appraisers, who have been actively licensed for at least 24 months, may directly supervise appraiser assistants as defined in OAR 161-002-0000(14), provided that the ratio of supervising appraisers to appraiser assistants does not exceed one supervising appraiser to one appraiser assistant, and that the licensed appraiser approves and

signs the report as being independently and impartially prepared and in compliance with USPAP. A state licensed appraiser supervising greater than one appraiser assistant as of June 1, 2004 may continue to supervise the same assistants until June 1, 2006 but may not supervise any additional or alternative assistants unless and until the ratio of all assistants to be supervised by the state licensed appraiser will not exceed one supervising appraiser to one appraiser assistant. A state licensed appraiser who, as of June 1, 2004, has not been actively licensed for at least 24 months and who is supervising any appraiser assistants may continue to supervise the same assistants but may not supervise any additional or alternative assistants until the state licensed appraiser has been actively licensed for at least 24 months.

(4) State licensed appraisers who have been disciplined by the Board for violation(s) of ORS Chapter 674 and/or OAR chapter 161 pursuant to a final order of the Board issued after June 1, 2004 may not supervise appraiser assistants as provided by the following presumptive guidelines unless substantial and compelling reasons exist to depart from the following presumptive guidelines as determined by the Administrator:

(a) First Board Action: A state licensed appraiser is not restricted from acting as a supervising appraiser based upon a first board action unless the first board action results in the suspension or revocation of the state licensed appraiser's license or the final order in the action otherwise restricts the licensed appraiser's eligibility to act as a supervising appraiser.

(b) Second Board Action: A state licensed appraiser may not act as a supervising appraiser to any appraiser assistants for twenty-four (24) months immediately following the date the final order in a second board action against the state licensed appraiser is issued by the Board except as otherwise provided in the final order in the action.

(c) Suspension, Revocation or Third Board Action: A state licensed appraiser may not act as a supervising appraiser to any appraiser assistants immediately following the date a final order in an action against the state licensed appraiser imposing suspension or revocation against the state licensed appraiser is issued by the Board or immediately following the date a final order in a third board action against the state licensed appraiser is issued by the Board.

(5) A state licensed appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties;

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(6) A state licensed appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value;

(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(7) The state licensed appraiser classification does not include the appraisal of subdivisions wherein a development analysis and/or appraisal is necessary and utilized.

(8)(a) The state licensed appraiser may appraise properties involving partial taking or condemnation actions where the value of the larger parcel is within the scope of practice for the state licensed appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state licensed appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's license.

(b) In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(A) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(B) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(C) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

Stat. Auth.: ORS 674.305(8) & ORS 674.310

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1995, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## 161-025-0030

### Appraiser Assistant

The appraiser assistant must register with the Appraiser Certification and Licensure Board in order to receive experience credit towards obtaining a real estate appraiser license or certificate.

(1) An appraiser assistant applicant must be at least 18 years of age, and work under the direct supervision of a state licensed appraiser, state certified residential appraiser, or state certified general appraiser.

(2) The appraiser assistant, before performing an assignment for a supervising appraiser, must have the knowledge and experience to complete the assignment competently.

(3) All appraisal work completed by an appraiser assistant shall be prepared in compliance with USPAP and these administrative rules.

(4) An appraiser assistant may assist in the preparation of any and all components of the appraisal.

(5) An appraiser assistant shall not sign, co-sign or issue an appraisal report.

(6) Any appraiser assistant who has provided professional assistance to a state certified or state licensed appraiser who is signing and issuing the appraisal report must be identified in the report and the extent of the assistance provided must be disclosed in the report.

(7) An appraiser assistant shall not represent, nor advertise in any manner which may mislead the public into believing, that the appraiser assistant is a certified or licensed appraiser or that the appraiser assistant is authorized to perform the functions of a certified or licensed appraiser.

(8) The scope of practice for the appraiser assistant is the appraisal of those properties which the supervising appraiser is permitted to appraise.

(9) The supervising appraiser shall be responsible for the "direct supervision" of the appraiser assistant. The supervising appraiser shall:

(a) ensure that any appraiser assistant working under their supervision gains sufficient knowledge, skills and abilities that will enable the appraiser assistant to:

- (A) Define the appraisal problem;
  - (i) Identify and locate the real estate;
  - (ii) Identify the property rights to be valued;
  - (iii) Identify the use of the appraisal
  - (iv) Define value(s) to be estimated;
  - (v) Establish date(s) of value estimate(s);
  - (vi) Identify and describe the scope of the appraisal; and
  - (vii) Identify and describe limiting conditions or limitations.
- (B) Conduct preliminary analysis, select and collect applicable data;
  - (i) Identify general data (regional, city and neighborhood) — social, economic, governmental and environmental factors;
  - (ii) Identify specific data (subject and comparables) — site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property;
  - (iii) Identify competitive supply and demand (the subject market) — inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies;
- (C) Conduct an analysis of the subject property which includes:
  - (i) Site/improvements;
  - (ii) Size;
  - (iii) Costs;
  - (iv) Elements of comparison; and
  - (v) Units of comparison.
- (D) Conduct highest and best use analysis (specified in terms of use, time and market participants);
  - (i) Land as if vacant and available; and
  - (ii) Property as improved (existing or proposed).
- (E) Estimate land value, including on-site improvements;
- (F) Estimate value of the property using the three approaches of value — cost, sales comparison and income capitalization;
- (G) Reconcile each value indication and reconcile the final value estimate; and
- (H) Report estimate(s) of value(s) as defined.

(b) Review each appraisal report the appraiser assistant prepares to ensure accuracy and reliability;

(c) Ensure that the appraisal report includes proper disclosure regarding the inspection of the subject and the comparable sales. The report must disclose;

(A) That the supervising appraiser inspected the subject property both inside and out, and made an exterior inspection of all comparables relied upon in the appraisal; or

(B) That the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; (and)

(d) Make a clear and prominent disclosure of real estate appraisal activity assistance in each appraisal report by identifying each individual category of experience, as outlined in OAR 161-025-0030(9)(a)(A) through (H), that the appraiser assistant provided; and

(e) Accept responsibility for the appraisal report by signing and certifying that the report has been prepared in compliance with USPAP.

(10) Experience credit shall only be awarded to registered appraiser assistants who demonstrate that they have provided substantial professional assistance to their supervising appraisers in all categories of experience as outlined in OAR 161-025-0030(9)(a)(A) through (H).

(11) The appraiser assistant shall be entitled to obtain copies of appraisals of which he or she assisted with the preparation.

(12) The appraiser assistant may have more than one supervising appraiser, each of whom must sign the appraiser assistant's application for registration as an appraiser assistant. If the appraiser assistant subsequently adds or changes a supervising appraiser, the appraiser assistant must submit a Change or Adding Supervising Appraiser form, signed by the new supervising appraiser(s). Any experience gained with a new supervising appraiser prior to confirmation from the Board that the registration has been amended to include the new supervising appraiser(s) will not count as experience credit towards obtaining a real estate appraiser license or certificate.

(13) The appraiser assistant must prepare, and the supervising appraiser(s) shall review and sign, the appraiser assistant's experience log on a monthly basis. Separate appraisal logs must be maintained for each supervising appraiser.

Stat. Auth.: ORS 674.305(8) & ORS 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04

## Board of Chiropractic Examiners Chapter 811

**Adm. Order No.:** BCE 1-2004

**Filed with Sec. of State:** 6-7-2004

**Certified to be Effective:** 6-7-04

**Notice Publication Date:** 4-1-04

**Rules Amended:** 811-001-0005, 811-010-0085

**Subject:** OAR 811-001-0005 The amended rule adopts the most current version of the Attorney General's Model Rules of Procedure.

OAR 811-010-0085 Reinstates requirement for all chiropractic physician applicants to take the state Ethics and Jurisprudence examination.

**Rules Coordinator:** Dave McTeague—(503) 378-5816, ext. 23

### 811-001-0005

#### Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Board of Chiropractic Examiners adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act current edition; these rules shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Chiropractic Examiners.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: 2CE 10, f. 2-3-72, ef. 2-15-72; 2CE 12, f. 11-20-73, ef. 12-11-73; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 3-1981, f. & ef. 11-27-81; 2CE 3-1984, f. & ef. 11-26-84; 2CE 4-1986, f. & ef. 7-3-86; CE 2-1988, f. & cert. ef. 7-1-88; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 1-1995, f. & cert. ef. 10-30-95; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2004, f. & cert. ef. 6-7-04

### 811-010-0085

#### Application and Examination of Applicants

(1) Applicants shall be examined according to ORS 684.050 or 684.052.

(2) The Board shall issue a Candidate's Guide, which contains all necessary examination information. The Guide shall be mailed to each applicant, along with other examination information for a fee of \$10.

(3) Fee and application deadlines are as follows:

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(a) Application and \$150 fee for chiropractic exams must be postmarked no later than 30 days prior to the first exam day.

(b) Request for retake of any section of the exam must be submitted in writing with a \$100 reexamination fee postmarked no later than 30 days prior to the first exam day.

(c) Supporting documentation must be postmarked no later than 30 days prior to the first exam day.

(d) Deadlines may be waived by the Board for good cause.

(e) A complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board. This subsection may be temporarily suspended by the Board upon a finding of insufficient agency resources.

(4) Documents to be submitted prior to approval to take the Oregon Specifics Examinations:

(a) A completed, official application including a recent photograph and fingerprints;

(b) Evidence of the applicant's good moral character on the letterhead stationary of a Chiropractic physician;

(c) Original transcripts of grades from all colleges attended showing successful completion of at least two years of liberal arts and sciences study in an accredited college; and

(d) A transcript certified by the registrar, from an approved chiropractic college, including transcripts of coursework as required by OAR 811-020-0006 (minimum Educational Requirements for physiotherapy and minor surgery/proctology). A transcript of grades is necessary from each chiropractic college attended.

(e) An official transcript of passing grades from the National Board of Chiropractic Examiners on Part I, II and III and physiotherapy.

(5) Documents and fee to be submitted prior to licensure include:

(a) \$100 initial license fee.

(b) A diploma or other evidence of graduation certified by the registrar from an approved Chiropractic college.

(c) An official transcript of passing grades from the National Board of Chiropractic Examiners Part IV.

(6) All applicants must take and pass the Oregon Specifics Examination consisting of written examination in ethics and jurisprudence, obstetrics and gynecology, minor surgery and proctology. Applicants who have previously taken and passed obstetrics and gynecology, and/or minor surgery and proctology within the last five years from the date of application as received by the Board are not required to retake these tests, however all applicants must take and pass ethics and jurisprudence.

(7) Oregon Specifics Examination Grades:

(a) The Board shall determine the passing scores. Each section of the examination shall be graded separately using the Angoff Method, a criterion referenced model. Passing scores may fluctuate between sections and between examinations. All examinations are designed to test minimal competency to protect the public health and safety.

(b) Examination grades will be released within seven working days following approval.

(8) Regrades: any request for regrade must be submitted in writing to the Board no later than 45 days after the date of the examination. A regrade involves a manual tally of points earned for the specific examination requested.

(9) An applicant failing to achieve a passing grade, as determined by the Board for each examination section, may make application to the Board for a re-examination in the failed sections.

(10) An applicant must take at least one of the failed section(s) within 13 months following the date when the applicant took the entire examination. If the applicant fails to re-test on at least one failed section within 13 months of the last examination, the file shall become inactive and the applicant must re-apply and take the entire examination.

(11) An applicant attempting to give aid or accepting aid from another while examinations are in progress shall fail the examination and will not be allowed to take the examination for a period of five (5) years.

(12) Refunds:

(a) The application fee is non-refundable; and

(b) The retake fee can be refunded until 10 days prior to the test date.

(13) The Board may reject applications for good cause, including evidence of unprofessional behavior.

(14) Effective June 1, 2001 applicants who have completed all requirements for licensure, including passage of all required examinations, must submit the initial license fee to obtain license within one year from the date they completed all the requirements or at the next license renewal, whichever is greater. Effective June 1, 2005 if applicant obtains the initial

license within three months prior to the first day of the licensee's birth month, the initial license may be valid for a maximum of 16 months. At that time, the licensee will be required to meet the requirements as outlined in administrative rule 811-010-0086 sections (2) or (6) and 811-015-0025 section (6).

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.050 & 684.052

Hist.: 2CE 3, f. 10-9-59; 2CE 7, f. 7-9-68; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 6-1993(Temp), f. 9-29-93, cert. ef. 11-3-93; CE 1-1994, f. & cert. ef. 7-26-94; CE 4-1995, f. & cert. ef. 12-6-95; CE 2-1997, f. & cert. ef. 7-29-97; CE 3-1997(Temp), f. & cert. ef. 9-25-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2004, f. & cert. ef. 6-7-04

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**Adm. Order No.:** BCE 2-2004

**Filed with Sec. of State:** 6-7-2004

**Certified to be Effective:** 6-7-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 811-010-0086

**Subject:** 811-010-0086 Makes changes to the DC registration process. Changes from annual fee schedule to birth month renewal schedule.

**Rules Coordinator:** Dave McTeague—(503) 378-5816, ext. 23

## 811-010-0086

### Annual Registration

As of August 1, 2005, the license period for chiropractic physicians in Oregon changes to a period equal to 12 months, expiring on the last day of the licensee's birth date month. The transition period will last from June 1, 2005 through December 31, 2006 in order to switch all licensees to the new license system. During the transition, license fees and continuing education credit hours will be prorated for the license period beginning August 1, 2005 through December 31, 2006. Each licensee will be required to renew for the period August 1, 2005 through the licensee's birth month.

To facilitate the conversion to the birth month system for doctors of chiropractic, licenses that expire on July 31, 2005 will be renewed for periods extending from six (6) months to seventeen (17) months depending on licensee's birth month. As of June 1, 2005, the license fee to be paid shall be that which is determined by multiplying 1/12 of the renewal fee by number of months of licensure in accord with the following schedule. All fees shall be rounded to the nearest dollar.

(1) At least 60 days prior to the renewal due date the board shall mail to the last-known professional address of each licensed chiropractor a notice of the requirements of ORS 684.090 and 684.092.

(2) Active licensees must meet the requirements of ORS 684.092 during the 12 months prior to the expiration of the Certificate of Registration and pay to the board the annual \$300 registration fee.

(3) Licensees may apply for a \$225 limited active license within 60 days prior to the expiration of the Certificate of Registration if the licensee meets all of the following requirements:

(a) Is 60 years of age or older; and

(b) Has held an active chiropractic license for at least 25 years.

(4) Limited active licensees shall fulfill the requirements of ORS 684.090, 684.092 and 684.094 except that:

(a) The annual license fee shall not exceed 75% of the current annual active license fee, and

(b) Continuing chiropractic education shall not be less than 6 hours per year.

(5) Limited active licensees shall show proof at the time of license renewal that the criteria of subsection (3)(a) and (b) of this rule have been met.

(6) Active licensees may apply for a \$175 inactive license within 60 days prior to the expiration of the Certificate of Registration if the licensee qualifies because of one of the following:

(a) Military service;

(b) Peace Corps or VISTA service;

(c) Retirement; or

(d) Licensee is not engaged in the practice of chiropractic in Oregon.

(7) Inactive licensees are not required to fulfill the requirements of ORS 684.092.

(8) Inactive licensees who want to reinstate their active license during the same fiscal year shall pay the full active annual registration fee and provide proof of compliance with ORS 684.092.

(9) Inactive licensees who apply for reinstatement after five or more years after the date of transfer to inactive license, or who cannot demonstrate to the satisfaction of the Board they have been in active practice dur-

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ing the preceding five years, may be required to establish their competency in the practice of chiropractic by

(a) Receiving a passing grade on all or part of an examination required by the Board; or

(b) Submitting a letter showing proof of active practice and any disciplinary actions from the state boards where licensure is maintained.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.090 & ORS 684.092

Hist.: 2CE 9, f. 10-16-70; 2CE 13(Temp), f. & ef. 4-13-76 through 8-10-76; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 1-1986, f. 4-14-86, ef. 5-1-86; Suspended by CE 1-1989(Temp), f. & cert. ef. 7-28-89; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 2-1995, f. & cert. ef. 10-30-95; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2004, f. & cert. ef. 6-7-04

## Board of Examiners for Speech Pathology and Audiology Chapter 335

**Adm. Order No.:** SPA 2-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 5-26-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 335-010-0050, 335-010-0060, 335-010-0070, 335-010-0080

**Rules Amended:** 335-005-0015, 335-005-0025, 335-070-0030, 335-070-0060, 335-095-0020, 335-095-0030

**Subject:** New Division 10 rules provide an explanation of and requirements for record keeping.

Amended rules in Division 5 add maintenance of clinical records to professional and ethical standards and define the rules for accurate representation of an audiologist who works for a business that dispenses hearing aids. 335-005-0025 (12) (13) also clarifies documentation requirements for speech-language pathologists who supervise others.

Amended rules in Division 70 clarify that inservices are acceptable at public schools and clarify the professional development requirements for new licensees.

Amended rules in Division 95 delete a grandparenting qualification that no longer applies and clarify how a person may qualify outside of grandparenting.

**Rules Coordinator:** Brenda Felber—(503) 731-4050

### 335-005-0015

#### Welfare of Clients

(1) Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally.

(2) Individuals shall provide all services competently.

(3) Individuals shall use all appropriate resources, including referral when appropriate.

(4) Individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, sex, age, religion, national origin, sexual orientation, or disability.

(5) Individuals shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.

(6) Individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

(7) Individuals shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.

(8) Individuals shall not evaluate or treat speech, language, or hearing disorders solely by correspondence.

(9) Individuals shall maintain adequate records of professional services and products dispensed and shall allow access to these records when appropriately authorized.

(10) Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

(11) Individuals shall not charge for services not rendered, nor shall they misrepresent in any fashion, services rendered or products dispensed.

(12) Individuals shall use persons in research or as subjects of teaching demonstrations only with their informed consent.

(13) Individuals whose professional services are adversely affected by substance abuse or other health-related conditions shall seek profession-

al assistance and, where appropriate, withdraw from the affected areas of practice.

(14) Individuals who have reason to believe that the Professional and Ethical Standards have been violated shall inform the Board.

(15) Individuals shall not exploit persons in the delivery of professional services.

(16) Individuals shall maintain clinical records as required by the Board's rules to ensure the provision of competent and appropriate care for persons served.

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2004, f. & cert. ef. 5-26-04

### 335-005-0025

#### Accurate Representation

(1) Individuals shall not misrepresent their credentials, competence, education, training, or experience.

(2) Individuals shall not misrepresent the credentials of assistants and shall inform those they serve professionally of the name and professional credentials of persons providing services.

(3) Individuals shall not transfer to a noncertified individual any responsibility which requires the unique skills, knowledge, and judgement that is within the scope of practice of that professional.

(4) Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(5) Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

(6) Individuals' statements to the public advertising, announcing, and marketing their professional services, reporting research results, and promoting products shall adhere to prevailing professional standards and shall not contain misrepresentations.

(7) Individuals shall not engage in any scheme or enter into any arrangement whereby clients are referred to or from any person or business entity in return for any remuneration of any kind, including referrals back to the person or business entity.

(8) Individuals shall not engage in dishonesty, fraud, misrepresentation, or any form of conduct that adversely reflects on the individual's fitness to serve persons professionally.

(9) Individuals' statements to colleagues about professional services, research results, and products shall contain no misrepresentations.

(10) At any time the licensee is disciplined or convicted of a crime, the licensee shall immediately report the incident to the Board.

(11) Audiology licensees may not consult with, contract with, or be employed by a business that dispenses hearing aids if the business holds itself out as having an audiologist on staff or providing audiology services unless audiology licensees provide audiological services as follows:

(a) The licensee, in combination with other audiology licensees or alone, performs audiology evaluations or hearing fitting services or both at each of the business locations that is advertised as having an audiologist on staff or providing audiology services;

(b) The licensee, or the licensee and other licensees, are physically present for at least 30 hours per month at each of the business locations that is advertised as having an audiologist on staff or providing audiology services; and

(c) The licensee keeps a record of the hours he or she spends at each of the business locations that is advertised as having an audiologist on staff or providing audiology services and submits a record of the hours spent at each of these business locations at the time of licensure renewal.

(12) Except as described in section 13 of this rule, a licensee shall not sign, or authorize anyone else to sign on the licensee's behalf, letters or reports purporting to describe the function or condition of any person unless the licensee has personally performed testing of the person.

(13) If support personnel or a student in supervised practicum provide services, the name of the assistant or the student and a description of duties performed must be clearly referenced in any formal documents (e.g. letters, treatment plans, reports) signed by the licensee.

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04

# ADMINISTRATIVE RULES

## 335-010-0050

### Philosophy

Speech-language pathology and audiology professionals in all positions and settings are responsible for maintaining ongoing and complete documentation of the clinical services they provide. Record keeping creates and maintains a record of events pertaining to each client. Clear and comprehensive record keeping facilitates communication between care or treatment providers and interdisciplinary team members, protects both clients and providers, justifies the need for treatment, and documents the results of treatment.

Stat. Auth.: ORS 681.420(5), 681.460  
Stat. Implemented: ORS 681.420  
Hist.: SPA 2-2004, f. & cert. ef. 5-26-04

## 335-010-0060

### Persons Responsible for Documentation

(1) A licensed speech-language pathology or audiology professional must sign each clinical entry or document with their name and professional title.

(2) The documentor must be:

(a) The licensed speech-language or audiology professional who directly renders the assessment, care, or treatment; or

(b) In supervisory situations, the speech-language or audiology professional who supervises the assessment, care, or treatment rendered by non-licensed personnel, shall co-sign for those services with their name and professional titles; or

(3) The documentation may not be delegated except in emergency situations.

Stat. Auth.: ORS 681.420(5), 681.460  
Stat. Implemented: ORS 681.420  
Hist.: SPA 2-2004, f. & cert. ef. 5-26-04

## 335-010-0070

### General Requirements for Record Keeping and Documentation

(1) Record keeping must conform and adhere to Federal, state, and local laws and regulations.

(2) Records must record history taken; procedures performed and tests administered; results obtained; conclusions and recommendations made. Documentation may be in the form of a "SOAP" (Subjective Objective Assessment Plan) note, or equivalent.

(3) Records and documentation must:

(a) Be accurate, complete, and legible;

(b) Be typed or recorded using ink;

(c) Include the documentor's name and professional titles.

(4) Corrections to entries must be recorded by:

(a) Crossing out the entry with a single line which does not obliterate the original entry, or amending the electronic record in a way that preserves the original entry; and

(b) Dating and initialing the correction.

(5) Documentation of clinical activities may be supplemented by the use of flowsheets or checklists, however, these do not substitute for or replace detailed documentation of assessments and interventions.

Stat. Auth.: ORS 681.420(5) & ORS 681.460  
Stat. Implemented: ORS 681.420  
Hist.: SPA 2-2004, f. & cert. ef. 5-26-04

## 335-010-0080

### Storage, Maintenance, and Retention of Records

(1) Clinical and billing records must be maintained for seven (7) years.

(2) All records, including clinical records, must be stored and maintained so that the records are safeguarded, readily retrievable, and open to inspection by the representatives of the Board of Examiners for Speech-Language Pathology and Audiology.

Stat. Auth.: ORS 681.420(5), 681.460  
Stat. Implemented: ORS 681.420  
Hist.: SPA 2-2004, f. & cert. ef. 5-26-04

## 335-070-0030

### Activities Acceptable for Obtaining Professional Development Hours

Professional development hours may be accrued from, but are not limited to, the following sources:

(1) Attendance at educational programs where continuing education credit is given and approved by the Oregon Speech-Language and Hearing Association (OSHA) and other state chapters of the American Speech-Language Hearing Association (ASHA).

(2) Attendance at educational programs where continuing education credit is given and approved by the American Speech-Language Hearing

Association (ASHA), including other state association educational programs.

(3) Attendance at educational programs where continuing education credit is given and approved by the American Academy of Audiology.

(4) Attendance at educational programs where continuing education credit is given and approved by the Oregon Academy of Audiology and other state chapters of the American Academy of Audiology.

(5) Attendance at educational programs where continuing education credit is given and approved by the Health Licensing Office Hearing Aid Dealers Program.

(6) Academic course work taken after successful completion of the master's degree licensure requirement and taken for credit from an educational institution accredited by an appropriate state or regional body or approved by the Board. The courses must relate to the clinical practice of speech-language pathology or audiology. One academic semester hour shall be equivalent to fifteen (15) clock hours for professional development credit. One academic quarter hour shall be equivalent to ten (10) clock hours for professional development credit. Courses must be on the graduate level, with a minimum grade of "C" required.

(7) Self-assessment home study courses accompanied by examination and sponsored by a nationally-recognized professional organization in audiology or speech-language pathology.

(8) In-service programs offered by public schools, hospitals and clinics. Programs must be related to speech-language pathology or audiology, and signed documentation must be provided for participants.

(9) CPR classes for a maximum of two (2) hours credit during the two-year licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460  
Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04

## 335-070-0060

### New Licensees

Professional development for new licensees will be required on the following scale:

(1) Licensed after July 30th of odd-numbered years — no report is required.

(2) Licensed from August 1st of even-numbered years to July 30th of odd-numbered years — report 20 hours.

(3) Licensed prior to July 30th of even-numbered years — report 40 hours.

Stat. Auth.: ORS 681.420(5) & 681.460  
Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04

## 335-095-0020

### Grandparenting

An applicant may meet the requirements for a certificate to practice as a speech-language pathology assistant if, prior to January 1, 2005, they submit proof of specific experience, or experience and preparation, as defined below.

(1) Applicants must meet either criterion (1)(a) or (1)(b) and (2) and (3).

(a) The equivalent of three school years of full-time experience (minimum thirty (30) hours per week, or more than 3,276 total hours) working with an Oregon licensed speech-language pathologist or a speech-language pathologist with a certificate of clinical competence (CCC's) from the American Speech and Hearing Association (ASHA); or

(b) The equivalent of two years of full time experience (minimum thirty (30) hours per week, or more than 2,184 total hours) working with an Oregon licensed speech-language pathologist or a speech-language pathologist with a certificate of clinical competence (CCC's) from the American Speech and Hearing Association (ASHA) and the completion of nine (9) hours of speech-language pathology technical coursework;

(2) Applicants must complete the Competency Checklist (Form SLP A1, Revised 6/02);

(3) Applicants must submit the completed application, all supporting documentation, and the required non-refundable certificate fee prior to January 1, 2005.

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

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04

# ADMINISTRATIVE RULES

## 335-095-0030

### Certification of Speech-Language Pathology Assistants

Applicants not qualifying by grandparenting under rule 335-095-0020 must submit all of the following to be eligible for certification.

- (1) Transcripts showing 45 quarter hours or 30 semester hours of speech-language pathology technical course work; and
- (2) Transcripts showing 45 quarter hours or 30 semester hours of general education credit, and
- (3) Written evidence of 100 clock contact hours of clinical interaction.  
Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460  
Stat. Implemented: ORS 681.360 & 681.375  
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04

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**Board of Medical Examiners**  
**Chapter 847**

**Adm. Order No.:** BME 12-2004(Temp)

**Filed with Sec. of State:** 6-11-2004

**Certified to be Effective:** 6-11-04 thru 12-8-04

**Notice Publication Date:**

**Rules Amended:** 847-035-0030

**Rules Suspended:** 847-035-0030(T)

**Subject:** The adopted rules allows EMT-Basics, in the event of a release of chemical agents, to administer atropine sulfate and pralidoxime chloride from a pre-loaded injector device if they are given a direct order by their supervising physician, or they are under the direction of an EMT-Paramedic who is on the scene.

**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

## 847-035-0030

### Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001(5).

(2) The scope of practice for First Responders and EMTs is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to a First Responder or EMT by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual EMT may be requested by the Board or Section and shall be furnished upon request.

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient's wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician or a nurse practitioner, if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) The scope of practice for emergency and nonemergency care established by the Board for First Responders is intended as authorization for performance of procedures by First Responders without direction from a Board-approved supervising physician, except as limited by subsection (2) of this rule. A First Responder may perform the following emergency care procedures without having signed standing orders from a supervising physician:

- (a) Conduct primary and secondary patient examinations;
- (b) Take and record vital signs;
- (c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;
- (d) Open and maintain an airway by positioning the patient's head;
- (e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (f) Provide care for soft tissue injuries;
- (g) Provide care for suspected fractures;
- (h) Assist with prehospital childbirth; and
- (i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

- (a) Administration of medical oxygen;
- (b) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;
- (c) Operate a bag mask ventilation device with reservoir;
- (d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and
- (e) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and  
(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

- (a) Perform all procedures that an Oregon-certified First Responder can perform;
- (b) Ventilate with a non-invasive positive pressure delivery device;
- (c) Insert a dual lumen airway device in the practice of airway maintenance;
- (d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(f) Provide care for suspected medical emergencies, including:  
(A) Obtaining a peripheral blood specimen for blood glucose monitoring, obtained via fingerstick, heelstick, or earlobe puncture;

(B) Administer epinephrine by subcutaneous or automatic injection device for anaphylactic shock;

(C) Administer activated charcoal for poisonings, following local written standing orders; and

(D) Administer aspirin for suspected myocardial infarction.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal or pharyngoesophageal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

(m) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:

(A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or

(B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

# ADMINISTRATIVE RULES

- (b) Initiate and maintain peripheral intravenous (I.V.) lines;
- (c) Initiate and maintain an intraosseous infusion;
- (d) Initiate saline or similar locks when specifically authorized by the physician;

- (e) Infuse any physiologic isotonic crystalloid solution;
- (f) Draw peripheral blood specimens;
- (g) Initiate or administer the following medications:

- (A) Epinephrine 1:10,000;
- (B) Atropine sulfate;

(C) Lidocaine bolus for ventricular fibrillation, post ventricular fibrillation/ventricular tachycardia cardiac arrest, ventricular tachycardia, or wide complex tachycardia;

- (D) Naxolone hydrochloride;
- (E) Hypertonic glucose;
- (F) Nitroglycerine for chest pain;
- (G) Beta-2-specific nebulized bronchodilators;
- (H) Morphine for pain management;

(h) Insert a dual lumen airway or laryngeal mask airway (LMA) device in the practice of airway maintenance;

- (i) Insert an orogastric tube;

(j) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the personnel at the sending medical facility.

(k) Perform cardiac defibrillation with a manual defibrillator if the EMT-Intermediate has satisfactorily completed a Section-approved training course in manual defibrillation, including written and practical examinations and the EMT-Intermediate is, at the time of performing manual defibrillation, in the service of an agency which has granted an "EMT-Intermediate Manual Defibrillation Waiver" by the Section.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

- (b) Initiate the following airway management techniques:

- (A) Endotracheal intubation;
- (B) Tracheal suctioning techniques;
- (C) Needle cricothyrotomy; and
- (D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(e) Provide advanced life support in the resuscitation of patients in cardiac arrest;

- (f) Perform emergency cardioversion in the compromised patient;

(g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(h) Initiate needle thoracocentesis for tension pneumothorax in a pre-hospital setting;

(i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

- (a) Designing the supervising physician and agent application;
- (b) Approving a supervising physician or agent; and
- (c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any

EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988,

f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04

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## Board of Naturopathic Examiners Chapter 850

**Adm. Order No.:** BNE 3-2004

**Filed with Sec. of State:** 6-10-2004

**Certified to be Effective:** 6-10-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 850-001-0000

**Subject:** Updates the requirements for rulemaking notice.

**Rules Coordinator:** Anne Walsh—(503) 731-4045

### 850-001-0000

#### Notice of Rulemaking

Before the adoption, amendment, or repeal of any rule relating to the practice of naturopathic medicine, with the exception of temporary rules, the Board will 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 rule.

(2) By mailing or delivering copies of the notice to at least 28 days before the effective date, to persons who have requested notice pursuant to 183.335(8).

(3) By mailing copies of the notice to the Associated Press and the Capitol Press; and

(4) At least 49 days before the effective date, to the legislators specified in ORS 183.335(15).

Stat. Auth.: ORS 183

Stats. Implemented: ORS 685

Hist.: NE 7-1980, f. & ef. 9-11-80; BNE 3-2004, f. & cert. ef. 6-10-04

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**Adm. Order No.:** BNE 4-2004

**Filed with Sec. of State:** 6-10-2004

**Certified to be Effective:** 6-10-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 850-010-0210

**Subject:** Updates approved continuing education programs.

**Rules Coordinator:** Anne Walsh—(503) 731-4045

### 850-010-0210

#### Continuing Education

(1) Continuing education (CE) is meant to assist licensed naturopathic physicians maintain the competency and skills necessary to assure the Oregon public a continued high standard of health care.

(a) It is recommended that physicians request CE approval at least four weeks in advance, and program providers and sponsors make requests at least eight weeks before approval is needed.

(b) The Board reserves the right to decline for approval programs that are not submitted with adequate documentation.

(c) Programs of CE submitted more than 30 days after the presentation may not be considered by the Board for approval.

(2) Programs of continuing education for naturopathic physicians must meet the following criteria for approval:

- (a) They must not misrepresent or mislead;

(b) They must be presented by qualified professionals including naturopathic physicians or other professionally recognized health care providers or educators;

(c) They must exclude the selling or promotion of commercial products or practice building;

(d) The material covered must pertain to the improvement of the competency and skills of the Naturopathic physician; and

(e) Programs must consist of education covering review, new, experiential, research or specialty subjects relevant to the practice of naturopathic medicine.

(3) Each licensee with an active license must obtain at least 25 hours of CE every year; each licensee holding an inactive license must obtain at least 10 hours of CE every year; a natural childbirth certificate requires 15

# ADMINISTRATIVE RULES

hours in obstetrics every year; and new licensees are not required to obtain any CE in the initial year of licensure per OAR 850-010-0195.

(a) No more than 15 hours of credit will be given in one subject area. CE, up to 15 hours in one subject area, obtained after December 15 not used in the year they were obtained, may be used in the following year for CE credit.

(b) CE credit will be rounded to the nearest quarter hour.

(c) At least ten (10) hours of CE must be obtained through participation by attendance at approved seminars, conferences, grand rounds or other in person activities.

(d) A Naturopathic physician holding an active license must obtain at least five hours of Board approved CE annually in the pharmacology of legend drugs. Pharmacy credit will be considered for programs when the presentation is specifically directed to the relevant use of pharmacological substances in naturopathic medicine. The following are examples of approved programs:

(A) Drugs listed on the formulary compendium OAR 850-010-0210; or

(B) Non-formulary drugs relevant to patient care; or

(C) Optimal use of drugs in patient care; or

(D) Drug interactions or contraindications; or

(E) Research of drugs in conjunction with naturopathic medical care.

(e) A Naturopathic physician must show evidence of Board approved pain management education according to Oregon Law 2001, Chapter 987, effective January 2, 2006.

(f) A Naturopathic physician must obtain at least 3 hours of medical ethics education every three years, which may be part of the annual CE requirement.

(4) Any licensed naturopath using intramuscular (IM) or subcutaneous (SC) or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, SC, or IV) must have qualifying education per OAR 850-010-0212.

(5) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-010-0210(6)(l);

(b) Community service seminars and activities;

(c) Self-growth/self-help activities;

(d) Practice building activities;

(e) Medical/insurance billing presentations;

(f) Nonprofessional health related activities presented by or directed to the lay public;

(g) Proprietary programs, which promote exclusive services and/or products;

(h) Information not within or directly related to the scope of practice of naturopathic medicine.

(6) CE credit may be given by the Board for courses or activities, which are defined as follows:

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals, or institutions, programs accredited by the Accreditation Council for Continuing Medical Education (ACCME), the American Council on Pharmaceutical Education (ACPE), or approved by the Board. A verification of attendance for all CE courses or activities showing hours claimed or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars. Video or audio taped presentation credit must be documented by a thorough original outline of the presentation with a discussion of the importance of the information to the doctor's practice as well as the name and qualifications of the presenter and the exact date, time, length of taped course or seminar and sponsor of the presentation;

(c) Reading journal articles. A copy of the journal article with the date, publication and author included, must be kept along with a thorough original outline of the article, with a discussion on the importance of the information to the doctor's practice. Credit is determined by length of article and complexity of the topic;

(d) Internet activities in accordance with the standards of the ACCME or ACPE including documentation of completion;

(e) Being an original author of an article or book related to health care. Credit for such activities will be credited in the year the project is completed; no more than 15 hours will be credited for each original publication;

(f) CPR course, with proof of current certification;

(g) Preceptorships for purposes of advancing education in treatment protocols. Documentation for preceptorship credit must indicate the date and hours of preceptorship, name of preceptor and qualifications for teaching the subject covered. Documentation must include a thorough original out-

line of the information studied, a discussion of the importance of the information to the doctor's practice and a written evaluation of the applicant's understanding of the subject by the preceptor;

(h) Participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. A written record of hours of development and research, including the names and addresses of the institutions involved, name of supervisors, and their signatures verifying hours;

(i) Participation in research related to naturopathic medicine directed by an educational or other qualified naturopathic organization. Licensee must document dates of participation, name of research program and a summary of the purpose and outcome of the research;

(j) Participation in accredited graduate level health related programs;

(k) Other courses or activities specifically authorized by the Board;

(l) Actual presentation hours for an initial course offering and up to three hours for preparation, when subject is specific to higher education in the practice of Naturopathic medicine.

(7) Up to a total of 10 hours of credit may be granted for CE obtained by participation on the Naturopathic Physicians Licensing Examinations (NPLEX) committee in the development and writing of the NPLEX examinations.

(8) Up to three hours of credit may be obtained by activities specific to patient charting and record keeping.

(9) Licensee maintaining an active license in Oregon but not living and practicing in Oregon may obtain up to 20 hours of CE by nonattendance activities that satisfy the program qualifications in OAR 850-010-0210.

(10) A full-time sanctioned residency, which is CNME or Board approved, requiring at least 6 months of participation in the calendar year, will suffice for all 25 hours of CE required.

(11) A fellowship with a Board recognized professional organization, requiring at least six months of active participation in the calendar year, will suffice for all 25 hours of CE.

(12) A CE provider who wishes to present the same program(s) more than once in a two-year period, may apply for approval as a Program Provider (PP). The applicant must make submission for approval at least eight weeks prior to the initial presentation.

(a) CE provider must submit an application provided by the Board for approval along with:

(A) An initial course program;

(B) Title and syllabus or course outline for all offerings in the initial course program;

(C) Date(s), time(s), and location(s) of programs;

(D) A copy of the curriculum vitae of instructors showing qualifications to present such programs;

(E) Names, addresses, and phone number for all corporate sponsors and responsible persons;

(F) A signed letter of agreement as provided by the Board, stating the purpose of the program with a disclosure on the financial relationship of presenter to sponsor;

(G) A list of products for sale or promotion being offered during or in conjunction with the CE program;

(H) A copy of verification that will be provided to attendees; and

(I) Any substantial changes to PP offerings throughout the year.

(b) A Program Provider is responsible for maintaining attendance records for all approved presentations for at least five years.

(c) A Program Provider must make a new application on a biennial basis from the date of original approval.

(13) A CE provider that has presented the Board with inaccurate or misleading information may lose CE approval for up to five years.

(a) If any CE provider fails to follow the provisions of this rule, the Board may revoke, deny or limit the approval.

(b) If a program has been denied approval, the provider may request a review by the full Board.

(14) At its discretion, the Board may appoint a member of the Board or other designee to audit by attendance the subject matter of any program in order to verify content. This audit will be free of charge or subject to reimbursement by the CE provider to the appointed attendee. Denial of an audit is grounds for disapproval.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100 & ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02; BNE 4-2004, f. & cert. ef. 6-10-04

# ADMINISTRATIVE RULES

**Adm. Order No.:** BNE 5-2004

**Filed with Sec. of State:** 6-10-2004

**Certified to be Effective:** 6-10-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 850-010-0225, 850-010-0226

**Subject:** Updates the formulary used by Naturopathic physicians and pharmacists.

**Rules Coordinator:** Anne Walsh—(503) 731-4045

## 850-010-0225

### Naturopathic Formulary Compendium

Classifications of the formulary compendium, which can be prescribed in any dosage or any dosage form. Products marked with an asterisk (\*) may be used by Naturopathic Physicians, but may not be prescribed.

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;
- (11) Alprostadil;
- (12) Amino Acids;
- (13) Amino Aspirins;
- (14) Aminoglycosides;
- (15) Aminophylline;
- (16) Aminosalicyclic Acid;
- (17) Ammonium Chloride;
- (18) Ammonium lactate lotion 12%;
- (19) Amoxicillin;
- (20) Amoxicillin & Clavulanate;
- (21) Amphotericin B;
- (22) Ampicillin;
- (23) Ampicillin & Sulbactam;
- (24) Anthralin;
- (25) Atorvastatin;
- (26) Atropine;
- (27) Atropine Sulfate;
- (28) Auranofin;
- (29) Azelaic Acid;
- (30) Azithromycin;
- (31) Bacampicillin;
- (32) Bacitracin;
- (33) Becaplermin;
- (34) Belladonna;
- (35) Benzodiazepines;
- (36) Benzoic Acid;
- (37) Benzonatate;
- (38) Betaine;
- (39) Betamethasone;
- (40) Bethanechol Chloride;
- (41) Bichloroacetic Acid\*;
- (42) Bimatoprost Ophthalmic Solution 0.03%;
- (43) Biphosphonate;
- (44) Bromocriptine;
- (45) Budesonide;
- (46) Buprenorphine;
- (47) Butorphanol;
- (48) Cabergoline;
- (49) Calcipotriene;
- (50) Calcitonin;
- (51) Calcitriol;
- (52) Carbamide Peroxide;
- (53) Carbidopa;
- (54) Carbol-Fuchsine;
- (55) Captopril;
- (56) Cefaclor;
- (57) Cefdinir;
- (58) Cefibuten;
- (59) Cefadroxil;
- (60) Cefditoren;
- (61) Cefixime;

- (62) Cefonicid Sodium;
- (63) Cefpodoxime Proxetil;
- (64) Cefprozil;
- (65) Ceftributen;
- (66) Cefuroxime;
- (67) Celecoxib;
- (68) Cellulose Sodium Phosphate;
- (69) Cenestin;
- (70) Cephalixin;
- (71) Cephadrine;
- (72) Chirocaine\*;
- (73) Chloramphenicol;
- (74) Citrate Salts;
- (75) Clarithromycin;
- (76) Clindamycin;
- (77) Clioquinol;
- (78) Clostridium botulinum toxin (ab);
- (79) Cloxacillin;
- (80) Codeine;
- (81) Colchicine;
- (82) Colistimethate;
- (83) Collagenase;
- (84) Condylox;
- (85) Cortisone;
- (86) Coumadin;
- (87) Cromolyn Sodium;
- (88) Cyanocobalamin;
- (89) Cycloserine;
- (90) Danazol;
- (91) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic chelation is allowed);
- (92) Demeclocycline Hydrochloride;
- (93) Desmopressin;
- (94) Desoxyribonuclease;
- (95) Dexamethasone;
- (96) Dextran;
- (97) Dextromethorphan;
- (98) Dextrose;
- (99) Dextrothyroxine;
- (100) Dicloxacillin;
- (101) Dihydroergotamine Migranal;
- (102) Didanosine;
- (103) Digitalis;
- (104) Digitoxin;
- (105) Digoxin;
- (106) Dinoprostone;
- (107) Diphylline;
- (108) Dirithromycin;
- (109) Doxercalciferol;
- (110) Doxycycline;
- (111) Dronabinol;
- (112) Dyclonine;
- (113) EDTA (Board approved certification required before therapeutic chelation is allowed);
- (114) Electrolyte Solutions;
- (115) Emtricitabine;
- (116) Ephedrine;
- (117) Epinephrine\*;
- (118) Epinephrine (auto-inject);
- (119) Ergoloid Mesylates;
- (120) Ergonovine Maleate;
- (121) Ergotamine;
- (122) Erythromycins;
- (123) Erythropoietin;
- (124) Estradiol;
- (125) Estriol;
- (126) Estrogen-Progestin Combinations;
- (127) Estrogens, Conjugated;
- (128) Estrogen, Esterified;
- (129) Estrone;
- (130) Estropipate;
- (131) Ethyl Chloride;
- (132) Etidronate;
- (133) Famciclovir;
- (134) Fentanyl;

## ADMINISTRATIVE RULES

- (135) Fibrinolysin;  
(136) Flavoxate;  
(137) Fluconazole;  
(138) Fludrocortisone Acetate;  
(139) Flunisolide;  
(140) Fluorides;  
(141) Fluoroquinolones;  
(142) Fluoroquinolines;  
(143) Fluorouracil;  
(144) Fluticasone propionate;  
(145) Fluvastatin;  
(146) Gabapentin;  
(147) Galantamine H. Br.;  
(148) Ganciclovir;  
(149) Gentamicin;  
(150) Gentian Violet;  
(151) Griseofulvin;  
(152) Guaifenesin;  
(153) Heparin — subcutaneous, sublingual and heparin locks;  
(154) Hexachlorophene;  
(155) Homatropine Hydrobromide\*;  
(156) Human Growth Hormone;  
(157) Hyaluronic Acid;  
(158) Hyaluronidase;  
(159) Hydrocodone;  
(160) Hydrocortisone;  
(161) Hydrogen Peroxide;  
(162) Hydromorphone;  
(163) Hydroquinone;  
(164) Hydroxypolyethoxydodecane\*;  
(165) Hyoscyamine;  
(166) Imiquimod Cream (5%);  
(167) Immune Globulins\*;  
(168) Insulin;  
(169) Interferon Alpha b w/Ribavirin;  
(170) Iodine;  
(171) Iodoquinol;  
(172) Iron Preparations;  
(173) Isosorbide Dinitrate;  
(174) Isotretinoin;  
(175) Itraconazole;  
(176) Kanamycin Sulfate;  
(177) Ketoconazole;  
(178) Lactulose;  
(179) Lamivudine;  
(180) Leucovorin Calcium;  
(181) Levalbuteral;  
(182) Levodopa;  
(183) Levonorgestrel;  
(184) Levorphanol;  
(185) Levothyroxine;  
(186) Lincomycin;  
(187) Lindane;  
(188) Liothyronine;  
(189) Liotrix;  
(190) Lisinopril;  
(191) Lisuride;  
(192) Lithium;  
(193) Lovastatin;  
(194) Mebendazole;  
(195) Meclizine;  
(196) Medroxyprogesterone;  
(197) Medrysone;  
(198) Megestrol Acetate;  
(199) Mercury, Ammoniated;  
(200) Mesalamine;  
(201) Metformin;  
(202) Methadone;  
(203) Methoxsalen;  
(204) Methscopolamine;  
(205) Methylethylgonovine;  
(206) Methylprednisolone;  
(207) Methyltestosterone;  
(208) Methysergide;  
(209) Metronidazole;  
(210) Miglitol;  
(211) Minerals (Oral & Injectable);  
(212) Minocycline;  
(213) Misoprostol;  
(214) Monobenzone;  
(215) Morphine;  
(216) Mupirocin;  
(217) Nafarelin acetate;  
(218) Naloxone;  
(219) Natamycin;  
(220) Nicotine;  
(221) Nitroglycerin;  
(222) Novobiocin;  
(223) Nystatin;  
(224) Olsalazine;  
(225) Omeprazole;  
(226) Opium;  
(227) Over the Counter (OTC) substances, not to exceed their current OTC dose or dosage forms;  
(228) Oxacillin;  
(229) Oxamniquine;  
(230) Oxaprozin;  
(231) Oxtriphylline;  
(232) Oxycodone;  
(233) Oxygen;  
(234) Oxymorphone;  
(235) Oxytetracycline;  
(236) Oxytocin\*;  
(237) Pancrelipase;  
(238) Papain;  
(239) Papavarine;  
(240) Paramethasone;  
(241) Paregoric;  
(242) Penciclovir;  
(243) Penicillamine (Board approved certification required before therapeutic chelation is allowed);  
(244) Penicillin;  
(245) Pentosan;  
(246) Pentoxifylline;  
(247) Pergolide;  
(248) Permethrin;  
(249) Phenazopyridine;  
(250) Phenylalkylamine;  
(251) Physostigmine;  
(252) Pilocarpine;  
(253) Pimecrolimus Cream 1%;  
(254) Podophyllum Resin;  
(255) Polymyxin B Sulfate;  
(256) Polysaccharide-Iron Complex;  
(257) Potassium Iodide;  
(258) Potassium Supplements;  
(259) Pramoxine;  
(260) Pravastatin;  
(261) Prednisolone;  
(262) Prednisone;  
(263) Progesterone;  
(264) Progestins;  
(265) Prostaglandins;  
(266) Proton Pump inhibitor;  
(267) Pyrazinamide;  
(268) Pyrethrins;  
(269) Quinidine;  
(270) Quinilones;  
(271) Quinolines;  
(272) Quinine Sulfate;  
(273) Rauwolfia Alkaloids;  
(274) Rho(D) Immune Globulins\*;  
(275) Rifabutin;  
(276) Rifampin;  
(277) Risendronate;  
(278) Salicylamide;  
(279) Salicylate Salts;  
(280) Salicylic Acid;  
(281) Salsalate;  
(282) Scopolamine;

# ADMINISTRATIVE RULES

(283) Selenium Sulfide;  
(284) Silver Nitrate;  
(285) Simvastatin;  
(286) Sodium Polystyrene Sulfonate;  
(287) Sodium Thiosulfate;  
(288) Spironolactone;  
(289) Stavudine;  
(290) Spectinomycin;  
(291) Sucralfate;  
(292) Sulfasalazine;  
(293) Sulfonamide/Trimethoprim/Sulfones;  
(294) Tazarotene topical gel;  
(295) Tacrolimus;  
(296) Tenofovir;  
(297) Testosterone;  
(298) Tetracycline;  
(299) Theophylline;  
(300) Thiabendazole;  
(301) Thyroid;  
(302) Thyroxine;  
(303) Tibolone;  
(304) Tiludronate;  
(305) Tinidazole;  
(306) Tobramycin;  
(307) Topical steroids;  
(308) Tramadol;  
(309) Trandolapril;  
(310) Troleandomycin;  
(311) Tretinoin;  
(312) Triamcinolone;  
(313) Triamterene;  
(314) Trichloroacetic Acid\*;  
(315) Trioxsalen;  
(316) Triptans;  
(317) Troleandomycin;  
(318) Undecylenic Acid;  
(319) Urea;  
(320) Urised;  
(321) Ursodiol;  
(322) Valacyclovir;  
(323) Vancomycin;  
(324) Verapamil;  
(325) Vidarabine;  
(326) Vitamins (Oral & Injectable);  
(327) Yohimbine;  
(328) Zalcitabine;  
(329) Zidovudine;  
(330) Zolpidem;  
(331) Local Anesthetics:  
(a) Benzocaine\*;  
(b) Bupivacaine\*;  
(c) Chloroprocaine\*;  
(d) Dyclonine\*;  
(e) Etidocaine\*;  
(f) Lidocaine\*;  
(g) Lidocaine (non-injectable dosage form);  
(h) Mepivocaine\*;  
(i) Prilocaine\*;  
(j) Procaine\*;  
(k) Tetracaine\*.  
(332) Vaccines:  
(a) BCG\*;  
(b) Cholera\*;  
(c) Diphtheria\*;  
(d) DPT\*;  
(e) Haemophilus b Conjugate\*;  
(f) Hepatitis A Virus\*;  
(g) Hepatitis B\*;  
(h) Influenza Virus\*;  
(i) Japanese Encephalitis Virus\*;  
(j) Measles Virus\*;  
(k) Mumps Virus\*;  
(l) Pertussis\*;  
(m) Plague\*;  
(n) Pneumococcal\*;

(o) Poliovirus Inactivated\*;  
(p) Poliovirus-Live Oral\*;  
(q) Rabies\*;  
(r) Rubella\*;  
(s) Smallpox\*;  
(t) Tetanus IG\*;  
(u) Tetanus Toxoid\*;  
(v) Typhoid\*;  
(w) Varicella\*;  
(x) Yellow Fever\*.

## (333) SkinTests:

(a) Diphtheria\*;  
(b) Mumps\*;  
(c) Tuberculin\*.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04

## 850-010-0226

### Naturopathic Formulary Compendium by Classification

Classifications of the formulary compendium, which can be prescribed in any dosage or any dosage form. Products marked with an asterisk (\*) may be purchased or otherwise obtained by Naturopathic Physicians in any dosage form for appropriate use, but may not be prescribed. Products marked with a double asterisk (\*\*) can only be purchased or otherwise obtained by a Naturopathic physician for office use of epithelial infections.

(1) Amino Acids.  
(2) Aminoglycosides.  
(3) Analgesics (An):  
(a) Aminosalicic Acid;  
(b) Auranofin;  
(c) Bromocriptine;  
(d) Celecoxib;  
(e) Colchicine;  
(f) Colistimethate;  
(g) Dihydroergotamine Migranal;  
(h) Ergoloid Mesylates;  
(i) Ergonovine Maleate;  
(j) Ergotamine;  
(k) Hyaluronic Acid;  
(l) Methylergonovine;  
(m) Methysergide;  
(n) Opioids — examples include, but not limited to:  
(A) Buprenorphine;  
(B) Butorphanol;  
(C) Codeine;  
(D) Dextromethorphan;  
(E) Fentanyl;  
(F) Hydrocodone;  
(G) Hydromorphone;  
(H) Levorphanol;  
(I) Methadone;  
(J) Morphine;  
(K) Naloxone;  
(L) Opium;  
(M) Oxycodone;  
(N) Oxymorphone;  
(O) Paregoric;  
(o) Oxaprozin;  
(p) Salsalate;  
(q) Tramadol;  
(r) Triptans.  
(4) Antibiotics (At):  
(a) Amphotericin B;  
(b) Anti-inflammatory:  
(A) Amino Aspirins;  
(B) Mesalamine;  
(C) Olsalazine;  
(D) Sulfasalazine;  
(c) Antimicrobial:  
(A) Ketoconazole;  
(B) Itraconazole;  
(C) Tinidazole;

## ADMINISTRATIVE RULES

- (D) Fluconazole;
- (E) Metronidazole;
- (F) Omeprazole;
- (G) Proton Pump Inhibitor;
- (d) Anti-Parasitic:
- (A) Thiabendazole;
- (e) Antivirals:
- (A) Interferon alpha 2b;
- (B) Nucleoside/Nucleotide Analogs:
- (i) Abacavir;
- (ii) Acyclovir;
- (iii) Didanosine;
- (iv) Emtricitabine;
- (v) Famciclovir;
- (vi) Ganciclovir;
- (vii) Lamivudine;
- (viii) Stavudine;
- (viv) Tenofovir;
- (x) Valacyclovir;
- (xi) Viarabine;
- (xii) Zalcitabine;
- (xiii) Zidovudine;
- (C) Penciclovir;
- (f) Bacitracin;
- (g) Carbamide Peroxide;
- (h) Cephalosporins:
- (A) Cefaclor;
- (B) Cefdinir;
- (C) Cefibuten;
- (D) Cefadroxil;
- (E) Cefditoren;
- (F) Cefixime;
- (G) Cefonicid Sodium;
- (H) Cefpodoxime Proxetil;
- (I) Cefprozil;
- (J) Cefibuten;
- (K) Cefuroxime;
- (L) Cephalexin;
- (M) Cephadrine;
- (i) Chloramphenicol;
- (j) Clindamycin;
- (k) Cycloserine;
- (l) Gentamicin;
- (m) Griseofulvin;
- (n) Imiquimod Cream (5%);
- (o) Macrolides:
- (A) Azithromycin;
- (B) Clarithromycin;
- (C) Dirithromycin;
- (D) Erythromycins;
- (E) Kanamycin Sulfate;
- (F) Lincomycin;
- (G) Novobiocin;
- (H) Spectinomycin;
- (I) Troleandomycin;
- (J) Vancomycin;
- (K) Natamycin;
- (p) Nystatin;
- (q) Penicillins:
- (A) Amoxicillin;
- (B) Amoxicillin and Clavulanate;
- (C) Ampicillin;
- (D) Ampicillin and Sulbactam;
- (E) Bacampicillin;
- (F) Cloxacillin;
- (G) Dicloxacillin;
- (H) Oxacillin;
- (I) Penicillin;
- (r) Polymyxin B Sulfate;
- (s) Rifabutin;
- (t) Rifampin;
- (u) Sulfonamide/Trimethoprim/Sulfones;
- (v) Tetracyclines:
- (A) Demeclocycline Hydrochloride;
- (B) Doxycycline;
- (C) Minocycline;
- (D) Oxytetracycline;
- (E) Tetracycline;
- (F) Tobramycin.
- (5) Anticholinergics:
- (a) Atropine;
- (b) Atropine Sulfate;
- (c) Belladonna;
- (d) Homatropine Hydrobromide\*;
- (e) Hyoscyamine;
- (f) Methscopolamine;
- (g) Physostigmine;
- (h) Pilocarpine;
- (i) Scopolamine.
- (6) Antihypertensive:
- (a) ACE Inhibitors:
- (A) Captopril;
- (B) Lisinopril;
- (C) Trandolapril;
- (b) Calcium Channel Blockers:
- (A) Phenylalkylamine;
- (B) Verapamil.
- (7) Benzodiazepines.
- (8) Bisphosphonates:
- (a) Alendronate;
- (b) Etidronate;
- (c) Risendronate;
- (d) Tiludronate.
- (9) Blood (B):
- (a) Coumadin;
- (b) Dextran;
- (c) Dextrose;
- (d) Heparin — subcutaneous, sublingual and heparin locks;
- (e) Immune Globulins\*;
- (f) Rho(D) Immune Globulins\*.
- (10) Cardiovascular (Cv):
- (a) Digitalis;
- (b) Digitoxin;
- (c) Digoxin;
- (d) HMG CoA Reductase Inhibitors:
- (A) Atorvastatin;
- (B) Fluvastatin;
- (C) Lovastatin;
- (D) Pravastatin;
- (E) Simvastatin;
- (e) Nitrates:
- (A) Isosorbide Dinitrate;
- (B) Nitroglycerin;
- (f) Papavarine;
- (g) Quinidine;
- (h) Rauwolfia Alkaloids;
- (i) Spironolactone;
- (j) Triamterene.
- (11) Chelating Agents (Board approved certification required before therapeutic chelation is allowed):
- (a) Deferoxamine/Desferroxamine;
- (b) EDTA;
- (c) Penicillamine.
- (12) Enzymes:
- (a) Collagenase;
- (b) Desoxyribonuclease;
- (c) Fibrinolysin;
- (d) Hyaluronidase;
- (e) Pancrelipase.
- (13) Fluoroquinolones.
- (14) Fluoroquinolones.
- (15) Gastrointestinal:
- (a) Citrate Salts;
- (b) Lactulose;
- (c) Sucralfate.
- (16) Genito-urinary (GU):
- (a) Bethanechol Chloride
- (b) Cellulose Sodium Phosphate;
- (c) Flavoxate;
- (d) Pentosan;

## ADMINISTRATIVE RULES

- (e) Phenazopyridine;
- (f) Urised.
- (17) Hormones (Ho):
  - (a) Betamethasone;
  - (b) Budesonide;
  - (c) Calcitonin;
  - (d) Cenestin;
  - (e) Cortisone;
  - (f) Danazol;
  - (g) Desmopressin;
  - (h) Dexamethasone;
  - (i) Dextrothyroxine;
  - (j) Dinoprostone;
  - (k) Erythropoietin;
  - (l) Estradiol;
  - (m) Estriol;
  - (n) Estrogen-Progestin Combinations;
  - (o) Estrogens, Conjugated;
  - (p) Estrogen, Esterified;
  - (q) Estrone;
  - (r) Estropipate;
  - (s) Fludrocortisone Acetate;
  - (t) Flunisolide;
  - (u) Fluticasone Propionate;
  - (v) Human Growth Hormone;
  - (w) Hydrocortisone;
  - (x) Insulin;
  - (y) Levonorgestrel;
  - (z) Levothyroxine;
  - (aa) Liothyronine;
  - (bb) Liotrix;
  - (cc) Medroxyprogesterone;
  - (dd) Medrysone;
  - (ee) Megestrol Acetate;
  - (ff) Methylprednisolone;
  - (gg) Methyltestosterone;
  - (hh) Nafarelin acetate;
  - (ii) Oxytocin\*;
  - (jj) Prednisolone;
  - (kk) Prednisone;
  - (ll) Progesterone;
  - (mm) Progestins;
  - (nn) Prostaglandins:
    - (A) Alprostadil;
    - (B) Misoprostol;
  - (oo) Testosterone;
  - (pp) Thyroid;
  - (qq) Thyroxine;
  - (rr) Tibolone;
  - (ss) Triamcinolone.
- (18) Hypoglycemics (Hy):
  - (a) Acarbose;
  - (b) Metformin;
  - (c) Miglitol.
- (19) Local anesthetics (L):
  - (a) Benzocaine\*;
  - (b) Betaine;
  - (c) Bupivacaine\*;
  - (d) Chirocaine\*;
  - (e) Chlorprocaine\*;
  - (f) Dyclonine\*;
  - (g) Ethyl Chloride;
  - (h) Etidocaine\*;
  - (i) Hydroxypolyethoxydodecane\*;
  - (j) Lidocaine\*;
  - (k) Lidocaine(non-injectable dosage form);
  - (l) Mepivocaine\*;
  - (m) Pramoxine;
  - (n) Prilocaine\*;
  - (o) Procaine\*;
  - (p) Tetracaine\*.
- (20) Minerals (M):
  - (a) Ammonium Chloride;
  - (b) Calcitriol;
  - (c) Electrolyte Solutions;
  - (d) Fluorides;
  - (e) Iodine;
  - (f) Iron Preparations;
  - (g) Lithium;
  - (h) Mercury, Ammoniated;
  - (i) Minerals (Oral & Injectable);
  - (j) Polysaccharide-Iron Complex;
  - (k) Potassium Iodide;
  - (l) Potassium Supplements;
  - (m) Silver Nitrate.
- (21) Quinilones.
- (22) Quinolines.
- (23) Skin Care (S):
  - (a) Acitretin;
  - (b) Adapalene;
  - (c) Ammonium lactate lotion 12%;
  - (d) Anthralin;
  - (e) Azelaic Acid;
  - (f) Becaplermin;
  - (g) Benzoic Acid;
  - (h) Calcipotriene;
  - (i) Carbol-Fuchsin;
  - (j) Clioquinol;
  - (k) Condylox;
  - (l) Fluorouracil;
  - (m) Gentian Violet;
  - (n) Hexachlorophene;
  - (o) hydroquinone;
  - (p) Isotretinoin;
  - (q) Lindane;
  - (r) Methoxsalen;
  - (s) Mupirocin;
  - (t) Permethrin;
  - (u) Pimecrolimus Cream 1%;
  - (v) Podophyllum Resin;
  - (w) Pyrazinamide;
  - (x) Pyrethrins;
  - (y) Salicylate Salts;
  - (z) Salicylic Acid;
  - (aa) Selenium Sulfide;
  - (bb) Sodium Thiosulfate;
  - (cc) Tacrolimus;
  - (dd) Tazarotene topical gel;
  - (ee) Topical steroids;
  - (ff) Tretinoin;
  - (gg) Trichloroacetic Acid\*;
  - (hh) Trioxsalen;
  - (ii) Undecylenic Acid;
  - (jj) Urea.
- (24) Skin Tests:
  - (a) Diphtheria\*;
  - (b) Mumps\*;
  - (c) Tuberculin\*.
- (25) Sympathomimetics:
  - (a) Ephedrine;
  - (b) Epinephrine\*;
  - (c) Epinephrine (auto-inject).
- (26) Upper Respiratory Tract (URT):
  - (a) Acetylcysteine;
  - (b) Albuterol Sulfate;
  - (c) Aminophylline;
  - (d) Benzonatate;
  - (e) Cromolyn Sodium;
  - (f) Guaifenesin;
  - (g) Levalbuteral;
  - (h) Xanthines:
    - (A) Diphylline;
    - (B) Oxtriphylline;
    - (C) Pentoxifylline;
    - (D) Theophylline.
- (27) Vaccines:
  - (a) BCG\*;
  - (b) Cholera\*;
  - (c) Diphtheria\*;
  - (d) DPT\*;

# ADMINISTRATIVE RULES

- (e) Haemophilus b Conjugate\*;
  - (f) Hepatitis A Virus\*;
  - (g) Hepatitis B\*;
  - (h) Influenza Virus\*;
  - (i) Japanese Encephalitis Virus\*;
  - (j) Measles Virus\*;
  - (k) Mumps Virus\*;
  - (l) Pertussis\*;
  - (m) Plague\*;
  - (n) Pneumococcal\*;
  - (o) Poliovirus — Inactivated\*;
  - (p) Poliovirus — Live Oral\*;
  - (q) Rabies\*;
  - (r) Rubella\*;
  - (s) Smallpox\*;
  - (t) Tetanus IG\*;
  - (u) Tetanus Toxoid\*;
  - (v) Typhoid\*;
  - (w) Varicella\*;
  - (x) Yellow Fever\*.
- (28) Vitamins:
- (a) Cyanocobalamin;
  - (b) Doxercalciferol;
  - (c) Leucovorin Calcium;
  - (d) Vitamins (Oral & Injectable).
- (29) Misc.:
- (a) Acetic Acid;
  - (b) Adenosine Monophosphate;
  - (c) Bichloroacetic Acid;
  - (d) Bimatoprost Ophthalmic Solution (0.03%);
  - (e) Cabergoline;
  - (f) Carbidopa;
  - (g) Clostridium botulinum toxin (ab);
  - (h) Dronabinol;
  - (i) Gabapentin;
  - (j) Galantamine H. Br.;
  - (k) Hydrogen Peroxide;
  - (l) Iodoquinol;
  - (m) Levodopa;
  - (n) Lisuride;
  - (o) Meclizine;
  - (p) Monobenzone;
  - (q) Nicotine;
  - (r) Over the Counter (OTC) substances, not to exceed their current OTC dose or dosage form;
  - (s) Oxamniquine;
  - (t) Oxygen;
  - (u) Papain;
  - (v) Paramethasone;
  - (w) Pergolide;
  - (x) Quinine Sulfate;
  - (y) Salicylamide;
  - (z) Sodium Polystyrene Sulfonate;
  - (aa) Ursodiol;
  - (bb) Yohimbine;
  - (cc) Zolpidem.
- Stat. Auth.: ORS 685.125  
Stats. Implemented: ORS 685.145  
Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04

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**Adm. Order No.:** BNE 6-2004  
**Filed with Sec. of State:** 6-10-2004  
**Certified to be Effective:** 6-10-04  
**Notice Publication Date:** 5-1-04  
**Rules Adopted:** 850-010-0212  
**Subject:** Clarifies the educational requirements for the administration of injections.  
**Rules Coordinator:** Anne Walsh—(503) 731-4045

## 850-010-0212

### Education Requirements for Injections/EDTA Chelation

Any licensed naturopath using intramuscular (IM) or subcutaneous (SC) or intravenous (I.V.) therapeutic injection of vitamins or minerals or preventive injections (IM, subcutaneous, or IV.) must provide proof of

Board approved qualifying continuing education prior to using these applications, or proof of Board approved qualifying education received at an approved medical institution.

(1) Non-IV injections of vitamins or minerals require a one-time 2-hour qualifying education on this subject.

(2) IV injections of vitamins or minerals require a one-time 12-hour qualifying education on this subject.

(3) Preventive injections (IM, IV, SC) require an additional one-time 4 hours of qualifying education in addition to the CE hours noted in OAR 850-010-0212(1) and (2).

(4) The use of EDTA chelation therapy requires 12 hours of Board approved qualifying education in addition to the education required in (1), (2) and (3) of this rule. Qualifying EDTA chelation therapy must be provided by qualified faculty with at least five years of experience in EDTA chelation therapy and current certification approved by the Board. The education must contain the following:

- (a) EDTA current/historical research; and
- (b) EDTA indications/contraindications; and
- (c) EDTA side effects, toxicity; and
- (d) EDTA therapy and practical application; and
- (e) IV solutions; and
- (f) Initial evaluation and treatment monitoring requirements; and
- (g) Frequency of treatment and remineralization; and
- (h) Charting requirements, standards of care, office procedures, consent to treat Nutrition and lifestyle recommendations during treatment; and
- (i) Heavy metal toxicity and disease; and
- (j) Practical on mixing and administering IV EDTA solutions; and
- (k) Examination for certification (exam subject to Board approval);

and

(l) Recertification is required every five years.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 6-2004, f. & cert. ef. 6-10-04

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## Board of Optometry Chapter 852

**Adm. Order No.:** OPT 2-2004

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 852-060-0060, 852-060-0065, 852-060-0070, 852-060-0075

**Rules Amended:** 852-060-0004

**Rules Repealed:** 852-001-0005, 852-001-0010, 852-001-0015

**Subject:** **852-001-0005, 0010, 0015** - Deletes language regarding procedures. This language is now in Division 60. **852-060-0004** - References statutory authority for Board Processing of complaints. **852-060-0060, 0065, 0070** - Are moved from Division 852-001. **852-060-0075** - Establishes rules for discovery in contested case hearings.

**Rules Coordinator:** David W. Plunkett—(503) 373-7721, ext. 23

## 852-060-0004

### Processing of Complaints

The Board processes complaints in accordance with the requirements of ORS 676.160 to 676.180 and the provisions of ORS 683.278, 683.325, 683.335.

Stat. Auth.: ORS 676 & 683

Stats. Implemented: ORS 676.160 - ORS 676.180

Hist.: OPT 6-1998, f. 12-28-98, cert. ef. 1-1-99; OPT 2-2004, f. & cert. ef. 5-20-04

## 852-060-0060

### Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Oregon Board of Optometry adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act current edition; these rules of procedure shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Optometry.]

Stat. Auth.: ORS 183, ORS 683 & ORS 182

Stats. Implemented: ORS 183.341(2) & ORS 182.466

Hist.: OPT 2-2004, f. & cert. ef. 5-20-04

# ADMINISTRATIVE RULES

## 852-060-0065

### Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases

In addition to the notice requirements under the Attorney General's Model Rules of Procedure adopted by OAR 852-60-060, the notice to parties in contested cases shall include the statement that an answer to the assertions or charges will be required and listing the consequences of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 852-060-0070 with the notice.

Stat. Auth.: ORS 183, ORS 683 & ORS 182  
Stats. Implemented: ORS 183.413 & ORS 182.466  
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04

## 852-060-0070

### Hearing Requests, Answers, and Consequences of Failure to Answer

(1) A hearing request, and answer when required, shall be made in writing to the Board by the party or his/her representative and an answer shall include the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the Board; and

(d) Evidence shall not be taken on any issue not raised in the notice and answer.

Stat. Auth.: ORS 683 & ORS 182  
Stats. Implemented: ORS 683.155 & ORS 182.466  
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04

## 852-060-0075

### Discovery

An order requiring discovery will be limited to a list of witnesses to be called to testify by the parties in their case in chief and the documents that the parties intend to introduce as exhibits at the contested case hearing during the presentation of their case in chief. Contested case hearings are closed to members of the public.

Stat. Auth.: ORS 683 & ORS 182  
Stats. Implemented: ORS 683.155 & ORS 182.466  
Hist.: OPT 2-2004, f. & cert. ef. 5-20-04

## Board of Parole and Post-Prison Supervision Chapter 255

**Adm. Order No.:** PAR 5-2004(Temp)

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04 thru 12-10-04

**Notice Publication Date:**

**Rules Amended:** 255-075-0079

**Subject:** The amendment of the proposed rule clarifies the board's authority to require offenders who were sentenced to life in prison for the crime of Murder to serve further incarceration to the sentence expiration date, regardless of the time the crime was committed. This amendment is necessary to bring the board's rules into conformity with OAR 213-005-0004.

**Rules Coordinator:** Michael R. Washington—(503) 945-8978

## 255-075-0079

### Guidelines for Re-release

(1) For technical violation(s):

(a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.

(2) For conduct constituting a crime:

(a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-011-0004.

(3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.

(4) Offenders sentenced to life imprisonment for murder may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder may serve further incarceration to the sentence expiration date.

(5) Offenders sentenced as dangerous offenders may serve repeated incarcerations of 180 days or more up to the sentence expiration date.

(6) Offenders sentenced as sexually violent dangerous offenders pursuant to HB 2327 (1999 Legislative Session) for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court.

(7)(a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.

(b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) shall be the sentencing date, if no further action is taken by the Board.

(c) If the jailer, hearing officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.

(8) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

(9) Notwithstanding subsections 1-7 of this rule, the Board may choose to postpone re-release on parole pursuant to Divisions 50 and 60 of this chapter.

(10) Notwithstanding subsections 1-8 of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.

(11) Administrative sanctions do not count toward the revocation sanction limits.

Stat. Auth.: ORS 135.055, 144.103, 144.107, 144.108, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395 & 161.735

Stats. Implemented:

Hist.: PAR 1-1989(Temp), f. & ef. 4-19-89; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 4-1989, f. & ef. 11-1-89; PAR 6-1990(Temp), f. & cert. ef. 10-15-90; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 2-2003, f. & cert. ef. 5-13-03; PAR 5-2004(Temp), f. & cert. ef. 6-14-04 thru 12-10-04

**Adm. Order No.:** PAR 6-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 255-032-0015

**Subject:** The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

**Rules Coordinator:** Michael R. Washington—(503) 945-9009

## 255-032-0015

### Petition/Purpose for Review Hearing

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

(1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or

(2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or

(3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or

(4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or

(5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Stat. Auth.: ORS 163.115

Stats. Implemented:

# ADMINISTRATIVE RULES

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 3-2004(Temp), f. & cert. ef. 4-15-04 thru 10-11-04; PAR 6-2004, f. & cert. ef. 6-14-04

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**Adm. Order No.:** PAR 7-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 255-060-0011

**Rules Repealed:** 255-060-0014

**Subject:** 255-060-0011: The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.

255-060-0014: The Oregon Court of Appeals ruling in *Carl Baty v. Debra Slater*, 161 OR App 653 (1999) rendered OAR 255-060-0014 invalid. Pursuant to OAR 255-060-0014, an offenders' active supervision did not begin until they were released into the community. The ruling in *Baty* is that the term of active supervision commences upon completion of the prison term.

**Rules Coordinator:** Michael R. Washington—(503) 945-9009

## 255-060-0011

### Procedures for Predatory Sex Offender

(1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the STATIC-99 (**Exhibit Q-I**) and definitions (**Exhibit Q-II**) which have been approved by the Department of Corrections as required by ORS 181.585(2).

(2) The procedures set forth in this rule only apply to inmates or offenders released from a Department of Corrections institution on or after May 1, 2004, after serving a sentence of more than 12 months. Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before May 1, 2004, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores four or more points on the STATIC-99.

(4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

(5) Subject to the procedures set forth below, inmates or offenders who score four or more points on the STATIC-99 have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

(a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (**Exhibit Q-III**).

(b) The Board must receive and review the signed Notice of Rights (**Exhibit Q-III**) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.

(c) The Board must consider any written objections to the score on STATIC-99 timely submitted by the inmate or offender before making a predatory sex offender finding. The Board shall make the predatory sex offender finding if there is evidence to support a score on STATIC-99 of four or more points.

(6) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections the Board may make the predatory sex offender finding if the inmate's or offender's score on the STATIC-99 is four or more points.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

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

Stat. Auth.: Ch. 163, 1999 OL

Stats. Implemented:

Hist.: PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; PAR 4-2002, f. & cert. ef. 3-12-02; PAR 5-2003, f. & cert. ef. 10-10-03; PAR 2-2004(Temp), f. & cert. ef. 1-41-04 thru 7-11-04; PAR 7-2004, f. & cert. ef. 6-14-04

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**Adm. Order No.:** PAR 8-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 255-080-0005

**Subject:** The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision.

**Rules Coordinator:** Michael R. Washington—(503) 945-9009

## 255-080-0005

### Procedure for Administrative Review

(1) An inmate/offender may request an administrative review by sending **Exhibit O**, Administrative Review Request Form, to the Board concisely explaining how his or her case fits the criteria for review listed in rule 255-080-0010.

(2) The Board must receive requests for administrative review within forty-five (45) days after the mailing date on the Board's final action on the reviewed issue.

(3) Regarding Orders of Supervision, the Board must receive requests for administrative review within forty-five (45) days after the date the offender signed the order or acknowledgement by the supervisory authority of the offender's receipt thereof.

(4) If the Board or its designee determines that the request is consistent with the criteria as defined in rules 255-080-0010 and 255-080-0011, and meets the deadline requirements, the Board will resolve the matter using the procedures outlined in OAR 255-080-0012.

(5) When the Board or its designee denies review, the Board shall send the inmate/offender written notice of the specific reasons for denial.

(6) When review is denied, the prior decision is re-affirmed.

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

Stat. Auth.: ORS 144.335

Stats. Implemented: ORS 144.335

Hist.: 2PB 1979, f. & ef. 2-1-79; 2PB 11-1981(Temp), f. & ef. 11-25-81; 2PB 1-1982, f. & ef. 5-19-82; 2PB 17-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 2-1991, f. & cert. ef. 2-20-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 7-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2000, f. & cert. ef. 6-9-00; PAR 8-2004, f. & cert. ef. 6-14-04

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## Board of Pharmacy Chapter 855

**Adm. Order No.:** BP 2-2004

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 855-021-0005, 855-021-0010, 855-021-0025, 855-021-0030, 855-021-0050

**Rules Repealed:** 855-021-0015, 855-021-0035

**Subject:** Modifies and clarifies requirements for Pharmacists continuing professional education.

**Rules Coordinator:** Karen Maclean—(503) 731-4032, ext. 223

## 855-021-0005

### Continuing Pharmacy Education Required for Pharmacist License Renewal

(1) During the period from June 1 through May 31 of each license renewal cycle, each pharmacist must have satisfactorily completed one and one half (1.5) continuing pharmacy education units (CEU's) in an approved continuing pharmacy education program Ten contact hours equals 1 CEU. Fifty minutes equals 1 contact hour.

(2) Section (1) does not apply to pharmacists applying for the first annual renewal of their license if they have not been licensed by the Board for at least one year prior to July 1 of the renewal period.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.285  
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04

## 855-021-0010

### Continuing Pharmacy Education

(1) A continuing pharmacy education program means classes of post graduate studies, informal study group participation, institutes, seminars, lectures, conferences, workshops, extension study, correspondence courses, teaching, planned and professional meetings, self study courses, cassette or audio visual tape/slides or materials, and other self instruction units:

(a) A program shall consist of therapeutics, or pharmacy and drug law or other aspects of health care. At least eleven of the required fifteen hours of continuing education credit must be earned in the areas of therapeutics. At least one hour of continuing education credit must be earned in the area of pharmacy and drug law.

(b) Programs shall provide for examinations or other methods of evaluation to assure satisfactory completion by participants.

(c) The person or persons who are to instruct or who are responsible for the delivery or content of the program shall be qualified in the subject matter by education and experience.

(2) Continuing pharmacy education programs shall be approved by the Board of Pharmacy. Application for approval shall be made on and in accordance with forms established by the Board. The forms shall require information relating to:

- (a) Name of provider or sponsor;
- (b) Type of program offered;
- (c) Description of subject matter;
- (d) Number of contact hours offered;
- (e) Total number of contact hours in therapeutics or pharmacy and drug law or other aspects of health care;
- (f) Method of determining satisfactory completion of program;
- (g) Dates and location of program;
- (h) Name and qualification of instructors or other persons responsible for the delivery or content of the program.

(3) CE programs are not required to carry approval of American Council on Pharmaceutical Education (ACPE). Programs presented by providers approved by the American Council on Pharmacy Education (ACPE) are generally accepted, however, the Board reserves the right to determine the number of hours allowed or to disapprove such programs.

(4) Providers shall provide attendees with proof of attendance that shows the date and number of contact hours provided. Providers must maintain attendance lists for three years.

(5) Continuing pharmacy education credit accumulated in excess of the required 15 contact hours for annual license renewal cannot be carried forward.

(6) A maximum of 10 hours (1.0 CEU) may be earned in any licensing year by preparing and presenting CE programs. Pharmacists presenting CE programs may earn one hour (0.1 CEU) for preparation time of one hour or more, plus credit for the actual contact hour time of the presentation. A pharmacist must show content of the course, and a description of the intended audience (e.g., pharmacists, physicians, nurses). Public service programs, such as presentations to school children or service clubs, are not eligible for continuing education credit.

(7) Pharmacists taking post graduate studies applicable to graduate or professional degrees may submit the course syllabus and evidence of satisfactory completion of the course for continuing education credit approval by the Board.

(8) The Board may approve up to 14 (fourteen) hours of CE credit for licensees who have successfully completed Disease State Management courses certified by the NIPCO, NISPC, BPST, or other appropriate certified programs sponsored by established credentialing groups.

(9) Board members or staff may attend CE programs for the purpose of evaluating content, format and appropriateness of material for Continuing Pharmacy Education credit. Subsequent programs by CE providers whose current programs are deemed deficient by on-site evaluation may be required to obtain prior approval by the Board. The Board will provide feedback to CE providers regarding evaluated CE presentations.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.285  
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1984, f. & ef. 3-7-84; 1PB 1-1986, f. & ef. 6-5-86; PB 10-1987, f. & ef. 12-8-87; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; BP 5-2000(Temp), f. 6-20-00, cert. ef. 6-20-00 thru 10-27-00; Administrative correction 6-21-01; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04

## 855-021-0025

### Continuing Pharmacy Education — Reciprocity

Continuing pharmacy education will be required for license renewal at the next renewal period after the licensee, by reciprocity, has been licensed one year in Oregon.

Stat. Auth.: ORS 689  
Stats. Implemented: ORS 689.205  
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04

## 855-021-0030

### Continuing Pharmacy Education — Non-Resident — Dual Licensees

(1) Any Oregon licensed pharmacist residing in another state shall, in order to receive Oregon license renewal, meet Oregon requirements for continuing pharmacy education.

(2) The Board shall accept for CE credit programs for out of state pharmacists that have been approved by that state's Board of Pharmacy.

(3) Upon request, the Board may certify to another state's licensing authority the status of a licensee's continuing education participation in Oregon.

(4) The Board may request certification from another state's licensing authority regarding the status of an applicant's continuing education.

Stat. Auth.: ORS 435, ORS 475 & ORS 689  
Stats. Implemented: ORS 689.205  
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 10-1987, f. & ef. 12-8-87; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04

## 855-021-0050

### Renewal Application

(1) The annual renewal notice must be returned to the Board with the appropriate fee and the pharmacist must state that he/she has satisfactorily completed the continuing pharmacy education requirements by signing the renewal document.

(2) The Board may randomly select and audit applications for renewal to verify completion of the CE programs reported on the application for renewal. Pharmacists whose applications for renewal are selected for audit must provide documentation of completion of the CE programs reported. A pharmacist who fails to provide the requested documentation to the Board or who fails to complete the annual CE requirement may be disciplined for unprofessional conduct.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.275  
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04

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**Adm. Order No.:** BP 3-2004

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:** 4-1-04

**Rules Repealed:** 855-043-0200, 855-043-0205

**Subject:** Remove sections that encompass the purpose, scope and drug delivery and control in student health centers. SB708 eliminated the Board's authority to authorize a Nurse Practitioner to dispense drugs in a college student health center.

**Rules Coordinator:** Karen MacLean—(503) 731-4032, ext. 223

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**Adm. Order No.:** BP 4-2004

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 855-043-0210

**Subject:** This rule adopts a training program jointly with the Board of Nursing for Nurse Practitioners who have applied to the Board of Nursing for special dispensing authority pursuant to OAR 851-050-0162.

**Rules Coordinator:** Karen MacLean—(503) 731-4032, ext. 223

## 855-043-0210

### Nurse Practitioner Dispensing

The Oregon State Board of Nursing may grant to a certified nurse practitioner the privilege of writing prescriptions described in the formulary under ORS 678.385. A certified nurse practitioner may submit an application to the Oregon State Board of Nursing to dispense prescription drugs. An application for the authority to dispense prescription drugs as authorized by ORS 678.385 shall include evidence of completion of a prescrip-

# ADMINISTRATIVE RULES

tion drug dispensing training program jointly developed and adopted by rule by the Oregon State Board of Nursing (851-050-0162) and the State Board of Pharmacy. The training program shall be as follows:

(1) Documented review of content regarding safe dispensing listed below:

(a) Board of Nursing handbook "Nurse Practitioner Prescriptive Authority in Oregon";

(b) The Drug Enforcement Administration Pharmacist's Manual (2001);

(c) OAR 851 division 50;

(d) ORS Chapter 689 and OAR chapter 855;

(e) US Consumer Product Safety Commission publication "Poison Prevention Packaging: A Text for Pharmacist's and Physicians," and;

(f) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (Nov.2003); and

(g) Information on available electronic or hard copy prescription drug references which provide information to professionals authorized to dispense prescription medications

(2) Successful self examination as provided by the Board of Nursing on these materials.

Stat. Auth.: ORS 689.205, 2003 OL, Ch. 617

Stats. Implemented: ORS 689.205

Hist.: BP 3-2003(Temp), f. 12-29-03, cert. ef. 12-31-03 thru 6-28-04; BP 4-2004, f. 5-21-04 cert. ef. 6-1-04

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## Bureau of Labor and Industries Chapter 839

**Adm. Order No.:** BLI 3-2004

**Filed with Sec. of State:** 5-18-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:**

**Rules Amended:** 839-016-0750

**Subject:** The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.

**Rules Coordinator:** Marcia Ohlemiller—(503) 731-4212

### 839-016-0750

#### Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determination(s) are the prevailing rates of wage for workers upon said public works project(s) for the period(s) of time specified:

(a) *Special Prevailing Wage Rate Determination for Residential Project, Madrone Street Affordable Housing, Project #2004-01* dated April 22, 2004 for the period May 1, 2004 through June 30, 2005.

(b) *Special Prevailing Wage Rate Determination for Residential Project, City Center Apartments, Project #2004-02, dated April 22, 2004*, for the period of May 1, 2004 through March 31, 2005.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Sagewind Manor, Project #2004-03, dated May 20, 2004*, for the period of May 24, 2004 through June 30, 2005.

(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and listed in the blue pages of the phone book. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #32, Portland, Oregon 97232; (503) 731-4709.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS 279.359

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04

**Adm. Order No.:** BLI 4-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:**

**Rules Amended:** 839-016-0750

**Subject:** The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.

**Rules Coordinator:** Marcia Ohlemiller—(503) 731-4212

### 839-016-0750

#### Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determination(s) are the prevailing rates of wage for workers upon said public works project(s) for the period(s) of time specified:

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(b) *Special Prevailing Wage Rate Determination for Residential Project, City Center Apartments, Project #2004-02, dated April 22, 2004*, for the period of May 1, 2004 through March 31, 2005.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Sagewind Manor, Project #2004-03, dated May 20, 2004*, for the period of May 24, 2004 through June 30, 2005.

(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and listed in the blue pages of the phone book. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #32, Portland, Oregon 97232; (503) 731-4709.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS 279.359

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04

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## Construction Contractors Board Chapter 812

**Adm. Order No.:** CCB 4-2004

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 812-001-0020, 812-001-0022, 812-002-0530, 812-003-0015, 812-004-0110, 812-010-0020, 812-010-0050, 812-010-0060, 812-010-0140, 812-010-0440, 812-010-0460, 812-010-0500, 812-010-0510, 812-010-0520

**Subject:** 812-001-0020, 812-001-0022, 812-002-0530, 812-003-0015, 812-004-0110, 812-010-0020, 812-010-0050, 812-010-0060, 812-010-0140, 812-010-0440, 812-010-0460, 812-010-0500, 812-010-0510, 812-010-0520 are amended to correct statutory cite references.

**Rules Coordinator:** Cathy Heine—(503) 378-4621, ext. 4077

### 812-001-0020

#### Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised October 18, 2002. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised December 9, 2003.

# ADMINISTRATIVE RULES

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act (HPA)" as revised December 16, 2003.

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

Stat. Auth.: ORS 87.093, 670.310, 701.055 & 701.235

Stats. Implemented: ORS 87.093, 701.055 & 701.235

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-001-0022

### Requirements for Notice of Compliance with Homebuyer Protection Act

(1) Under ORS 87.007(3), a seller of residential property must deliver a Notice of Compliance with Homebuyer Protection Act on or before the date the sale of the property closes to the purchaser of:

(a) A new single family residence, condominium or residential building; or

(b) An existing single-family residence, condominium or residential building where:

(A) The price for original construction, including but not limited to an addition to the single family residence, condominium or residential building, that is completed within three months prior to the date of the sale of the property is \$50,000 or more; or

(B) The contract price for improvements to the single-family residence, condominium or residential building that are completed within three months prior to the date of the sale of the property is \$50,000 or more.

(2) The seller must deliver the notice required under ORS 87.007(3) on or before the close of the sale of the property.

(3) The notice required under ORS 87.007(3) shall be on the form adopted under OAR 812-001-0020.

(4) Under ORS 87.007(3), a seller of residential property may specify on the Notice of Compliance with Homebuyer Protection Act that ORS 87.007(2) does not apply to the sale of the property if the seller knows that no person may enforce a valid lien against the property because:

(a) The last day to perfect any lien on the property under ORS 87.035 was prior to the date of sale of the property; and

(b) No lien was perfected.

Stat. Auth.: ORS 87.007, 670.310, & 701.235

Stats. Implemented: ORS 87, 87.007, & 701

Hist.: CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-002-0530

### Office of Administrative Hearings

"Office of Administrative Hearings" means the Office of Administrative Hearings established under ORS 179.331.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145 & ORS 701.147

Hist.: CCB 7-2003, f. & cert. ef. 8-8-03; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-003-0015

### Applications for License

(1)(a) The application required under subsection (3)(a) of this rule together with the fee required and the original, fully-executed surety bond shall be on file with the agency before a license may be issued, except as provided in section (b) of this rule.

(b) The effective date of a license or renewal may be prior to the date of receipt of all documents and/or fees required by law and by these rules if the agency determines that delays in receipt of required documents and/or fees were caused by agency error. Additionally, if the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and/or fees if the surety concurs with the agency's decision to pre-date the bond.

(2)(a) An applicant for a license or renewal shall certify that the applicant has procured insurance, from an insurance company authorized to do business in Oregon, as required by ORS 701.105 and will continue to meet those insurance requirements for as long as the applicant is licensed. New licensees shall provide a certificate of insurance issued by an insurance company licensed in Oregon. The agency may also require such certification from renewing licensees. As a minimum, for all licensees, certification shall include the name of the insurance company, policy or binder number,

effective dates of coverage, and coverage amount, and may also include the agent's name, and agent's telephone number. The CCB must be listed as the certificate holder.

(b) This certification constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(c) If the requirements of subsection (2)(a) of this rule have been met, and the agency receives a notice of cancellation, the agency may send a notice to the licensee, by regular mail, reminding the licensee of the obligation imposed by the licensee's insurance certification.

(d) The licensee shall maintain and provide evidence to the agency of the insurance required by ORS 701.105. The insurance shall remain in effect continuously until the license is terminated, revoked, or expired. If the licensee, in performance of work subject or ORS chapter 701, through failure to comply with this subsection, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurance company had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.135.

(3)(a) A complete license application includes:

(A) A completed application form;

(B) A completed "Independent Contractor Certification Statement";

(C) A signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(D) The certification of insurance coverage showing not less than the minimum amount required per occurrence for property damage and personal injury;

(E) A properly executed bond; and

(F) The application fee.

(b) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4)(a) The agency will not issue or renew a license unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to the agency and is in the record.

(b) If an applicant has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the applicant to fulfill the requirements of section (4)(a). The applicant may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(A) Be signed by the applicant;

(B) Attest to the fact that no social security number has been issued to the applicant by the United States Social Security Administration; and

(C) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

(5) A license card shall be issued by the agency effective the date on which all fees required by law have been paid and all documents required by law and by those rules are on file with the agency.

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

Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 - 183.500

Stats. Implemented: ORS 701.075, 25.278, Ch. 610 OL 2003

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 2-1979, f. & ef. 12-29-79; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0025; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2004, f. & cert. ef. 2-2-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-004-0110

### Claim Processing Fee; Waiver of Fee

(1) The claim processing fee authorized under ORS 701.147 is \$50 for a claim filed under ORS 701.145. There is no claim processing fee for a claim filed under ORS 701.146.

(2) The agency shall collect the processing fee under OAR 812-004-0400.

(3) A claimant may request that the agency waive the claim processing fee described in section (1) of this rule by submitting a properly exe-

# ADMINISTRATIVE RULES

cutted waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the claim processing fee if the waiver request submitted by the claimant shows that:

- (a) The claimant is an individual;
- (b) Claimant has no significant assets except the home that is the subject of the claim and one automobile; and

(c) Claimant's gross income does not exceed the 2003 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458.

(5) A claimant, who requests a waiver of the claim processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the claimant pay a claim processing fee of \$97 if the agency finds that the claimant provided false information on a request for a waiver of the claim processing fee submitted under section (3) of this rule.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 701.146 & 701.147  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0020

### Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in division 10 of this chapter apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court in accordance with ORS 36.600 or 36.625.

(2) The amendments to the rules in division 10 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for an arbitration:

- (a) On or after January 1, 2004; and
- (b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

(3) Except as otherwise provided in the rules in division 10 of this chapter, an agreement to arbitrate shall be governed by ORS 36.600 to 36.740, subject to:

(a) ORS 36.600, which relates to the effect of the date of an agreement to arbitrate on the application of ORS 36.600 to 36.740 to the agreement;

(b) ORS 36.735, which relates to consideration of the need to promote uniformity of law in construing an arbitration agreement; and

(c) Section 31, chapter 598, Oregon Laws 2003, which relates to a proceeding commenced or a right accrued before January 1, 2004.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 183, 701.139, 701.147 & 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0050

### Application for Judicial Relief

An application for to the court for judicial relief under the rules in division 10 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 36.600 - 36.740  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0060

### Appointment of Arbitrator

Assignment of arbitrator shall be as provided in ORS 701.147 and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645, 179.331 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310, ORS 701.235  
Stats. Implemented: ORS 179.331, 183.645, 701.147 & 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0140

### Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under ORS 36.705(1)(b) for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under ORS 36.705(1)(b) may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705(1)(b).

(7) Substantial compliance with the procedures in this division 10 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under ORS 36.705(1)(b).

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. Such decision shall be final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.148, 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0440

### Payments from Licensee's Bond

(1) As used in this rule, award means an award that becomes effective:

- (a) Under OAR 812-010-0420(8); or
- (b) After an amended award is issued under OAR 812-010-0425(9).

(2) If an award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payments from the bond shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS chapter 701 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 812-004-0600 if no party files a petition to vacate, modify or correct the award with the court under ORS 36.700 and delivers a copy of the petition to the agency within 30 days of the date the award becomes effective.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.143 & 701.150  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0460

### Filing with Court, Exceptions

(1) If a timely petition to modify or correct an award is filed with the arbitrator, a party may not file the award with the court under ORS 36.700 until the arbitrator issues an amended award under OAR 812-010-0425(9).

(2) After an award becomes effective under OAR 812-010-0420(7) a denial of a petition to vacate, modify or correct an award is issued under

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OAR 812-010-0425(8) or an amended award is issued under OAR 812-010-0425(9), a party to an arbitration may file the award or amended award with the court with a petition to confirm the award under ORS 36.700.

(3) By proceeding with arbitration under these rules, parties shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(4) A party against whom an award is made may file a petition to vacate, modify or correct the award with the court under ORS 36.700. The party filing the petition must file the petition and deliver a copy of the petition to the agency within 30 days of the date of the award. Failure to file a timely petition under this section is a waiver of the right to file a petition.

(5) If an award is made on a claim and claimant does not file the award with the court under ORS 36.700, respondent must file the award with court prior to respondent filing a petition of the award under ORS 36.700.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.145 & 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0500

### Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to ORS 3.660(1) to (3).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0510

### Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to ORS 36.660(4).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

## 812-010-0520

### Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 812-010-0510 the court may award attorney fees and costs as provided in ORS 36.660(5).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04

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**Adm. Order No.:** CCB 5-2004(Temp)

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04 thru 11-28-04

**Notice Publication Date:**

**Rules Amended:** 812-001-0020

**Subject:** OAR 812-001-0020(1) is amended to remove the automated 24-hour inquiry line phone number from the form as the phone number is no longer in service.

OAR 812-001-0020(2) is amended to correct the phone number to obtain information regarding federal employer identification (EIN) numbers.

**Rules Coordinator:** Cathy Heine—(503) 378-4621, ext. 4077

## 812-001-0020

### Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised June 1, 2004. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised June 1, 2004.

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 87.093, 670.310, 701.055 & 701.235  
Stats. Implemented: ORS 87.093, 701.055 & 701.235  
Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04

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## Department of Agriculture Chapter 603

**Adm. Order No.:** DOA 14-2004

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 4-1-04

**Rules Amended:** 603-051-0855, 603-051-0856, 603-051-0857, 603-051-0858, 603-051-0859

**Subject:** The amended rules (Rules for Virus Certification of Oregon Nursery Stock) increase the participation fee for nurseries to \$200 per nursery, change the laboratory testing fee and remove references to Oregon State University.

**Rules Coordinator:** Sherry Kudna—(503) 986-4619

## 603-051-0855

### Declaration of Policy

Certification of nursery stock is a function of state government, the responsibilities of which shall be conducted by the Department in keeping with the provisions of ORS 633.620 to 633.660 and statutes related thereto. Participation by nurseries in the certification program shall be voluntary in nature. These regulations may be reviewed annually by the Department and nurseries participating in the program.

Stat. Auth.: ORS 561.571 & 632  
Stats. Implemented: ORS 561, 571 & 632  
Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04

## 603-051-0856

### Definitions

As used in OAR 603-051-0855 to 603-051-0859, unless the context requires otherwise:

(1) "Department" means the State Department of Agriculture.

(2) "Index" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by other scientifically acceptable means of detection.

(3) "Indicator Plant" means any herbaceous or woody plant used to index or determine virus infection.

(4) "Off-Type" means different from the cultivar as stated on the application for certification.

(5) "Oregon Certified Nursery Stock" means nursery-grown seedlings, clonal root-stocks originating from registered trees, nursery-grown trees propagated by using top-stock from registered trees, and root-stock originating from registered trees, but is limited to the genera *Chaenomeles*, *Cydonia*, *Crataegus*, *Malus*, *Prunus*, and *Pyrus*.

(6) "Oregon Certified Seed" means seed produced on registered seed trees.

(7) "Registered Tree" means a tree or clonal planting that has a registration number assigned to it by the Department, and that has been inspected and tested in accordance with the provisions of OAR 603-051-0855 to 603-051-0859.

(8) "Scion-Block" means a planting of registered trees which serves as a source of scionwood for the propagation of Oregon Certified Nursery Stock.

(9) "Seed-Block" means a planting of registered seed trees which serves as a source of seed for producing rootstock used in the propagation of Oregon Certified Nursery Stock.

(10) "Stool Bed" means a clonal planting of self-rooted registered trees for the specific purpose of producing vegetatively propagated root-stock used in the propagation of Oregon Certified Nursery Stock.

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(11) "Virus Affected" means the presence of a harmful virus in a plant or plant part.

(12) "Virus-Like" means either a genetic disorder or nontransmissible entity.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04

## 603-051-0857

### Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department or their employees as to the condition of nursery stock. The following requirements and conditions shall be met in order to qualify for consideration of certification of nursery stock:

(1) The applicant for certification shall be responsible for the selection of the location and the proper maintenance of all plantings being grown. The applicant shall also be responsible for maintaining the identity of all nursery stock. Any planting entered in this certification program shall be kept in a thrifty growing condition and free of plant pests.

(2) Trees may be registered for certification as rootstock and top-stock sources for the propagation of Oregon Certified Nursery Stock when inspected, tested and found to be discernably free from harmful virus and virus-like diseases and having varietal purity, in accordance with the procedures prescribed in OAR 603-051-0855 to 603-051-0859.

(3) No budding, grafting, or top-working of registered trees in a scion-block, seed-block, or stool bed shall be permitted. Use of a certified nursery stock for scionwood shall only be allowed upon receiving permission from the Department and shall be subject to departmental supervision. Any plant found to be infected by a virus or virus-like disease, or found to be off-type, shall be removed immediately from any planting and destroyed after notification is rendered by the Department.

(4) Prior to planting, all registered plant growing areas and their contiguous border areas of not less than ten feet shall be fumigated in accordance with the rates and practices recommended by the school. Such treatment shall be carried out under the supervision of the Department.

(5) Applicants shall be responsible for maintaining varietal purity of certified nursery stock produced from registered plants. The applicant shall develop a written program, in cooperation with the Department, so as to provide for monitoring of each cultivar for varietal purity.

(6) The following requirements specifically apply to scion-blocks:

(a) A scion-block shall be located not less than 100 feet from any non-registered cultivated plant of the Rosaceae family. The ground in a scion-block, and for a distance of 20 feet surrounding it, shall be kept either clean-cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner, and at sufficient distances, so that branches of different varieties do not overlap. Each tree shall bear a permanent registration number;

(b) The rootstock and top-stock sources of the scion-block trees shall have originated from foundation trees established under this certification program or from virus-tested trees originating through the Inter-Regional Project No. 2 (IR-2) or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above-mentioned requirements. Only registered trees shall be permitted in the scion-block.

(7) The following requirements specifically apply to stool beds:

(a) A stool bed shall be located not less than 50 feet from any non-registered cultivated plant of the Rosaceae family. However, nonregistered stool beds may be located not less than ten feet from registered stool bed plantings if such plantings are in production when they become subject to this certification program. The ground in a stool bed, and for a distance of ten feet surrounding it, shall be kept clean-cultivated;

(b) Existing stool beds that index clean on the commonly used virus indicators shall qualify as registered stool beds. New stool beds (those planted after July 1, 1980) shall have originated from foundation stock established under this certification program, or from virus-tested plants originating through the Inter-Regional Project No. 2 (IR-2) or other departmentally approved virus-tested sources, and shall be located not less than 50 feet from nonregistered rosaceous hosts and not less than ten feet from registered rosaceous plants. If the tree is scion-rooted, its source shall have met the requirements of this certification program. Only registered trees shall be permitted in the stool bed.

(8) The following requirements specifically apply to seed-blocks:

(a) A *Prunus* seed-block shall be located not less than 300 feet from any nonregistered plant of the *Prunus* species. The ground in a seed-block and for a distance of 20 feet surrounding the seed-block shall be kept clean-cultivated or in an approved, controlled ground cover. Each tree shall bear a permanent registration number;

(b) The rootstock and top-stock sources of the seed-tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the Inter-Regional Project No. 2 (IR-2) or other Department approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the seed-block.

(9) The following requirements specifically apply to nursery stock:

(a) All nursery stock grown for certification shall be on rootstocks from registered trees except for stone fruit trees grown on peach seedlings. Such peach root-stocks shall be acceptable only if the seed transmissible virus content does not exceed five percent, and upon the prior approval of the Department being obtained. Clonal rootstocks used in the production of Oregon Certified Nursery Stock shall originate from registered stool beds;

(b) Nursery stock grown for certification shall be planted sufficiently apart to maintain its identity and shall be kept clean-cultivated. Such nursery stock shall be designated as to rootstock, top-stock, and interstock sources. Re budding or re grafting of nursery row stock shall not be allowed unless such stock is reworked with budwood from the same registered scion-block;

(c) A blue tag shall be utilized to designate trees produced from registered scion-source trees and which have been propagated on rootstocks produced from registered seed sources or stool bed trees, or which are self-rooted.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04

## 603-051-0858

### Procedures for Certification

(1) In accordance with OAR 603-051-0855, certification and the supervision of activities relating thereto shall be in the Department. Inspection and testing procedures prescribed in this certification program may be carried out by the Washington State Department of Agriculture or the Department, and shall be conducted at such times and in such manner as is acceptable to the Department.

(2) The methods and procedures used for virus indexing shall conform to IR-2 standards and shall be conducted in the manner and times determined by the Department.

(3) The Department reserves the right to visually inspect nursery rootstock in a planting for certification throughout the growing season. At the request of the Department, any undesirable rootstock may be rogued before propagation.

(4) All nursery stock meeting the requirements of this certification program shall have the variety, interstock and rootstock designated upon any tag evidencing the same as Oregon Certified Nursery Stock.

(5) The Department shall authorize the use of official certification tags for the identification of nursery stock or seed meeting the requirements of OAR 603-051-0855 to 603-051-0859, and therefore certified as Oregon Certified Nursery Stock. Such official certification tags shall be furnished by the Department to the qualified applicants therefore upon payment of the established cost of the Department for the tags so furnished.

(6) Any person selling, or offering for sale, any nursery stock or seed identified by tagging as Oregon Certified Nursery Stock shall be deemed to be responsible for the identity of such stock. All Oregon Certified Nursery Stock offered for sale shall be handled in accordance with accepted commercial practices and shall be identified by the tags described in the subsection.

(7) Certification shall be refused if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease, or if other provisions of this certification program have been violated.

(8) A list of participating nurseries and certified nursery stock shall be provided to all participating nurseries and to other interested parties upon request.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04

## 603-051-0859

### Application for Certification and Fees

(1) An application for certification shall be made on a form prescribed by the Department and shall be submitted to the Department by May 15 of each year so as to provide sufficient time for inspection and indexing of registered scion and seed trees and for the inspection of nursery stock to be submitted for certification. The nursery participation fee (see (4)) must be submitted with the application for certification by May 15 of each year.

(2) The application shall contain the information required thereon, including the consent of the applicant for the Department to obtain propa-

# ADMINISTRATIVE RULES

gating wood or expanded leaf tissues from any tree for inspection and testing purposes.

(3) Except as otherwise provided, fees charged by the certifying agency for certification are payable on or before July 1 of each year, and are for the sole purpose of defraying expenses incurred by the Department in the inspection, approval, or certification procedures provided for in this certification program, and for providing funds to the Department to support appropriate plant virus survey programs. Payment thereof shall not be construed as granting any right or privilege to the applicant.

(4) The fees payable under this section shall be determined in accordance with the fee schedule (see (4)(a)-(d)). Testing of *Prunus*, *Malus*, *Pyrus*, *Chaenomeles*, *Cydonia*, and *Crataegus* materials will be performed annually by the Department. These fees shall be payable upon request of the Department.

(a) The fee for participation shall be \$200 annually per participating nursery.

(b) The fee shall be \$10.00 per sample per Ilarvirus (*Prunus necrotic ring spot virus*, *prune dwarf virus*, and *apple mosaic virus*) test requested.

(c) The fee shall be \$7.00 per sample per *Tomato ring spot virus* test requested.

(d) The fee shall be \$7.00 per sample per each additional virus test requested.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; AD 17-1994, f. & cert. ef. 11-10-94; DOA 14-2004, f. & cert. ef. 6-1-04

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

**Adm. Order No.:** BCD 6-2004

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 7-1-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 918-020-0091

**Rules Amended:** 918-020-0090

**Subject:** Section 24 of 2003 Senate Bill 906 created additional statutory provisions for municipal building inspection programs to contain uniform processes and procedures for issuing citations for licensing requirement violations. The intent of this rulemaking activity is to create a streamlined, comprehensible and consistent statewide process for taking enforcement action against an unlicensed individual.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7599

### 918-020-0090

#### Program Standards

The division and every municipality that administers and enforces a building inspection program shall establish and maintain the minimum standards, policies and procedures set forth in this section.

(1) Administrative Standards. A building inspection program shall:

(a) Provide adequate funds, equipment and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates; and

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent.

(2) Permitting Standards. A building inspection program shall:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration and certification of any person who proposes to engage in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program shall:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably apprise persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" shall be defined by the division taking into consideration the Tri-County procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction shall also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the Tri-County procedures in OAR chapter 918, division 50. The process shall not allow a project to proceed beyond the level of approval authorized by the building official. The process shall:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(b) Employ or contract with a person licensed, registered or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations and certifications

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held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" shall:

(a) Comply with the requirements for prescriptive construction under the One-and Two-Family Dwelling Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling and Park Specialty Code; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following shall be considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the authority having jurisdiction or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule shall be deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program shall:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors shall require proof of compliance with the licensing, permitting, registration and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701. Inspectors shall report any violation of a licensing, permitting, registration or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program shall establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in ORS 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program shall demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.030, 455.467 & 455.469, 455.156

Stats. Implemented: ORS 455.150, 455.467 & 455.469, 455.156

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04

## 918-020-0091

### Citation Process for Licensing Violations

Municipalities must use the forms and procedures approved by the division.

Stat. Auth.: ORS 455.030, 455.156

Stats. Implemented: ORS 455.156

Hist.: BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04

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**Adm. Order No.:** BCD 7-2004

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 7-1-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 918-030-0200

**Subject:** Section 62 of 2003 Senate Bill 906 created new statutory requirements for individuals licensed under the elevator, electrical, boiler/pressure vessel and plumbing statutes and rules. This rule implements the legislation by requiring individuals performing elevator, boiler/pressure vessel or plumbing work which requires a license, to wear and visibly display their license.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7599

## 918-030-0200

### Visible Identification Badge

(1) For the purpose of this rule, a visible identification badge is an individual license, registration or certification issued by the division or an appropriate advisory board. This rule does not apply to contractors, businesses or inspectors.

(2) Individuals performing elevator, electrical, boiler, pressure vessel, or plumbing work, which requires a license, shall wear and visibly display their license. A licensee does not need to wear and visibly display their license if doing so would create a danger or unsafe condition for the licensee or for the public, provided the licensee can demonstrate proof of licensure to an inspector, investigator or other employee empowered to enforce the state building code.

Stat. Auth.: ORS 455.030 & 455.415

Stats. Implemented: ORS 455.415

Hist.: BCD 7-2004, f. 5-21-04, cert. ef. 7-1-04

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## Department of Consumer and Business Services,

### Division of Finance and Corporate Securities

#### Chapter 441

**Adm. Order No.:** FCS 1-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 441-049-1001, 441-065-0001, 441-175-0002

**Rules Amended:** 441-035-0045, 441-049-1021, 441-049-1031, 441-049-1041, 441-049-1051, 441-065-0015, 441-065-0020, 441-065-0035, 441-065-0170, 441-065-0180, 441-065-0270, 441-075-0020, 441-095-0030, 441-175-0015, 441-175-0060, 441-175-0080, 441-

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175-0085, 441-175-0100, 441-175-0120, 441-175-0130, 441-175-0160, 441-175-0165, 441-175-0171, 441-195-0010, 441-195-0020, 441-195-0030

**Subject:** These rules:

- 1) Streamline the licensing process for those broker-dealers filing through the CRD system by eliminating all paper filing requirements.
- 2) Revise the broker-dealer books and records rules to make them consistent with the SEC's rules.
- 3) Permanently adopt, with no changes, the temporary rules as adopted and amended on November 26, 2003 concerning securities fees.

**Rules Coordinator:** Berri Leslie—(503) 947-7478

### 441-035-0045

#### **Solicitation of Interest for Offering of Securities Pursuant to SEC Regulation A or OAR 441-065-0225**

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from ORS 59.055 if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blank check company," as such term is defined in OAR 441-045-0010(2);

(b) The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A, as promulgated by the Securities and Exchange Commission, or OAR 441-065-0225;

(c) At least 10 business days prior to the initial solicitation of interest under this rule, the offerer files with the Director:

(A) A completed solicitation of interest application on a form prescribed by the Director along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;

(B) The minimum registration fee as set in OAR 441-065-0001;

(C) A completed Form U-4 (salesperson application available from the Securities Section) for at least one, but no more than five, issuer salespersons (each such salesperson must be a bona fide officer, director or employee of the issuer); and

(D) A salesperson licensing fee as set in OAR 441-175-0002 for each salesperson.

(d) At least five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest;

(f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication;

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(h) No sale is made until at least seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus;

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(A) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

(B) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(C) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of

the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

(D) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(F) The prohibitions listed in paragraphs (A) through (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed. Any disqualification caused by this action is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of ORS 59.055 for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1). Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under ORS 59.245 and 59.255 and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of ORS 59.055, but shall be a violation of the Oregon Securities Law, be actionable by the Director under ORS 59.245 and 59.255, and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(B) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(C) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(D) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC, IF APPLICABLE, AND IS REGISTERED IN THIS STATE.

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

(4) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities

# ADMINISTRATIVE RULES

undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of ORS 59.055 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ORS 59.025(7), 59.035(5), 59.035(12) or OAR 441-035-0050 until six months after the last communication with a prospective investor made pursuant to this rule.

Stat. Auth.: ORS 59.025(4) & 59.035(11)

Stats. Implemented: ORS 59.025(4), 59.035(11), 59.035(15) & 59.285

Hist.: FCS 10-1994, f. & cert. ef. 10-3-94; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-049-1001

### Fees for Federal Covered Securities Notice Filings

Pursuant to ORS 59.049, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial and renewal notice filing fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$270 per portfolio and a renewal fee of \$225 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, initial and renewal fees of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,025.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$225. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049

Stats. Implemented: ORS 59.049

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-049-1021

### General Provisions Applicable to Notice Filing Rules

(1) Address. All notice filings and payment of fees under the Notice Filing Rules shall be directed to the State of Oregon, Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street NE Room 410, Salem, Oregon 97301-3881. At such time as filings can be received electronically by the Director, filings may be made electronically.

(2) Fees. Filing fees are set out in OAR 441-049-1001.

(3) Additional information. Notwithstanding the filing requirements in the Notice Filing Rules, the Director may request additional information, documentation or both. The request shall not exceed the information or documentation required by the SEC to be filed in connection with that offering.

(4) Salespersons. No information or documentation need be filed concerning broker-dealers or salespersons other than the information to be supplied on Form D or Form NF. No license is required for persons not otherwise licensed in Oregon as broker-dealers or salespersons who are engaged in executing transactions in federal covered securities.

(5) Initial Filings. Notice and fees submitted as an initial filing shall become effective on the later of the date the notice is received by the Director or date specified by the notice filer in accordance with 59.049(1), (2), or (3). The notice for Regulation D Rule 506 filings shall be indefinite. The notice for all other federal covered securities shall continue for one year from the effective date. The notice may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice.

(6) Renewal Filings:

(a) Notice form:

(A) A person seeking renewal shall provide the same form and materials required for the initial filing or most recent renewal. The renewal, if received prior to the annual anniversary date of the initial filing, shall become effective on the anniversary date and shall continue for one year from that date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice;

(B) Notices submitted for renewals and received after the anniversary date shall become effective on the date received. A late renewal shall be accompanied by a letter from or on behalf of the notice filer indicating whether any sales were made in this state after the expiration date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice. A late renewal may be treated as an initial filing.

(b) Aggregate offering amount. A renewal notice may be submitted for any aggregate offering amount of securities provided appropriate fees are submitted. A renewal is not limited to unsold portions of previously noticed aggregate offering amounts.

(c) Fees. A person seeking renewal shall submit the appropriate fees set out in OAR 441-049-1001.

(7) Acknowledgment of filing. Upon receipt of an initial filing or renewal, the Director shall provide written acknowledgment of the filing to the person submitting the request for the filing. An improvident failure by the Director to acknowledge the filing shall not invalidate the filing.

(8) Options, warrants or similar rights to purchase securities. Options, warrants or similar rights to purchase securities that are part of an offering under the Notice Filing Rules, constitute a continuous offering of the underlying securities during the exercise period and require the notice filing to be continually renewed as relevant. Disclosure materials shall be kept continuously current throughout the exercise period.

Stat. Auth.: ORS 59.049 & 59.285

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-049-1031

### Investment Company Notice Filing

(1) An investment company notice filing shall comply with this rule.

(2) The notice required by ORS 59.049 shall:

(a) Identify the portfolios offered through the same SEC registration; and

(b) Subject to section (3) of this rule, be filed on NASAA Form NF.

(3) In lieu of the notice provided in section (2) of this rule, if the issuer follows ORS 59.049(1), and files a copy of its registration statement as filed with the SEC, the issuer shall advise the Director of the number of portfolios covered by the registration statement and pay fees as provided in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-049-1041

### Offering to Qualified Purchaser, Federally Exempt Securities and Federally Exempt Transactions

An issuer offering a security that is a covered security under section 18(b)(3) or (4), other than 18(b)(4)(D), of the Securities Act of 1933, as amended, shall:

(1) File a written notice of such offering identifying the issuer and seller if other than the issuer; and

(2) Pay a fee as set in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-049-1051

### Rule 506 Offerings

A person offering a covered security under section 18(b)(4)(D) shall:

(1) File a notice on SEC Form D not later than 15 days after the first sale of securities subject to the notice in Oregon; and

(2) Pay a fee as set in OAR 441-049-1001.

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

Stat. Auth.: ORS 59.049 & 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0001

### Fees for Registration of Securities

Pursuant to ORS 59.065, the Director sets the following fees for registration of securities:

(1) For initial registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

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(2) For renewal of a current registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(3) To increase the aggregate offering amount of a current registration, a fee calculated for registration of the desired aggregate offering amount less fees previously paid for the current registration, but not less than \$100. Amending the aggregate offering amount does not extend the expiration date of the current registration.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065, 59.070

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0015

### When Registration Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of securities under ORS 59.065 and OAR 441, division 65.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that the fees are insufficient;

(b) Documents required by the rules in OAR 441, division 65 have not been submitted by the applicant;

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 65 has not been submitted to the Director by the applicant; or

(d) Changes to disclosure documents requested by the Director have not been submitted to the Director by the applicant.

(3) An application for registration of securities is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned registration shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0020

### Registration by Qualification

(1) Eligibility. Any issuer, owner, licensed broker-dealer, licensed mortgage broker, or any other person on whose behalf an offering is to be made may apply to register or renew by qualification.

(2) Application. An applicant for registration by qualification must use **Form U-1** (developed by the North American Securities Administrators Association, Inc.). The application must be complete and accompanied by the following documents as applicable:

(a) One copy of the registration statement filed with the Securities and Exchange Commission;

(b) One copy of the most recent prospectus;

(c) The underwriting agreement, agreement among underwriters, and selected dealers' agreement;

(d) Copies, including all amendments, of the issuer's articles of incorporation, certificate of limited partnership, or charter;

(e) Issuer's bylaws as amended to date;

(f) Other contracts or documents of a material nature including option or warrant plans, proceeds escrow agreements, stock escrow agreements, key employment contracts, leases, patent opinions, preliminary title reports, and loan commitment letters;

(g) Counsel's opinion as to the legality of the securities to be issued and counsel's consent to use the opinion;

(h) Other experts' opinions or reports and consent to use the opinions;

(i) A specimen of the security including any restrictions on its transfer;

(j) Proposed advertising material except material described in Rules 134, 134a, 135, or 135a adopted under the Securities Act of 1933, as amended;

(k) Financial statements as defined in OAR 441-011-0040;

(l) A **Form U-4** application and a filing fee as set in OAR 441-175-0002 for each salesperson if the offering will not be made through a licensed broker-dealer; and

(m) A registration fee as set in OAR 441-065-0001.

(3) Post application information. Every applicant or registrant by qualification must:

(a) Advise the Director prior to registration in Oregon of any material change in any information contained in the application or in any documents submitted with or as a part of the application;

(b) File within two business days after filing with the Securities and Exchange Commission:

(A) Any amendments to the federal registration statement designating the changed, revised, or added material or information; and

(B) The final prospectus and any further amendments or supplements thereto.

(c) File within 14 days of the date of registration the final prospectus, if not filed with the Securities and Exchange Commission;

(d) Notify the Director within two business days of receipt of:

(A) Any stop order, order of denial, order to show cause, order of suspension or revocation, injunction, or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court concerning the securities covered by the application or other securities of the issuer currently being offered to the public; and

(B) Notice of effectiveness of the registration by the Securities and Exchange Commission.

(e) Notify the Director at least two business days prior to the effectiveness of the registration with the Securities and Exchange Commission of:

(A) Any requests by the issuer or applicant to any other state or regulatory authority for permission to withdraw any application to register the securities described in the application; and

(B) All states in which applications have been filed where the issuer or applicant has received notice from the state authority that the application does not comply with state requirements and the applicant or issuer cannot or does not intend to comply with such requirements.

(f) Furnish promptly all additional information and documents with respect to the issuer or the securities covered by the application as the Director requests.

(4) Registration. Registration is effective on the issuance of an order of registration.

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

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.2; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0035

### Registration by Multijurisdictional Coordination

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 on Securities and Exchange Commission Forms F-7, F-8, F-9 or F-10 in connection with the same offering may be registered by multijurisdictional coordination.

(2) A registration statement filed with the Director under this rule shall contain the following information and be accompanied by the following documents as applicable:

(a) An appropriate registration fee as set in OAR 441-065-0001;

(b) An executed registration application on Form U-1;

(c) One copy of the latest form of prospectus filed under the Securities Act of 1933;

(d) If the Director requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(e) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this rule automatically becomes effective at the moment the federal registration becomes effective if all the following conditions are satisfied:

(a) No order is in effect or proceeding is pending pursuant to ORS 59.105;

(b) The application for registration and all required documents have been on file with the Director for seven calendar days or such shorter period as the Director permits by rule or otherwise; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for two full business days or such shorter period as the Director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Director by telephone or oth-

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erwise of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Director may institute proceedings to suspend or revoke the registration pursuant to ORS 59.105.

(4) If the federal registration statement becomes effective before all the conditions specified in section (3) of this rule are satisfied, and those pending conditions are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Director of the date when the federal registration statement is expected to become effective, the Director shall promptly advise the registrant by telephone or otherwise, at the registrant's expense, whether all the conditions are satisfied and whether the Director then contemplates the institution of a proceeding pursuant to ORS 59.105. This advice by the Director does not preclude the institution of such a proceeding at any time.

(5) A registration under this rule remains effective for a period of 12 months from the initial date of effectiveness unless earlier terminated by the registrant or the Director. A registrant may renew a registration under this rule by meeting the requirements of this rule.

(6) For purposes of this rule, financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and which have been accepted by the Securities and Exchange Commission for inclusion in Form F-7, F-8, F-9 or F-10, with or without reconciliation to United States generally accepted accounting principles, consistently applied, will be accepted.

(7) Any person, not otherwise licensed in Oregon, who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to this rule and who is not otherwise compensated in connection with the sale of the registered securities, is exempt from the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

(8) Any person, not otherwise licensed in Oregon, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to this rule and who does not perform any active solicitation in this state, is exempt from the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

Stat. Auth.: ORS 59.015, 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1991, f. & cert. ef. 8-23-91; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0170

### Registration Procedures for "Regulation D" and Similar Type Offerings

(1) An application to register securities filed pursuant to OAR 441-065-0220 (small offerings not exceeding \$500,000 including under SEC Rule 504) shall include the following:

(a) A completed Form 440-2013 (a form for the registration of limited or non-public offerings);

(b) A copy of the written disclosures required by OAR 441-065-0100(3);

(c) A registration fee as set in OAR 441-065-0001;

(d) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 and a per person license fee as set in OAR 441-175-0002; and

(e) Any additional or supplementary materials requested by the Director.

(2) An application to register securities filed pursuant to OAR 441-065-0225 (small corporate offerings not exceeding \$1,000,000 including under SEC Rule 504) shall include the following:

(a) A completed **Form U-7** (a uniform disclosure document for small corporate offerings) including the following exhibits, to the extent applicable:

(A) Form of underwriting or selling agency agreement;

(B) Issuer's articles of incorporation or other charter documents and all amendments thereto;

(C) Issuer's bylaws, as amended to date;

(D) Copy of any resolutions by the issuer's board of directors setting forth terms and provisions of capital stock to be issued;

(E) Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants or rights to be offered;

(F) Specimen of security to be offered (including any legend restricting resale);

(G) Copy of all advertising or other materials directed to or to be furnished investors in the offering;

(H) Form of escrow agreement for escrow of proceeds;

(I) Consent to inclusion in **Form U-7** Disclosure Document of accountant's report;

(J) Consent to inclusion in **Form U-7** Disclosure Document of tax advisor's opinion or description of tax consequences;

(K) Consent to inclusion in **Form U-7** Disclosure Document of any evaluation of litigation or administrative action by counsel;

(L) Form of any Subscription Agreement for the purchase of the securities;

(M) Opinion of counsel that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the issuer in accordance with their terms;

(N) Schedule of residence street addresses of the issuer's officers, directors and principal stockholders;

(O) Work sheets showing computations of responses to Questions 6, 7(a), 8(a), 8(b) and 17(b) of **Form U-7** Disclosure Document; and

(P) Any additional or supplementary materials requested by the Director.

(b) A registration fee as set in OAR 441-065-0001; and

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on **Form U-4** and a per person license fee as set in OAR 441-175-0002.

(3) Amendments to Small Corporate Registrations under section (2). If a material change occurs concerning the issuer or the offering while the offering is effective in this state:

(a) The **Form U-7** Disclosure Document shall be amended to make the disclosures accurate and complete;

(b) The amended **Form U-7** showing additions and deletions shall be filed with the Director for approval;

(c) The offering shall be suspended in this state until approval is received from the Director to proceed with the offering; and

(d) The registrant shall report the status of the offering in this state and file a plan for dealing with present purchasers in this state.

(4) An application to register securities filed pursuant to OAR 441-065-0230 (limited offering for offerings not exceeding \$5,000,000 including under SEC Rule 505) shall include the following:

(a) A completed **Form 440-2013** (a form for the registration of limited or non-public offerings);

(b) A registration fee in accordance with OAR 441-065-0001;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 (available from the Securities Section) and a per person license fee in accordance with OAR 441-175-0002; and

(d) Any additional or supplementary materials requested by the Director.

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

Stat. Auth.: ORS 59.065 & 59.235

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0055; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 7-1994, f. & cert. ef. 5-13-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0180

### Licensing of Salespersons

(1) General License Requirements. Offers and sales of offerings registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 may only be made by licensed broker-dealers, licensed salespersons or persons excluded by rule pursuant to OAR 441-175-0020 through 441-175-0040.

(2) Issuer Salespersons; Licensing Conditions. The following special licensing conditions are applicable to salespersons licensed to an issuer:

(a) An issuer may license up to five persons as issuer salespersons;

(b) Issuer salespersons must be bona fide officers, directors or employees of the issuer;

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(c) Issuer salespersons are exempt from examination requirements and are not required to file a surety bond or an irrevocable letter of credit;

(d) An issuer salesperson shall not be simultaneously licensed to two or more employers; and

(e) The issuer and salespersons shall comply with OAR 441-175-0120.

(3) Issuer Salespersons; Licensing Procedures. An issuer shall submit to the Director a complete application to license each salesperson, including:

(a) A completed Form U-4 (salesperson application); and

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

Stat. Auth.: ORS 59.165 & 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0060; FCS 15-1988, f. & cert. ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-065-0270

### Compensatory Benefit Plans and Contracts

(1) Creation of Classification.

(a) The Director creates a classification of transaction in securities by an issuer designated as a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701).

(b) An issuer of a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701) may use this registration rule.

(2) Application to Register. The issuer shall submit:

(a) A completed Form U-1 (Application to Register Securities), except documents required under section 8 of Form U-1;

(b) A registration fee in accordance with OAR 441-065-0001;

(c) At least one completed Application to License a Salesperson on Form U-4 and license fee as set in OAR 441-175-0002. The salesperson must be a bona fide affiliate of the issuer, its parent or majority-owned subsidiary, and must either:

(A) Be an officer, director, general partner or trustee of the issuer, its parent or majority-owned subsidiary; or

(B) Have significant involvement in the administration of the benefit plan or contract.

(d) The following information:

(A) Type of business organization;

(B) Full title of plan or description of contracts;

(C) Type of plan;

(D) Affirmation that the offering is exempt from federal registration pursuant to SEC Rule 701; and

(E) Aggregate offering price of securities to be offered or sold pursuant to this application.

(e) An election regarding expiration date of an Order of Registration pursuant to section (5) of this rule; and

(f) Any supplementary materials requested by the Director.

(3) Discrete Offering. Subject to the inclusion of certain offers and sales of securities pursuant to OAR 441-065-0060 through 441-065-0230 or notice filing, offers and sales of securities registered pursuant to this rule shall be deemed to be part of a single, discrete offering and shall not be subject to integration with any other offer or sale by the issuer, whether registered pursuant to other provisions of OAR chapter 441, division 65 or otherwise exempt from the registration requirements of ORS 59.055.

(4) Review of Application. An application for registration pursuant to this rule shall be subject to the authority of the Director, pursuant to ORS 59.075, to deny registration or, pursuant to ORS 59.085 and section (8) of this rule, to impose conditions on registration.

(5) Order of Registration. Renewal. An initial Order of Registration, if issued, shall, at the election of the registrant, expire 30 days following the end of the issuer's fiscal year, otherwise, one year after the date of issuance. The election must be made at the time application is made pursuant to section (3) of this rule. An application may be submitted for renewal. An Order of Renewal, if issued, shall expire one year after the date of issuance.

(6) Conditions of Registration. The following conditions shall be imposed upon every Order of Registration or Renewal issued pursuant to this rule:

(a) The issuer, its parent or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan, and a copy of a written contract relating to compensation shall be provided to the parties; and

(b) This registration shall be effective only while the federal exemption under 17 CFR 230.701 is available to the issuer for this offering.

(7) Order of Registration. Continued Effectiveness. An issuer may rely on this rule with respect to offers made pursuant to this rule prior to the issuer becoming subject to the reporting requirements of Section (13) or (15)(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.), and sales consummating such offers may be made thereafter in reliance upon this rule and an effective Order of Registration or Renewal.

(8) Full Disclosure. This rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065 & 59.285

Hist.: FCS 3-1991, f. & cert. ef. 8-23-91; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-075-0020

### Specific Renewal Procedures

An application for renewal must meet the following requirements:

(1) Timely Application. In order to prevent an automatic expiration of an order of registration or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of registration or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(2) Incomplete Applications. Incomplete applications will not be processed.

(3) Application Form. An applicant for renewal shall use the same application form used for the initial registration application or most recent renewal.

(4) Aggregate Offering Amount. A renewal application may be submitted for any aggregate offering amount of securities. An applicant is not limited to renewing unsold portions of previously authorized aggregate offering amounts.

(5) Fees. An applicant for renewal shall submit the appropriate fees as established pursuant to OAR 441-065-0001.

(6) Prospectus. An applicant for renewal of an offering, other than a compensatory benefit plan registered under OAR 441-065-0270, shall file one copy of the most recent prospectus including supplements.

(7) Financial Statements. If financial statements are not submitted as part of the prospectus or offering document, the applicant for renewal of an offering other than a compensatory benefit plan registered under OAR 441-065-0270 shall file one copy of the most recent annual financial statements, including a balance sheet, statement of income or operations, statement of cash flows, and all accompanying footnotes. The annual financial statements must be current within 135 days of filing the application for renewal, or interim financial statements current within 135 days must also be submitted.

(8) Additional Documents. An applicant for renewal shall promptly furnish all additional information and documents with respect to the issuer or the securities covered by the renewal application as the Director requests.

(9) Salesperson Applications. If the offering is not being sold by a licensed broker-dealer, the applicant for renewal shall submit a U-4 salesperson application for each person who will sell securities on behalf of the issuer and the appropriate fees as established pursuant to OAR 441-175-0002. The requirements for issuer salesperson licensing are set forth in OAR 441-175-0120(11).

(10) Order of Renewal. An order of renewal will be issued by the Director upon receipt and processing of a complete application, unless the Director determines that the application should be denied pursuant to ORS 59.105. An order of renewal will be effective for a period of 12 months from the date of issuance.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.065 & 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-095-0030

### Fairness Hearing Procedures

(1) The Director may decline to accept the filing of a plan pursuant to ORS 59.095 if the proponent of the plan is unable to establish a nexus with Oregon. That nexus must be established by showing:

(a) That the proponent of the plan is an entity with headquarters in Oregon;

(b) That the entity to be acquired or merged has its headquarters in Oregon; or

# ADMINISTRATIVE RULES

(c) That a minimum of 50% of the securities, claims or property interests to be exchanged are owned by persons who reside in Oregon.

(2) The proponent of the plan shall file:

(a) A **Form U-1** registering all securities to be issued by the proponent;

(b) A copy of the merger agreement between the parties;

(c) A copy of the information statement to be submitted to the holders of the securities, claims or property interests to be exchanged;

(d) A copy of the Articles of Formation of the acquiring entity;

(e) A **Form U-4** for each agent of the issuer, or the name and Central Registration Depository number of the broker-dealer to execute the securities transactions; and

(f) A filing fee for the total offering amount calculated pursuant to OAR 441-065-0001 and a fee in the amount set in OAR 441-175-0002 for each **Form U-4** being filed.

(3) Following a preliminary review by the Director and resolution, if necessary, of any fairness or procedure issues raised by the Director, 30 days notice of the fairness hearing shall be given to all holders of the securities, claims or property interests to be exchanged. The proponent may request a shorter notice period of not less than 10 days, which request may not be unreasonably denied by the Director, provided the proponent demonstrates that all holders of the securities, claims or property interests to be exchanged:

(a) Are accredited investors as defined in OAR 441-035-0010; or

(b) Have been directly involved in the development of the plan, merger or acquisition negotiations.

(4)(a) The fairness hearing shall be conducted as an other than contested case pursuant to ORS Chapter 183 by a hearings officer designated by the Director at a location in Oregon designated by the hearings officer. With the consent of both parties to the merger or acquisition, the hearing may be conducted by telephone conference.

(b) The hearings officer may permit testimony of counsel, all interested parties to the exchange, and any holder of securities, claims or property interests to be exchanged who wishes to make a statement or raise questions. Any interested party who is unable to attend the hearing shall be permitted to participate by telephone or in writing.

(5) Any order issued concerning the plan of the proponent shall be dated effective as of the date of the hearing, unless issues were raised at the hearing which must be resolved, in which event the order shall be dated on the date when all such issues are satisfactorily resolved.

(6) The order issued shall make specific findings as to whether the plan is fair, just and equitable and free from fraud; and

(a) Approve the request as proposed by the proponent;

(b) Approve the request with conditions, limitation, or restrictions imposed by the Director; or

(c) Deny the request, provided the Director made findings that the plan is unfair, unjust or inequitable or not free from fraud. Notice of any denial issued under this subsection shall be provided by the Director, at the expense of the proponent, to all persons who were entitled to receive or who did receive notice of the hearing.

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

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.095

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0002

### Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$200;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$50 and a renewal license fee of \$50;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0015

### When Licensing Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, division 175 have not been submitted by the applicant; or

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 175 has not been submitted to the Director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0060

### Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996

(1) Broker Dealers subject to section 15 of the Securities Exchange Act of 1934. A licensed broker-dealer that is subject to section 15 of the Securities Exchange Act of 1934, as amended, referred to as a "NASD broker dealer," is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0080(1) Licensing of Broker-Dealers and 441-175-0110 Surety Bond; Letter of Credit.

(2) Investment Advisers:

(a) Federal Covered Investment Adviser. A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 Applications for Licensing of Investment Advisers and 441-175-0110 Surety Bond; Letter of Credit.

(b) Out-of-State State Investment Adviser. A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4) Notice filing by Federal Covered Investment Adviser.

(a) Notice filing by a federal covered investment adviser will be accepted by the Director through IARD using form ADV (Uniform Application for Investment Adviser Registration adopted by the SEC (17 C. F. R. 279.1 (1996) as modified in 2000) and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the Director through IARD and shall include the fee required under OAR 441-175-0002.

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

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

# ADMINISTRATIVE RULES

## 441-175-0080

### Applications for Licensing of Broker-Dealers

(1) An applicant for licensing as a NASD broker-dealer must submit to the NASD/CRD:

(a) A completed **Form BD** (broker-dealer application available from the Securities Section);

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (salesperson application available from the Securities Section) pursuant to OAR 441-175-0130. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer; and

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

(2) An applicant for licensing as a non-NASD broker-dealer must submit to the Securities Section:

(a) A completed **Form BD** (broker-dealer application available from the Securities Section);

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (salesperson application available from the Securities Section) pursuant to OAR 441-175-0120. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer;

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(e) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change.

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

Stat. Auth.: ORS 59.175, 59.195 & 59.285

Stats. Implemented: ORS 59.165, 59.175, 59.185, 59.195 & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.2; FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0085

### Limited Licensing of Canadian Broker-Dealers and Salespersons

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

(a) Files an application in the form required by the jurisdiction in which it has its head office;

(b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and

(c) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:

(a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and

(b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.

(6) A Canadian broker-dealer licensed under this rule shall:

(a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(b) Provide the Director upon request with its books and records relating to its business in this state as a broker-dealer;

(c) Inform the Director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.

(7) A salesperson of a Canadian broker-dealer licensed under this rule shall:

(a) Maintain his or her provincial or territorial registration in good standing;

(b) Inform the Director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.

(8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.

(b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule, as the case may be.

(9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.

(10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers;

(c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(d) As otherwise permitted pursuant to the Oregon Securities Law.

(11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law, except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0100

### Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser may apply through IARD or with the Director.

(2) An applicant applying through IARD must submit:

(a) To the IARD:

(A) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as set in OAR 441-175-0002;

(C) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section). All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as set in OAR 441-175-0002.

(b) To the Director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Director within 30 days following the change;

(C) Financial statements if the person is an Oregon based state investment adviser applicant. All financial statements must be prepared by an "independent accountant," as that term is defined pursuant to OAR 441-175-0010(6), and shall include the financial statements described in paragraphs (3)(h)(A)-(D) of this rule;

# ADMINISTRATIVE RULES

(D) For Oregon based state investment advisers, a copy of any proposed client contracts; and

(E) Fees and any form or portion of any form which cannot be submitted through IARD.

(3) An applicant applying with the Director must submit:

(a) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(b) A state investment adviser licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section) pursuant to OAR 441-175-0120. All licensed state investment advisers must have at least one investment adviser representative licensed continuously throughout the licensing period of the investment adviser;

(d) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(e) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(f) For Oregon based state investment advisers, a copy of any proposed client contracts;

(g) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Director within 30 days following the change; and

(h) Financial statements if the person is an Oregon based state investment adviser applicant. All financial statements must be prepared by an "independent accountant," as that term is defined pursuant to OAR 441-175-0010(6), and shall include the following:

(A) For such investment adviser who has or will have custody of client funds or securities or requires or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, an audited balance sheet;

(B) For all other such investment advisers, a reviewed or compiled balance sheet;

(C) The financial statements must be submitted for the last two fiscal years. If an application is made less than 90 days after the end of the applicant's fiscal year, the financial statements shall be for the two most recent fiscal years, not including the most recently completed fiscal year. For persons with less than two years of operations, the same financial statements must be submitted for the period of operations; and

(D) If the year-end financial statements are dated more than 90 days from the completed application, interim financial statements within 90 days must accompany the application.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

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

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0120

### Licensing of Salespersons or Representatives to Non-NASD Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a NASD broker-dealer, must be licensed as provided in this rule.

(2) A non-NASD broker-dealer, an issuer, or an owner of securities must submit to the Director a complete application to license a salesperson including:

(a) A completed **Form U-4** (available from the Securities Section);

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations pursuant to section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on **Form 440-2131**, as provided in section (10) of this rule.

(3) A state or federal covered investment adviser must submit to the IARD, if the adviser files with the IARD and the IARD is capable of accepting the application, and otherwise to the Director:

(a) A completed **Form U-4** (available on IARD or from the Securities Section);

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on Form 440-2131, as provided in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(5) A salesperson to a non-NASD broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements pursuant to section (4) of this rule is required to pass the S-63 (Uniform Securities Agent State Law Examination), with a minimum score of 70 percent. In addition, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-5 for an interest rate options license;

(d) S-6 for an investment company, mutual funds or variable contracts license;

(e) S-15 for a foreign currency options license;

(f) S-22 for a limited partnership or tax shelter license;

(g) S-42 for an options license;

(h) S-52 for a municipal bonds license; or

(i) S-62 for a corporate securities license.

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements pursuant to section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the S-7 (Uniform Securities Agent State Law Examination), then either the S-65 (Uniform Investment Adviser Law Examination) if taken prior to January 1, 2000 or S-66 (Uniform Combined State Law Examination) if taken after January 1, 2000; or

(B) The S-65 (Uniform Investment Adviser Law Examination) if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the Director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) Alternate equivalent examinations will be considered upon a written request to the Director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(9) Waiver of the examination requirement will be considered upon a written request to the Director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

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(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on **Form 440-2131** (a dual licensing application available from the Securities Section). The undertaking shall contain the following provisions:

(A) The effective date of the salespersons or investment adviser representatives employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the Director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940 under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(C) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the Director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed pursuant to ORS 59.049(1) or 59.049(2), do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the Director shall issue a license, which may be conditioned or restricted pursuant to OAR 441-225-0030, for the salesperson or investment adviser representative unless the Director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the Director are inaccurate or incomplete in any material respect, the license shall be void.

(14) License Expiration. A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the Director as follows:

(a) The license of an issuers or owners salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

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

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0130

### Licensing of Salespersons to NASD Broker-Dealers

(1) For purposes of ORS 59.175, all NASD salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the NASD to a broker-dealer who is a member in good standing of the NASD;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon pursuant to ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the Director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

(b) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule, is required to pass the S-63 (Uniform Securities Agent State Law Examination) with a minimum score of 70 percent. In addition to the S-63, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-5 for an interest rate options license;

(d) S-6 for an investment company, mutual funds or variable contracts license;

(e) S-15 for a foreign currency options license;

(f) S-22 for a limited partnership or tax shelter license;

(g) S-42 for an options license;

(h) S-52 for a municipal bonds license; or

(i) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the Director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the Director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this State.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on a form provided by the Securities Section. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the Director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Director.

(9) Unless disqualified for automatic licensing in Oregon pursuant to OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

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(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the Director will either approve the application, condition or restrict the license pursuant to OAR 441-225-0030, or deny it pursuant to ORS 59.205 to 59.225. If the Director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS Chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with the NASD.

(13) If the application, the undertaking, any supporting material or any representations made to the Director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for an NASD salesperson expires on December 31 of each year. The NASD broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative Correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0160

### Renewal of NASD Broker-Dealer and Salesperson Licenses

(1) The licenses of a NASD broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed pursuant to this rule.

(2) To renew a license, a NASD broker-dealer must submit the following items to the NASD/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a NASD broker-dealer satisfies the Director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the NASD broker-dealer does complete the renewal application by January 31, the Director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0165

### Renewal of the Licenses of Non-NASD Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1) The license of a non-NASD broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed pursuant to this rule. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(2) Timely Application. In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(3) Incomplete Applications. Incomplete applications will not be processed.

(4) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the Director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) To renew a license, a non-NASD broker-dealer or state investment adviser which has not previously licensed through IARD must submit the following items to the Director:

(a) A non-NASD broker-dealer or state investment adviser renewal form;

(b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the Director;

(d) A salesperson or investment adviser representative renewal form for each salesperson or investment adviser representative to be renewed, signed by both the salesperson or investment adviser representative and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson or investment adviser representative renewal fee as set in OAR 441-175-0002 for each salesperson or investment adviser representative to be renewed, except as provided in section (7) of this rule; and

(g) For an Oregon based state investment adviser, financial information as set forth in section (6) of this rule.

(6) An applicant for renewal as an Oregon based state investment adviser must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined pursuant to OAR 441-175-0010(6);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined pursuant to OAR 441-175-0010(6); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(7) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-175-0171

### Use of Trade Name or Assumed Business Name

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the Director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the Director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the Director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked pursuant to ORS 59.205; or

(b) Cancelled pursuant to ORS 59.225.

(3) Any person using a trade name or assumed business name pursuant to an order issued by the Director must, within 30 days after any change of information, notify the Director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

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## 441-195-0010

### Customer and Account Records by Broker-Dealers

(1) Every broker-dealer shall make and keep current a record for each account with a natural person as a customer or owner, which record shall state the customer's or account owner's name, address, tax identification or social security number, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a broker-dealer), annual income, net worth (excluding value of primary residence), the account's investment objectives, and whether the account includes the signatures of the associated person regularly handling the account and a supervisor designated pursuant to OAR 441-205-0210(2). In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. For accounts in existence on the effective date of this amended rule, this information must be obtained no later than May 2, 2006.

(2) Any item of information required by section (1) of this rule need not be contained in the customer's record if, after reasonable inquiry, the customer declines, neglects, or is unable to furnish or update such item of information and a statement to that effect is placed in such record.

(3) Every broker-dealer shall make and keep current a record indicating that:

(a) No later than May 2, 2006 for customers existing as of May 2, 2003, and no later than 30 days of the opening of an account for new customers since May 2, 2003, and thereafter at intervals no greater than 36 months, each customer or account owner was furnished with a copy of the account record or an alternate document with all information required by section (1) of this rule. This document may be mailed with the account statement, and may exclude any tax identification number and date of birth. The broker-dealer shall include an explanation of any terms regarding investment objectives, and shall include or accompany the document with prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the broker-dealer, and that the customer or owner should notify the broker-dealer of any future changes to information contained in the account record;

(b) For each account record updated to reflect a customer or account owner change of name or address, the broker-dealer sent a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, no later than 30 days after the broker-dealer received notice of the change;

(c) For each change in the account's investment objectives the broker-dealer has furnished to each customer or owner and the associated person, if any, responsible for that account a copy of the updated customer account record or alternate document with all information required to be furnished in subsection (a) of this section no later than 30 days after the broker-dealer received notice of the change or after the account was updated for any reason other than the broker-dealer receiving notice of the change. The broker-dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner;

(d) Each customer or account owner was furnished with a copy of each written agreement entered into on or after May 2, 2003 pertaining to that account and that, if requested by the customer or account owner, the customer or account owner was furnished with a fully executed copy of each agreement;

(e) Each customer of the broker-dealer has been provided with a notice containing the address and telephone number of the broker-dealer's department to which any account-related complaints may be directed.

(4) Every broker-dealer shall make and keep current a record with respect to each discretionary account which shall include the dated signature of each customer or account owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(5) The account record requirements in section (1) of this rule and the furnishing requirement in subsection (3)(a) of this rule apply only to accounts for which the broker-dealer is, or within the preceding 36 months has been, required to make a suitability determination under federal securities laws or the requirements of a self-regulatory organization of which it is a member.

(6) Every broker-dealer shall make and keep current, as to each office, the books and records described in this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 59  
Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 185-030-0195 and 815-030-0081; FCS 1-2004, f. & cert. ef. 5-19-04

## 441-195-0020

### Business Records by Broker-Dealers

(1) Every broker-dealer shall make and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts and all other debits and credits to such account;

(d) Ledgers (or other records) reflecting the following:

(A) Securities in transfer;

(B) Dividends and interest received;

(C) Securities borrowed and securities loaned;

(D) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(E) Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered and, in all cases, the name or designation of the account in which each position is carried;

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, or any employee thereof, shall be so designated. The term "Instruction" shall include instructions between partners and employees of a broker-dealer. The term "Time of Entry" shall mean the time when such broker-dealer transmits the order or instruction for execution;

(g) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order and of any modification thereof, the account in which it was entered, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies

## ADMINISTRATIVE RULES

each other person. An order with a customer other than a broker-dealer entered pursuant to the exercise of discretionary authority by the broker-dealer, or associated person thereof, shall be so designated;

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such broker-dealer;

(i) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account;

(j) A record of all puts, calls, spreads, straddles, and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved;

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date;

(l) A questionnaire or application for employment executed by each partner, officer, director, branch manager, or any employee, except any person associated with a broker-dealer whose functions are solely clerical or ministerial, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to such person:

(A) The associated person's name, address, social security number, date of birth and the starting date of the associated person's employment or other association with the broker-dealer;

(B) A complete consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(C) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(D) A record of any denial, suspension, expulsion or revocation of membership, or registration of any broker-dealer with which the associated person was associated in any capacity when such action was taken;

(E) A record of any permanent or temporary injunction entered against the associated person or any broker-dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(F) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing;

(G) A record of any other name or names by which the associated person has been known or which the associated person has used; provided, however, that if such associated person has been registered as a registered representative of such broker-dealer, or the associated person's employment has been approved by, the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc. or the International Securities Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of section (1) of this rule;

(m) Fingerprint records together with any information received from the United States Attorney General or its designee for every person required to be fingerprinted under the Securities Exchange Act of 1934;

(n) A record as to each associated person of each written customer complaint received by the broker-dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a broker-dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint;

(o) A record listing every associated person of the broker-dealer which shows, for each associated person, every office of the broker-dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the broker-dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker-dealer;

(p) A record as to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a broker-dealer may elect to produce the required information promptly upon request of the director;

(q) A record of all agreements pertaining to the relationship between each associated person and the broker-dealer including a summary of each associated person's compensation arrangement or plan with the broker-dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined;

(r) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the broker-dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the broker-dealer is a member that require advertisements, sales literature, or any other communications with the public by a broker-dealer or its associated persons be approved by a principal;

(s) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records;

(t) A record listing each principal of the broker-dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the broker-dealer is a member that require acceptance or approval of a record by a principal.

(u) The following record regarding any internal broker-dealer system of which such broker-dealer is the sponsor:

(A) A record of the broker-dealer's customers that have access to the system (identifying any affiliations between such customers and the broker-dealer);

(B) Daily summaries of trading in the system, including securities for which transactions have been executed through use of such system and transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation); and

(C) Time-sequenced records of each transaction effected through the system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if the system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker-dealer sponsoring the system).

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(3) This rule shall not be deemed to require a broker-dealer to make or keep such records as are required by section (1) of this rule reflecting the sale of U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F, and G.

(4) The records specified in section (1) of this rule shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(5) Every broker-dealer shall make and keep current, as to each office, the books and records described in subsections (1)(a), (1)(f), (1)(g), and (1)(l) through (1)(s) of this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-1 and 815-030-0085;

FCS 1-2004, f. & cert. ef. 5-19-04

# ADMINISTRATIVE RULES

## 441-195-0030

### Records to be Preserved by Certain Broker-Dealers

(1) Every broker-dealer subject to OAR 441-195-0020 shall preserve for a period of not less than six years all records required to be made pursuant to OAR 441-195-0020(1)(a), (b), (c), (e), (r) (s), (t), and analogous records created pursuant to OAR 441-195-0020(5). The records for the most recent two years shall be kept in an easily accessible place.

(2) Every such broker-dealer shall preserve for a period of not less than three years, with the most current two years being kept in an easily accessible place:

(a) All records required to be made pursuant to OAR 441-195-0020(1)(d), (f), (g), (h), (i), (j), (n), (p), (r), (u), and analogous records made pursuant to OAR 441-195-0020(5);

(b) All checkbooks, bank statements, canceled checks, and cash reconciliations;

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such broker-dealer, as such;

(d) Originals of all communications received and copies of all communications sent (and any approvals thereof) by such broker-dealer (including interoffice memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the broker-dealer is a member regarding communications with the public. As used in this subsection, the term communications includes sales scripts;

(e) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of such broker-dealer, as such;

(f) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(g) All written agreements (or copies thereof) entered into by such broker-dealer relating to its business as such, including agreements with respect to any account;

(h) All notices relating to an internal broker-dealer system provided to the customers of the broker-dealer that sponsors such internal broker-dealer system. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this subsection if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this subsection include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

(3) Every broker-dealer shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(4) Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all Articles of Incorporation or Charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD, all Forms BDW, all amendments to these forms, and all licenses or other documentation showing the registration of the broker-dealer with any securities regulatory authority.

(5) Every broker-dealer shall maintain and preserve in an easily accessible place:

(a) All records required under OAR 441-195-0020(1)(l) and (1)(o) until at least three years after the associated person has terminated the associated person's employment and any other connection with the broker-dealer;

(b) All records required under OAR 441-195-0020(1)(m) until at least three years after the termination of employment or association of those persons required to be fingerprinted under the Securities Exchange Act of 1934;

(c) All account record information required pursuant to OAR 441-195-0010(1), (3) and (4) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated;

(d) Each report which a securities regulatory authority has requested or required the broker-dealer to make and furnish to it pursuant to an order

or settlement, and each securities regulatory authority examination report until three years after the date of the report;

(e) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker-dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker-dealer until three years after the termination of the use of the manual;

(f) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a broker-dealer may produce promptly the reports upon request by the director. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports.

(6) The records required to be maintained and preserved pursuant to OAR 441-195-0010, 441-195-0020 and this rule may be immediately produced or reproduced on microfilm, microfiche, or any similar medium, or on any digital storage medium or system, and may be maintained and preserved for the required time in that form. If such substitution for hard copy is made by a broker-dealer, it shall:

(a) At all times have available for examination of its records facilities for immediate, easily readable projection or production of the media or images and for producing easily readable images;

(b) Arrange the records and index in such a manner as to permit the immediate location of any particular record;

(c) Be ready at all times to provide, and immediately provide, any facsimile enlargement which may be requested; and

(d) Store separately from the original one other copy of the substitute storage media for the time required.

(7) If a person who has been subject to OAR 441-195-0020 ceases to be licensed pursuant to ORS 59.165 or such other statute dealing with licensing, such person shall, for the remainder of the periods of time specified in this rule, continue to preserve the records which it theretofore preserved pursuant to this rule.

(8) Every broker-dealer shall furnish promptly to the director legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under this rule, or any other records of the broker-dealer that are requested by the director.

(9) Records for the most recent two year period required to be made pursuant to OAR 441-195-0010(6) and subsections (2)(d) and (5)(d) of this rule which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the broker-dealer handled there, the broker-dealer need not maintain records at that office, but the records must be maintained at another location within the same state as the broker-dealer may select. Rather than maintain the records at each office, the broker-dealer may choose to produce the records promptly at the request of the director at the office to which they relate or at another location agreed to by the director.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-2 and 815-030-0090;

FCS 1-2004, f. & cert. ef. 5-19-04

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**Department of Consumer and Business Services,  
Insurance Division  
Chapter 836**

**Adm. Order No.:** ID 5-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 836-051-0700

**Subject:** This rulemaking adopts a standard authorization form to be used by insurers and other persons that ask applicants for insurance to take a genetic test in connection with the applications. These insurers and other persons are required by statute to reveal the use of the test to applicants and to obtain their specific authorization. The authorization form requirement primarily applies to life insurance

# ADMINISTRATIVE RULES

because genetic testing is prohibited in connection with health insurance coverage.

**Rules Coordinator:** Sue Munson—(503) 947-7272

**836-051-0700**

## Authorization, Genetic Testing

(1) A person who asks an applicant for insurance to take a genetic test in connection with an application for insurance shall obtain the specific authorization of the applicant by use of the form in **Exhibit 1** to this rule, or a form that is substantively similar.

(2) This rule implements ORS 746.135.

Stat. Auth.: ORS 746.135

Stats. Implemented: ORS 746.135

Hist.: ID 5-2004, f. & cert. ef. 6-14-04

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## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

**Adm. Order No.:** OSHA 2-2004

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04

**Notice Publication Date:** 4-1-04

**Rules Amended:** 437-002-0340

**Subject:** On February 17, 2004, February OSHA published in the Federal Register (69:7351-7366) final new rules for Commercial Diving, 1910.401(a)(3) and 1910.402.

Oregon OSHA adopts these rules in Division 2/T, Commercial Diving Operations (CDO). These changes allow employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards. The final rule applies only when these employees engage in recreational diving instruction and diving-guide duties; use an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater-breathing apparatus supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture. These alternate requirements essentially are the same as the terms of a variance granted by Federal OSHA to Dixie Divers, Inc. in 1999.

Please visit OR-OSHA's web site: [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

**437-002-0340**

## Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.401 Scope and application, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 11/26/82, FR vol. 47, p. 53365; amended 2/17/04, FR vol. 69, p. 7351.

(2) 29 CFR 1910.402 Definitions, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 11/26/82, FR vol. 47, p. 53365; amended 2/17/04, FR vol. 69, p. 7351.

(3) 29 CFR 1910.410 Qualification of dive team, published 7/22/77, Federal Register, vol. 42, p. 37668.

(4) 29 CFR 1910.420 Safe practices manual, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/30/84, FR vol. 49, p. 18295.

(5) 29 CFR 1910.421 Pre-dive procedures, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/6/82, FR vol. 47, p. 14706; 6/7/89, FR vol. 54, p. 24334.

(6) 29 CFR 1910.422 Procedures during dive, published 7/22/77, Federal Register, vol. 42, p. 37668.

(7) 29 CFR 1910.423 Post-dive procedures, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 4/30/84, FR vol. 49, p. 18295.

(8) 29 CFR 1910.424 SCUBA diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(9) 29 CFR 1910.425 Surface-supplied air diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(10) 29 CFR 1910.426 Mixed-gas diving, published 7/22/77, Federal Register, vol. 42, p. 37668.

(11) 29 CFR 1910.427 Liveboating, published 7/22/77, Federal Register, vol. 42, p. 37668.

(12) 29 CFR 1910.430 Equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/30/84, FR vol. 49, p. 18295; 9/18/88, FR, vol. 51, p. 33033.

(13) 29 CFR 1910.440 Recordkeeping requirements, published 7/22/77, Federal Register, vol. 42, p. 37668; amended 5/23/80, FR vol. 45, p. 35281; 4/6/82, FR, vol. 47, p. 14706; 9/29/86, FR, vol. 51, p. 34562; 3/7/96, FR vol. 61, no. 46, p. 9242.

(14) 29 CFR 1910.441 Effective date, published 7/22/77, Federal Register, vol. 42, p. 37668.

(15) 29 CFR 1910, Appendix A to Subdivision T, Examples of conditions which may restrict or limit exposures to hyperbaric conditions, published 7/22/77, Federal Register, vol. 42, p. 37668.

(16) 29 CFR 1910, Appendix B to Subdivision T, Guidelines for scientific diving, published 1/9/85, Federal Register, vol. 50, p. 1050.

(17) 29 CFR 1910, Appendix C to Subdivision T, Alternative Conditions Under 1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory), published 2/17/04, Federal Register, vol. 69, p. 7351.

**NOTE:** These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-1993, f. 5-3-93, cert. ef. 6-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-2004, f& cert. ef. 5-20-04

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**Adm. Order No.:** OSHA 3-2004

**Filed with Sec. of State:** 6-7-2004

**Certified to be Effective:** 6-7-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 437-007-0220, 437-007-0600, 437-007-0605, 437-007-0615, 437-007-0650, 437-007-0655, 437-007-0660, 437-007-0690, 437-007-0725

**Subject:** Oregon OSHA adopts amendments to existing standards in Division 7, Forest Activities. Many of the changes are in response to a federal mandate to clarify the requirements for: wire rope inspections and controlling hazardous energy. Additional clarifications are based on industry requests and input from Oregon OSHA's Forest Activities Standard Advisory Committee. After reviewing public hearing comments, Oregon OSHA decided not to adopt the proposed changes to the Medical Services and First Aid (OAR 437-007-0220) rule. However, 437-007-0220(3)(b) is amended to add 'or as required by a nationally recognized first aid training provider.' A program directive has been developed for clarification on the enforcement of these requirements.

Please visit OR-OSHA's web site: [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

**437-007-0220**

## Medical Services and First Aid

(1) The employer must develop and implement an emergency medical plan to ensure emergency medical service to employees with major illnesses and injuries.

(2) All employees must be knowledgeable concerning the emergency care and emergency medical treatment plan.

(3) All personnel employed in forest activities must be trained in first aid and CPR as follows:

(a) In a language they understand.

(b) At least every 2 years or as required by a nationally recognized first aid training provider.

(c) All supervisors and all cutters must be first aid and CPR trained prior to their initial assignment.

(d) All new employees, other than supervisors and cutters, that are not first aid and CPR trained prior to their initial assignment must receive a first aid and CPR briefing.

(e) All new employees must receive first aid and CPR training within 6 months of being hired.

(f) For the initial start-up of a side or operation where new employees are assigned, at least one out of every five crew members must be first aid and CPR trained before work starts.

**NOTE 1:** Log truck drivers and watchers are not required to receive first

# ADMINISTRATIVE RULES

aid and CPR training if they are not involved with falling, yarding or processing logs.

**NOTE 2:** See the Oregon OSHA Division 2, Subdivision 2/Z, Toxic and Hazardous Substances, §1910.1030, Bloodborne Pathogens, if an employee comes into contact with blood or other potentially infectious material as the result of providing first aid.

(4) Each worksite must have at least one serviceable and operable two-way radio, phone or radio/phone combination available to reach ambulance service. Citizens' band radios are permitted only as a secondary means of communication.

**NOTE:** This rule does not apply to road graders, log and dump trucks, crew buses and similar mobile equipment that service locations where a communication unit is already available (e.g., yarders, loaders).

(5) Each operating site or crew in a communication "dead" area must have a mobile communication unit or advance plans to relay emergency calls through another site operating in the vicinity.

(6) At worksites of more than one day duration, the employer must have available near the worksite communication device(s):

- (a) Written land directions to the worksite.
- (b) The worksite location by Township, Range and Section.

(7) When air evacuation is available to any worksite of more than one day duration, the employer must have available, near the worksite communication device(s), the:

- (a) Name and phone number of the air evacuation service.
- (b) Worksite location by latitude and longitude or township, range and section as required by the air service.

(8) The employer must assure that transportation is always available to:

- (a) A point where an ambulance can be met, or
- (b) The nearest suitable medical facility.
- (9) Vehicles used for the transportation of personnel must carry a first aid kit:

- (a) Suitable for the number of passengers customarily transported.
- (b) Suitable for the types of injuries that could occur.
- (c) Located where they are readily available to the driver or crew.
- (10) First aid kits must be provided at each worksite.
- (11) Worksite first aid kits must contain the following minimum supplies at all times:

(a) Eight gauze pads individually wrapped (at least 4 inches by 4 inches in size);

(b) Two large gauze pads that are or can be folded to an approximate size of 8 inches by 10 inches or the equivalent;

(c) One box adhesive bandages;

(d) One package gauze roller bandage at least 2 inches wide or the equivalent;

(e) Two triangular bandages;

(f) Wound-cleaning agent, such as sealed, moistened towelettes, or soap and water;

(g) Scissors;

(h) One stretcher or equivalent weatherproof litter at any three or more person worksite, and at all logging sites;

(i) Two blankets, one of which must provide the strength and insulation equivalent to a wool blanket;

(j) Latex gloves;

(k) Mouth barrier;

(l) Tweezers;

(m) Adhesive tape;

(n) Two elastic wraps; and

(o) Splint material.

**NOTE:** The quantities of each item are minimum amounts. Bulk pack or unit pack supplies are acceptable. First aid supplies from other states may be acceptable if such supplies are the reasonable equivalent of those required by this rule.

(12) The employer also may have the number and content of first aid kits reviewed and approved annually by a health care provider.

(13) First aid supplies must be regularly inspected and replenished as needed.

(14) First aid supplies must be stored in containers adequate to protect the contents from damage, deterioration or contamination.

(a) The containers must be clearly marked "First Aid."

(b) The container must not be locked, but may be sealed.

(c) Soap and water, stretcher, or basket and blankets may be stored separately, but must be near or with the first aid supplies.

(15) All employees must be informed of the location of first aid supplies.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0600

### Inspection and General Requirements for Rigging

(1) A competent person must thoroughly inspect all:

(a) Blocks, butt rigging, shackles and other rigging for damaged, cracked or worn parts, loose nuts and bolts, and the need for lubrication before they are used.

(b) Wire rope (running lines), skylines, chokers, straps and guylines before they are used.

(2) Repairs or replacements must be made before the blocks, butt rigging, shackles, other rigging, guylines, or straps are used.

(3) Rigging and loads must not foul or saw against lines, straps, blocks, or other equipment when in use.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0605

### Out-of-Service Requirements for Wire Rope

(1) Wire rope must be repaired (spliced), re-socketed, or taken out of service when there is:

(a) Evidence of chafing, sawing, crushing, kinking, crystallization, bird-caging, corrosion, heat damage, or other damage that has weakened the rope structure, or

(b) One or more broken wire(s) at the base of a poured nubbin or end fitting, or

(c) Corroded, damaged, or improperly applied end connections, or

(d) 12 1/2 percent of the wires are broken within a distance of one lay.

**EXCEPTION:** Out-of-service requirements do not apply to chokers, grapple opening lines, tag lines, cat and skidder winch lines, and droplines that are not used to move the carriage. However, in accordance with 437-007-0600, a competent person must inspect these cables daily and remove from service any that are unsafe.

Figure 7-1 — Wire Rope Out-of-Service

**EXAMPLE 1:** A 6 x 19 Independent Wire Rope Core (IWRC) wire rope must be removed from service when 14 broken wires are found within the distance of one wire rope lay. [6 strands with 19 wires = 114 x 0.125 (12 1/2%) = 14.25]

**EXAMPLE 2:** A 6 x 25 IWRC wire rope must be removed from service when 19 broken wires are found within the distance of one wire rope lay. [6 strands with 25 wires = 150 x 0.125 (12 1/2%) = 18.75]

(2) Oversized trailer lift straps must be removed from service when the strap no longer has a breaking strength equal to five times the load to be lifted.

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

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0615

### Pressed Eyes and End Fittings

(1) Pressed eyes must not be used for skyline eyes that will be crossed with loaded carriages.

(2) Quick nubbins must not be used as guyline and skyline end fittings.

(3) For rigging made up after December 1, 2003, standard sized ferrules must be used when nubbins are poured on wire rope that exceeds the rated breaking strength of 1 1/8-inch diameter extra improved plow steel.

(4) Poured nubbin ferrules must be stamped with the date they were poured.

(5) The recommendations of the manufacturer must be followed in attaching sockets and similar end fastenings.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0650

### Guylines — General Requirements.

(1) Splicing of guylines is prohibited except to make an eye.

(2) Guylines used to stabilize logging machines must be at least of the size, strength and number recommended by the machine manufacturer.

(3) Load-bearing guyline angles must not be greater than 50 degrees measured horizontally or that recommended by the machine manufacturer. If suitable anchors are not available or the terrain is so steep that the guyline angle exceeds 50 degrees or the machine manufacturer's recommendation, additional precautions must be taken, such as rearranging guylines to oppose the load, adding an additional guyline to oppose the load, or narrowing yarding roads.

(4) Tail and intermediate support tree guylines must be:

(a) Arranged and adjusted so they share the load when lines are tensioned.

(b) Kept securely tightened during the yarding process.

# ADMINISTRATIVE RULES

(c) Made of the same strength material as the line hung in the tree or larger size guylines must be used to provide the same relative strength.

**Example:** In 437-007-0650(4)(c), a 1-inch swaged skyline requires guylines equivalent in strength to 5/8-inch swaged guylines.

(5) When using tail or intermediate support trees and the line hung in the tree is:

(a) 5/8-inch or less, guylines must be at least 3/8-inch.

(b) Greater than 5/8-inch and less than 1-inch, guylines must be at least 1/2-inch.

(c) 1-inch and larger, guylines must be at least 5/8-inch.

(6) A skyline must not be considered a guyline.

(7) Machines and equipment used for yarding that are specifically designed to be self-stabilizing during operation may be used without guyline(s).

**NOTE:** Hydraulic excavator-based log loading machines may yard logs without using guylines.

(8) Guylines made of synthetic materials, including the end connectors, must have the equivalent strength capacities of wire rope.

(9) The manufacturer's recommendations for out-of-service requirements of synthetic materials must be followed.

(10) When guylines are required for towers they must be positioned according to Appendix 7-I, Table 7-9 or the manufacturer's specifications.

(11) Tail or intermediate support tree guylines must not be pretensioned beyond the point of tree stability before the load is applied. (See Figure 7-18.)

(12) Trees and unintentional siwashes must not interfere with the proper alignment, placement, or tightening of guylines.

(13) Guylines must be hung in a manner to prevent a bight or fouling when they are tightened.

[ED. NOTE: Figures and Appendices are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0655

### Guylines — Tail Tree Guying.

(1) Except as provided for in rule (2) and (5) of this section, a minimum of two guylines must be used on tail trees and located within guying zones to oppose the forces as shown in Figure 7-16 (azimuths 130-150 and 210-230 degrees).

**Figure 7-16** — Guylines — Tail Trees

(2) When the angle of the lines between the tail tree and a tail hold produces an offset of more than 8 degrees between the lines as they enter and leave the tail tree, then at least three guylines are required.

(3) If a suitable anchor is not available within a specified guying zone, two guylines may be used in lieu of one guyline for that zone, provided a guyline is placed on both sides of, and as near as possible, to the affected guying zone.

(4) When additional guylines are needed in a tree, they must be placed to oppose the yarding forces.

(5) Guylines are not required when at the point of rigging attachment the tail tree does not move more than its diameter in the direction of load as shown in Figure 7-18 and the:

(a) Tail tree is not within reach of workers.

(b) Resulting line movement would not pose a hazard to workers if the tail tree failed.

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

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0660

### Intermediate Support Trees

(1) Intermediate support trees must be rigged so:

(a) Horizontal carriage clearance at the base of the intermediate support tree(s) is sufficient for the turn of logs to pass the support tree(s).

(b) The jackline is a single piece of line that provides strength equal to a line 1/8-inch larger than the tong or skidding line. (Figures 7-17, 7-19 and 7-20.) Extensions may be attached to the anchor end of the jack-line.

**Figure 7-17** — Intermediate Support Tree — Vertical

(2) Vertical support trees must be firmly rooted.

(3) The base of all leaning tree supports must be prevented from moving by:

(a) Retaining 20 percent of the stump diameter in holding wood; or

(b) Other suitable rigging arrangements.

(4) Single tree intermediate supports must be guyed as follows:

(a) For skylines 1-inch and smaller use the rigging configuration in Figure 7-17:

(A) No guylines are required when at the point of rigging attachment the tree does not move more than its diameter in the direction of load as shown in Figure 7-18.

(B) If the tree moves more than one diameter at the point of rigging attachment, then a guyline of the size called for in 437-007-0650(4) must be rigged to oppose the yarding forces.

**Figure 7-18** — Guyline — Tail Tree Stability

(b) For all skylines larger than 1-inch and for skylines rigged as in Figure 7-17.

(A) Two guylines are needed of the sizes called for in 437-007-0650(4)(c).

(B) The guylines must be rigged according to 437-007-0655(4) if the tree is not stable according to Figure 7-18.

(c) For all leaning tree intermediate supports using the rigging configuration of Figure 7-19, a minimum of three guylines must be used.

(A) Two guylines of the sizes called for in 437-007-0650(4)(c) must be rigged according to Appendix 7-I, Figure 7-42.

(B) A snap guyline of at least 3/8-inch diameter must be placed opposite the two load-bearing guylines.

**Figure 7-19** — Intermediate Support Tree — Leaning

(5) Double tree supports must be rigged (see Figure 7-20) so the:

(a) Angle of the block to the center of the support line:

(A) Is 10 degrees in any direction when skylines 1 1/8-inch and smaller are used, or

(B) Has deflection in the direction of the jack which does not exceed 10 degrees when skylines larger than 1 1/8-inch are used.

(b) Loaded support trees do not displace more than 2 feet at the point of rigging attachment.

(c) Minimum and maximum heights of the jack relative to the height of the block is as shown below for double tree intermediate support systems.

**Figure 7-20** — Intermediate Support — Double Tree

(6) Double tree supports must be guyed as follows:

(a) For skyline sizes equivalent to 1 1/8-inch improved plow steel (IPS) and less, no guys are required;

(b) For skyline sizes equivalent to those larger than 1 1/8-inch IPS as shown in Appendix 7-I, Figure 7-39.

[ED. NOTE: Figures and Appendices referenced are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0690

### Metal Towers

(1) A competent person must direct the raising and lowering of each metal tower.

(2) All employees not engaged in the actual raising or lowering of metal towers must stay in the clear during these operations.

(3) Metal towers must be level to provide proper line spooling and avoid excessive stress on component parts.

(4) Each metal tower must have an identification plate permanently attached to its base or on the yarder in a position that can be easily read by a person standing on the ground or on the base platform.

(5) All plates must contain the following information:

(a) Name and address of manufacturer and model number; and

(b) The maximum and minimum inclination at which the metal tower is designed to operate.

(6) In addition, all identification plates on metal towers manufactured after July 1, 1980, must contain the following information:

(a) The maximum breaking strength and size of mainline for which the metal tower is designed;

(b) The maximum breaking strength and size of haulback line for which the metal tower is designed;

(c) The number, minimum breaking strength and size of guylines or any other lines required; and

(d) If the metal tower is designed for a skyline, slackline, or modified slackline system, the maximum breaking strength and size of skyline, mainline and haulback line that can be used.

(7) All metal towers must be operated within the manufacturer's capacity:

(a) As specified on the identification plate; or

(b) As modified by the manufacturer; or

(c) As designed and specified by a registered professional engineer.

(8) If wire rope dimensionally larger in size or of a greater breaking strength than that specified by the yarder manufacturer is used for skyline, mainline, skidding line and/or haulback line, one of the following methods for limiting the load on the spar must be used:

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(a) A tamper-proof tension limiting device that automatically slacks the line loads (pull) on the metal tower to below its maximum identification plate rating.

(b) A line fuse system installed in the skyline or mainline; or

(c) Established operating procedures that limit line loads (pull) on the metal tower to below the maximum identification plate rating for the metal tower.

(9) When a line fuse system is used to limit line loads (pull) on the metal tower:

(a) The line fuse must have a designed breaking strength equal to or less than the maximum line rating of the metal tower as listed on its identification plate.

(b) The line fuse must be certified and stamped as to the breaking strength.

(c) The skyline or mainline must be hung in a single eye of the fuse link.

(d) Notice must be given to crew personnel that line fuses are in use.

(10) When operating procedures are used to limit line loads (pull) on the metal tower:

(a) They must be observable or verifiable.

(b) Any locking or dogging device on the brake or elsewhere must be removed or deactivated.

(c) Personnel must be knowledgeable about the operating procedures that are in use to limit line loads.

(11) Metal towers and their appurtenances must be inspected by a competent person each time the tower is lowered and at any time its safe condition is in doubt.

(12) When damage from overstress or any other source is noted or suspected, the part in question must be inspected by a suitable method and found to be safe or the part repaired by a qualified person or replaced before the tower is again used.

(13) Structural modifications or additions which affect the capacity or safe operation of metal towers must be made only under the direction of the manufacturer or a registered professional engineer. If such modifications or additions are made, the identification plate required in OAR 437-007-0690(4), (5) and (6) must reflect such changes.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

## 437-007-0725

### Securing Machines.

(1) Before the operator leaves the operator's work station, procedures must be implemented to prevent the release of stored energy, accidental start up, or movement of the machine.

(2) The employer must instruct all authorized employees how to use shut down procedures.

(3) Authorized employees must demonstrate a working knowledge of the specific shut down procedures they are required to use.

(4) Locks, tags and other devices used to control hazardous energy must be durable.

(5) The words "DO NOT START," "DO NOT OPERATE," or other appropriate warning must be displayed on tags used to control energy.

(6) Tags used to control hazardous energy must be placed so they are obvious to anyone attempting to operate the machinery.

(7) Blades must be lowered to the ground or other stable surfaces to secure the blade and machine from movement while maintenance or repair activities are performed.

(8) Grapples, delimeter masts, feller buncher attachments, forks and other similar devices must be stable and not pose a hazard to personnel while maintenance or repair activities are performed.

(9) If a hydraulic or pneumatic storage device can move machine elements, such as blades, buckets, saws, shears, etc., after the machine is shut down for maintenance or repair, the pressure or stored energy that can activate the movable elements must be discharged.

(10) Before locks, tags and other devices that are used to control hazardous energy are removed and machinery or equipment is started, the work area must be inspected to ensure that:

(a) All tools have been removed.

(b) Personnel are in the clear.

(c) Guards must be replaced after necessary adjustments are made.

(12) Follow the requirements of Division 2/J, 1910.147 when it is necessary to control hazardous energy for servicing and maintenance of machines.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04

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

**Adm. Order No.:** WCD 6-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-29-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 436-015-0008, 436-015-0030, 436-015-0040, 436-015-0050, 436-015-0060, 436-015-0070, 436-015-0090

**Rules Repealed:** 436-015-0130

**Subject:** These rules have been amended to replace temporary rules issued to implement changes in the law due to legislation passed by the 2003 Oregon Legislature. Senate Bill 233 changed the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments.

### In addition, these rules:

- State the time frame and method to appeal a decision of a managed care organization;

- Require MCOs to provide the director copies of MCO/insurer contract extensions no later than the contract expiration or termination dates, or workers will no longer be subject to the contracts after expiration or termination without renewal;

- Require MCOs to report new board members or shareholders to the director within 14 days, and that these parties submit affidavits certifying they have no interest in an insurer or other non-qualifying employer;

- Require that fees paid for medical services provided by authorized nurse practitioners who qualify under ORS 656.245(6) not be less than fees paid to MCO providers for similar medical services; and

- Repeal the rule prescribing how the director serves orders of sanctions, civil penalties, and orders suspending or revoking the certification of a managed care organization.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us). Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-015-0008

### Administrative Review

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative review before the director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to these rules must first use the dispute resolution process of the MCO. If the party does not appeal the MCO's decision, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision.

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division within 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision. The request must specify the grounds upon which the action is contested.

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(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Contested cases before the director: Any party that disagrees with an order pursuant to this rule may request a contested case hearing before the director as follows:

(a) The party shall file a written request for a contested case hearing with the administrator of the Workers' Compensation Division within 30 days of the mailing date of the order. The request shall specify the grounds upon which the order is contested.

(b) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at the contested case hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the director determines the record has been improperly, incompletely, or otherwise insufficiently developed.

(4) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(5) Hearings on the suspension or revocation of an MCO's certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) The order must be served upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for contested case hearing within 60 days of the date of service of the order. The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

Stat. Auth.: ORS 183.310 - 183.550 & 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; Administrative correction 6-13-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

## 436-015-0030

### Applying for Certification

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director, within 120 days of the filing of the Notice of Intent to Form, the following:

(a) Four copies of an application which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

(b) The MCO certification of incorporation and a copy of the MCO by-laws;

(c) A non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund; and

(d) The approved MCO plan.

(2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.

(3) The MCO plan shall provide a description of the times, places, and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:

(a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(b) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner within 24 hours of the MCO's knowledge of the need or a request for treatment;

(c) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physician or answer other questions;

(f) Seek treatment from any category of medical service provider as defined in subsection (6)(a) of this rule and have a choice of at least 3 medical service providers within each category. The worker shall also have at least 3 choices, as needed, of ancillary service providers including, but not limited to, physical therapists and psychologists. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles (one way) in urban areas and 60 miles (one way) in rural areas will be considered a reasonable distance;

(h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;

(i) Receive services that meet quality, continuity, and other treatment standards which will provide all medical and health care services in a manner that is timely, effective, and convenient for the worker; and

(j) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places, and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician or authorized nurse practitioner who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(5) The MCO shall provide:

# ADMINISTRATIVE RULES

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician, and podiatrist, as listed in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A process that allows workers to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which workers can choose within a GSA, the MCO must allow workers to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards. Treatment must also be consistent with ORS 656.245(2)(b)(C), which limits the authorization of treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits for a period not to exceed 60 days from the date of the first visit on the initial claim. Such authorized nurse practitioners are not themselves bound by the MCO's treatment and utilization standards; however, workers are subject to those standards.

(c) A program which specifies the criteria for selection and de-selection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical recordkeeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution, and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer, and the MCO to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(10) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(11) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and 436-010.

(12) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(a) Coordinating and channeling all outgoing correspondence and medical bills;

(b) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(c) Serving as a member on the quality assurance committee.

(13) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(14) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(a) Submit all bills in accordance with the MCO contract with the insurer.

(b) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(15) The MCO plan shall provide a procedure within the MCO plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(16) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(17) Within 45 days of receipt of all information required for certification, the director shall notify the applicant of the effective date of the certification and the initial geographical service area of the MCO. If the certification is denied, the applicant will be provided with the reason therefore.

(18) The application for certification for an MCO shall not be approved if the MCO fails to meet the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

# ADMINISTRATIVE RULES

## 436-015-0040

### Reporting Requirements for an MCO

(1) In order to ensure the MCO complies with the requirements of these rules, each MCO shall provide the director with a copy of the entire text of any MCO/insurer contract agreement, signed by the insurer and the MCO, within 30 days of execution of such contracts. Amendments, addendums, and cancellations, together with the entire text of the underlying contracts, shall be submitted to the director within 30 days of execution.

(2) Notwithstanding section (1), when an MCO/insurer contract agreement contains a specific expiration or termination date, the MCO must provide the director with a copy of a contract extension, signed by the insurer and MCO, no later than the contract's date of expiration or termination, or workers will no longer be subject to the contract after it expires or terminates without renewal pursuant to ORS 656.245(4)(a).

(3) Any amendment to the approved MCO plan must be submitted to the director for approval. The MCO shall not take any action based on the amendment until the amended plan is approved.

(4) Within 45 days of the end of each calendar quarter, each MCO shall provide the following information, current on the last day of the quarter, in a form and format as prescribed by the director: specify quarter being reported, MCO certification number, membership listings by category of medical service provider (in coded form), including provider names, specialty (in coded form), Tax ID number, Oregon license number, business address and phone number. (All fields are required unless specifically excepted by bulletin.) When a medical provider has multiple offices, only one office location in each geographical service area needs to be reported. In addition, the updated membership listing shall include the names and addresses of all health care providers participating in the MCO.

(5) By April 30 of each year, each MCO shall provide the director with the following information for the previous calendar year:

(a) A summary of any sanctions or punitive actions taken by the MCO against its members;

(b) A summary of actions taken by the MCO's peer review committee; and

(c) An affidavit that the approved MCO plan is consistent with the MCO's business practices, and that any amendments to the plan have been approved by the director.

(6) An MCO must report any new board members or shareholders to the director within 14 days of such changes. These parties must submit affidavits certifying they have no interest in an insurer or other non-qualifying employer as described under OAR 436-015-0009.

(7) Nothing in this rule limits the director's ability to require information from the MCO as necessary to monitor the MCO's compliance with the requirements of these rules.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 13-1992, f. & cert. ef. 9-21-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

## 436-015-0050

### Notice of Place of Business in State; Records MCO Must Keep in Oregon

(1) Every MCO shall give the division notice of one in-state location and mailing address where the MCO keeps records of the following:

(a) Updated membership listings of all MCO members;

(b) Records of any sanctions or punitive actions taken by the MCO against its members;

(c) Records of actions taken by the MCO's peer review committee;

(d) Records of utilization reviews performed in accordance with the requirements of utilization and treatment standards pursuant to ORS 656.260 showing cases reviewed, the issues involved, and the action taken;

(e) A profile analysis of each provider in the MCO listed by the International Classifications of Disease-9-Clinical Manifestations (ICD-9-CM) diagnosis;

(f) A record of those enrolled injured workers receiving treatment by non-panel primary care physicians or authorized nurse practitioners authorized to treat pursuant to OAR 436-015-0070; and

(g) All other records as necessary to ensure compliance with the certification requirements in accordance with OAR 436-015-0030.

(2) Records retained as required by section (1) of this rule must be maintained at the authorized in-state location for 3 full calendar years.

(3) If the MCO/insurer contract is canceled for any reason, all MCO records, as identified in section (1), relating to treatment provided to workers within the MCO must be forwarded to the insurer upon request. The

records included in subsections (1)(b), (c), (d), and (e) of this rule are confidential in accordance with ORS 656.260(6) through (10).

(4) Individual MCO providers must maintain claimant medical records as provided by OAR 436-010-0240.

(5) Nothing in this section is intended to otherwise limit the number of locations the MCO may maintain to carry out the provisions of these rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

## 436-015-0060

### Commencement/Termination of Members

(1) Prospective new members of an MCO shall submit an application to the MCO. The directors, executive director, or administrator may approve the application for membership pursuant to the membership requirements of the MCO. The MCO shall verify that each new member meets all licensing, registration, and certification requirements necessary to practice in Oregon. If the MCO requires a membership fee, the fee shall be the same for every category of medical service provider. An MCO may not require membership fees or other MCO administrative fees to be paid by primary care physicians or authorized nurse practitioners who provide services under OAR 436-015-0070.

(2) Individual members may elect to terminate their participation in the MCO or be subject to cancellation by the MCO pursuant to the membership requirements of the MCO plan. Upon termination of a member, the MCO shall:

(a) Make alternate arrangements to provide continuing medical services for any affected injured workers under the plan.

(b) Replace any terminated member when necessary to maintain an adequate number of each category of medical service provider.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

## 436-015-0070

### Primary Care Physicians and Authorized Nurse Practitioners Who Are Not MCO Members

(1) The MCO shall authorize a nurse practitioner or physician who is not a member of the MCO to provide medical services to an enrolled worker if:

(a) The nurse practitioner qualifies as an authorized nurse practitioner under ORS 656.245 and OAR 436-010-0005 or the physician qualifies as a primary care physician under ORS 656.260(4)(g);

(b) The nurse practitioner or physician agrees to comply with all terms and conditions regarding services governed by the MCO. For purposes of this section, the phrase "all terms and conditions regarding services governed by the MCO" means MCO treatment standards, protocols, utilization review, peer review, dispute resolution, billing and reporting procedures, and fees for services in accordance with OAR 436-015-0090. However, the MCO's terms and conditions may not place limits on the length of services unless such limits are stated in ORS chapter 656; and

(c) The nurse practitioner or physician agrees to refer the worker to the MCO for specialized care, including physical therapy, to be furnished by another provider that the worker may require.

(2) The MCO cannot deny authorization of a primary care physician or authorized nurse practitioner based on past practices.

(3) The primary care physician or authorized nurse practitioner who is not a member of the MCO will be deemed to have maintained the worker's medical records and established a documented history of treatment, if the physician's or nurse practitioner's medical records show treatment has been provided to the worker prior to the date of injury. Additionally, if an injured worker has selected a primary care physician or authorized nurse practitioner through a private health plan, prior to the date of injury, the requirements of subsections (1)(b) and (c) shall be deemed to be met.

(4) Notwithstanding section (1), for those workers receiving their medical services from a facility which maintains a single medical record on the worker, but provides treatment by multiple primary care physicians or authorized nurse practitioners who are not MCO members, the requirements of sections (1) and (3) will be deemed to be met. In this situation, the worker shall select one physician or authorized nurse practitioner to treat

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the compensable injury as the primary care physician or authorized nurse practitioner.

(5) Any questions or disputes relating to the worker's selection of a primary care physician or authorized nurse practitioner who is not an MCO member shall be resolved pursuant to OAR 436-015-0110.

(6) Any disputes relating to a worker's non-MCO primary care physician's, non-MCO authorized nurse practitioner's, or other non-MCO physician's compliance with MCO standards and protocols shall be resolved pursuant to OAR 436-015-0110.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

## 436-015-0090

### Charges and Fees

(1) Billings for medical services under an MCO shall be submitted in the form and format as prescribed in OAR 436-009. The payment of medical services may be less than, but shall not exceed, the maximum amounts allowed pursuant to OAR 436-009.

(2) Notwithstanding section (1) of this rule, fees paid for medical services provided by primary care physicians who qualify under ORS 656.260(4)(g) or authorized nurse practitioners who qualify under ORS 656.245(6) shall not be less than fees paid to MCO providers for similar medical services. Fees paid to medical providers who are not under contract with the MCO, shall be subject to the provisions of OAR 436-009.

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.245 & 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04

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## Department of Environmental Quality Chapter 340

**Adm. Order No.:** DEQ 3-2004

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 5-28-04

**Notice Publication Date:** 6-1-03

**Rules Amended:** 340-041-0002, 340-041-0033, 340-041-0061

**Subject:** The Environmental Quality Commission revised the ambient water quality criteria for 134 toxic pollutants, OAR chapter 340, division 041. The water quality criteria describe the minimum quality of water needed to protect identified beneficial uses in waters of the state. The Department of Environmental Quality and the US Environmental Protection Agency use the criteria as benchmarks to assess whether the quality of Oregon's waters is adequate, and to develop wastewater discharge permits, Total Maximum Daily Loads, and other programs to achieve water quality standards and prevent pollution. This rulemaking also added rules regarding the application of water quality standards to reservoirs where waters become stratified for temperature, dissolved oxygen, or pH and amended rules to allow DEQ to establish compliance schedules for wastewater discharge permit holders to comply with new standards.

**Rules Coordinator:** Roberta Young—(503) 229-6408

## 340-041-0002

### Definitions

Definitions in this rule apply to all basins unless context requires otherwise.

(1) "401 Water Quality Certification" means a determination made by DEQ that a dredge and fill activity, private hydropower facility, or other federally licensed or permitted activity that may result in a discharge to waters of the state has adequate terms and conditions to prevent an exceedance of water quality criteria. The federal permit in question may not be issued without this state determination in accordance with the Federal Clean Water Act, section 401 (33 USC 1341).

(2) "Ambient Stream Temperature" means the stream temperature measured at a specific time and place. The selected location for measuring stream temperature must be representative of the stream in the vicinity of the point being measured.

(3) "Anthropogenic," when used to describe "sources" or "warming," means that which results from human activity;

(4) "Applicable Criteria" means the biologically based temperature criteria in OAR 340-041-0028(4), the superseding cold water protection criteria in OAR 340-041-0028(11), or the superseding natural condition criteria as described in OAR 340-041-0028(8). The applicable criteria may also be site-specific criteria approved by U.S. EPA. A subbasin may have a combination of applicable temperature criteria derived from some or all of these numeric and narrative criteria.

(5) "Appropriate Reference Site or Region" means a site on the same water body or within the same basin or ecoregion that has similar habitat conditions and represents the water quality and biological community attainable within the areas of concern.

(6) "Aquatic Species" means plants or animals that live at least part of their life cycle in waters of the state.

(7) "Basin" means a third-field hydrologic unit as identified by the U.S. Geological Survey.

(8) "BOD" means 5-day, 20°C Biochemical Oxygen Demand.

(9) "Cold-Water Aquatic Life" means aquatic organisms that are physiologically restricted to cold water, including but not limited to native salmon, steelhead, mountain whitefish, char (including bull trout), and trout.

(10) "Cold Water Refugia" means those portions of a water body where or times during the diel temperature cycle when the water temperature is at least 2 degrees Celsius colder than the daily maximum temperature of the adjacent well-mixed flow of the water body.

(11) "Commission" means the Oregon Environmental Quality Commission.

(12) "Cool-Water Aquatic Life" means aquatic organisms that are physiologically restricted to cool waters, including but not limited to native sturgeon, Pacific lamprey, suckers, chub, sculpins, and certain species of cyprinids (minnows).

(13) "Core Cold-Water Habitat Use" means waters that are expected to maintain temperatures within the range generally considered optimal for salmon and steelhead rearing, or that are suitable for bull trout migration, foraging, and sub-adult rearing that occurs during the summer. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(14) "Critical Habitat" means those areas that support rare, threatened, or endangered species or serve as sensitive spawning and rearing areas for aquatic life as designated by the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration-Fisheries pursuant to the Endangered Species Act (16 USC 1531).

(15) "Daily Mean" for dissolved oxygen means the numeric average of an adequate number of data to describe the variation in dissolved oxygen concentration throughout a day, including daily maximums and minimums. For the purpose of calculating the mean, concentrations in excess of 100 percent of saturation are valued at the saturation concentration.

(16) "Department" or "DEQ" means the Oregon State Department of Environmental Quality.

(17) "Designated Beneficial Use" means the purpose or benefit to be derived from a water body as designated by the Water Resources Department or the Water Resources Commission.

(18) "DO" means dissolved oxygen.

(19) "Ecological Integrity" means the summation of chemical, physical, and biological integrity capable of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region.

(20) "Epilimnion" means the seasonally stratified layer of a lake or reservoir above the metalimnion; the surface layer.

(21) "Erosion Control Plan" means a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.

(22) "High Quality Waters" means those waters that meet or exceed levels that are necessary to support the propagation of fish, shellfish, and wildlife; recreation in and on the water; and other designated beneficial uses.

(23) "Hypolimnion" means the seasonally stratified layer of a lake or reservoir below the metalimnion; the bottom layer.

(24) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

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(25) "In Lieu Fee" means a fee collected by a jurisdiction in lieu of requiring construction of onsite stormwater quality control facilities.

(26) "Intergavel Dissolved Oxygen" (IGDO) means the concentration of oxygen measured in the water within the stream bed gravels. Measurements should be taken within a limited time period before emergence of fry.

(27) "Jurisdiction" means any city or county agency in the Tualatin River and Oswego Lake subbasin that regulates land development activities within its boundaries by approving plats or site plans or issuing permits for land development.

(28) "Land Development" means any human-induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure; land division; drilling; and site alteration such as land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation, or clearing.

(29) "Load Allocation (LA)" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading that may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Whenever possible, natural and nonpoint source loads should be distinguished.

(30) "Loading Capacity (LC)" means the greatest amount of loading that a water body can receive without violating water quality standards.

(31) "Low Flow Period" means the flows in a stream resulting primarily from groundwater discharge or base flows augmented from lakes and storage projects during the driest period of the year. The dry weather period varies across the state according to climate and topography. Wherever the low flow period is indicated in Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.

(32) "Managed Lakes" refers to lakes in which hydrology is managed by controlling the rate or timing of inflow or outflow.

(33) "mg/l" or "mg/L" means milligrams per liter.

(34) "Metalimnion" means the seasonal, thermally stratified layer of a lake or reservoir that is characterized by a rapid change in temperature with depth and that effectively isolates the waters of the epilimnion from those of the hypolimnion during the period of stratification; the middle layer.

(35) "Migration Corridors" mean those waters that are predominantly used for salmon and steelhead migration during the summer and have little or no anadromous salmonid rearing in the months of July and August. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 151A, 170A, and 340A.

(36) "Minimum" for dissolved oxygen means the minimum recorded concentration including seasonal and diurnal minimums.

(37) "Monthly (30-day) Mean Minimum" for dissolved oxygen means the minimum of the 30 consecutive-day floating averages of the calculated daily mean dissolved oxygen concentration.

(38) "Natural Conditions" means conditions or circumstances affecting the physical, chemical, or biological integrity of a water of the state that are not influenced by past or present anthropogenic activities. Disturbances from wildfire, floods, earthquakes, volcanic or geothermal activity, wind, insect infestation, and diseased vegetation are considered natural conditions.

(39) "Natural Thermal Potential" means the determination of the thermal profile of a water body using best available methods of analysis and the best available information on the site-potential riparian vegetation, stream geomorphology, stream flows, and other measures to reflect natural conditions.

(40) "Nonpoint Sources" means any source of water pollution other than a point source. Generally, a nonpoint source is a diffuse or unconfined source of pollution where wastes can either enter into or be conveyed by the movement of water to waters of the state.

(41) "Ocean Waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of Oregon.

(42) "Outstanding Resource Waters" means those waters designated by the commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values or where special water quality protection is needed to maintain critical habitat areas.

(43) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wildlife, fish, other aquatic life or the habitat thereof.

(44) "Point Source" means a discernable, confined, and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

(45) "Public Water" means the same as "waters of the state".

(46) "Public Works Project" means any land development conducted or financed by a local, state, or federal governmental body.

(47) "Reserve Capacity" means that portion of a receiving stream's loading capacity that has not been allocated to point sources or to nonpoint sources and natural background as waste load allocations or load allocations, respectively. The reserve capacity includes that loading capacity that has been set aside for a safety margin and is otherwise unallocated.

(48) "Resident Biological Community" means aquatic life expected to exist in a particular habitat when water quality standards for a specific ecoregion, basin, or water body are met. This must be established by accepted biomonitoring techniques.

(49) "Salmon" means chinook, chum, coho, sockeye, and pink salmon.

(50) "Salmon and Steelhead Spawning Use" means waters that are or could be used for salmon and steelhead spawning, egg incubation, and fry emergence. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B.

(51) "Salmon and Trout Rearing and Migration Use" means thermal-ly suitable rearing habitat for salmon, steelhead, rainbow trout, and cut-throat trout as designated on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(52) "Salmonid or Salmonids" means native salmon, trout, mountain whitefish, and char (including bull trout). For purposes of Oregon water quality standards, salmonid does not include brook or brown trout since they are introduced species.

(53) "Secondary Treatment" means the following depending on the context.

(a) For "sewage wastes," secondary treatment means the minimum level of treatment mandated by EPA regulations pursuant to Public Law 92-500.

(b) For "industrial and other waste sources," secondary treatment means control equivalent to best practicable treatment (BPT).

(54) "Seven-Day Average Maximum Temperature" means a calculation of the average of the daily maximum temperatures from seven consecutive days made on a rolling basis.

(55) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or wastes, as defined in this rule, may also be considered "sewage" within the meaning of this division.

(56) "Short-Term Disturbance" means a temporary disturbance of six months or less when water quality standards may be violated briefly but not of sufficient duration to cause acute or chronic effects on beneficial uses.

(57) "Spatial Median" means the value that falls in the middle of a data set of multiple intergravel dissolved oxygen (IGDO) measurements taken within a spawning area. Half the samples should be greater than and half the samples should be less than the spatial median.

(58) "SS" means suspended solids.

(59) "Stormwater Quality Control Facility" means 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. It may also include but is not

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be limited to existing features such as wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

(60) "Subbasin" means a fourth-field hydrologic unit as identified by the U.S. Geological Survey.

(61) "Summer" means June 1 through September 30 of each calendar year.

(62) "Threatened or Endangered Species" means aquatic species listed as either threatened or endangered under the federal Endangered Species Act (16 USC 1531 et seq. and Title 50 of the Code of Federal Regulations).

(63) "Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(64) "Toxic Substance" means those pollutants or combinations of pollutants, including disease-causing agents, that after introduction to waters of the state and upon exposure, ingestion, inhalation, or assimilation either directly from the environment or indirectly by ingestion through food chains will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in any organism or its offspring.

(65) "Wasteload Allocation (WLA)" means the portion of receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(66) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances that may cause or tend to cause pollution of any water of the state.

(67) "Water Quality Limited" means one of the following:

(a) A receiving stream that does not meet narrative or numeric water quality criteria during the entire year or defined season even after the implementation of standard technology;

(b) A receiving stream that achieves and is expected to continue to achieve narrative or numeric water quality criteria but uses higher than standard technology to protect beneficial uses;

(c) A receiving stream for which there is insufficient information to determine whether water quality criteria are being met with higher-than-standard treatment technology or a receiving stream that would not be expected to meet water quality criteria during the entire year or defined season without higher than standard technology.

(68) "Water Quality Swale" means a natural depression or wide, shallow ditch that is used to temporarily store, route, or filter runoff for the purpose of improving water quality.

(69) "Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(70) "Weekly (seven-day) Mean Minimum" for dissolved oxygen means the minimum of the seven consecutive-day floating average of the calculated daily mean dissolved oxygen concentration.

(71) "Weekly (seven-day) Minimum Mean" for dissolved oxygen means the minimum of the seven consecutive-day floating average of the daily minimum concentration. For purposes of application of the criteria, this value will be used as the reference for diurnal minimums.

(72) "Without Detrimental Changes in the Resident Biological Community" means no loss of ecological integrity when compared to natural conditions at an appropriate reference site or region.

Stat. Auth.: ORS 468.020, 468B.010, 468B.015, 468B.035 & 468B.048  
Stats. Implemented: ORS 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04

## 340-041-0033

### Toxic Substances

(1) Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations

that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife, or other designated beneficial uses.

(2) Levels of toxic substances in waters of the state may not exceed the applicable criteria listed in Tables 20, 33A, and 33B. Tables 33A and 33B, adopted on May 20, 2004, update Table 20 as described in this section.

(a) Each value for criteria in Table 20 is effective until the corresponding value in Tables 33A or 33B becomes effective.

(A) Each value in Table 33A is effective on February 15, 2005, unless EPA has disapproved the value before that date. If a value is subsequently disapproved, any corresponding value in Table 20 becomes effective immediately. Values that are the same in Tables 20 and 33A remain in effect.

(B) Each value in Table 33B is effective upon EPA approval.

(b) The department will note the effective date for each value in Tables 20, 33A, and 33B as described in this section.

(3) To establish permit or other regulatory limits for toxic substances for which criteria are not included in Tables 20, 33A, or 33B, the department may use the guidance values in Table 33C, public health advisories, and other published scientific literature. The department may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges, or chemical substances without numeric criteria.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04

## 340-041-0061

### Other Implementation of Water Quality Criteria

(1) A waste treatment and disposal facility may not be constructed or operated and wastes may not be discharged to public waters without a permit from the department in accordance with ORS 468B.050.

(2) Water quality variances. The commission may grant point source variances from the water quality standards in this Division where the following requirements are met.

(a) The water quality variance may apply only to the point source for which the variance is requested and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(b) A water quality standard variance may not be granted if:

(A) Standards will be attained by all point source dischargers implementing effluent limitations required under sections 301(b) and 306 of the federal Clean Water Act and by nonpoint sources implementing cost-effective and reasonable best management practices; or

(B) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(c) Before a variance is granted, the applicant must demonstrate that attaining the water quality standard is not feasible for one of the following reasons:

(A) Naturally occurring pollutant concentrations prevent the attainment of the use.

(B) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met without violating state water conservation requirements.

(C) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(D) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use.

(E) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and unrelated to water quality preclude attainment of aquatic life protection uses.

(F) Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact.

(d) Procedures. An applicant for a water quality standards variance must submit a request for a variance to the department. The application

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must include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate that the designated use is unattainable for one of the reasons specified in subsection (c) of this section. If the department preliminarily determines that grounds exist for granting a variance, it must provide public notice of the proposed variance and an opportunity for public comment.

(A) The department may condition the variance on the performance of additional studies, monitoring, management practices, and other controls deemed necessary. These terms and conditions will be incorporated into the applicant's NPDES permit or department order.

(B) A variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant does not comply with the conditions of the original variance or otherwise does not meet the requirements of this section.

(C) DEQ approval of a variance for a point source is not effective under the federal Clean Water Act until submitted to and approved by EPA.

(3) Plans for all sewage and industrial waste treatment, control, and disposal facilities must be submitted to the department for review and approval prior to construction as required by ORS 468B.055.

(4) Minimum design criteria for waste treatment and control facilities prescribed under this plan and other waste treatment and controls deemed necessary to ensure compliance with the water quality standards contained in this plan must be provided in accordance with specific permit conditions for those sources or activities for which permits are required and the following implementation program.

(a) For new or expanded waste loads or activities, fully approved treatment or control facilities, or both, must be provided prior to discharge of any wastes from the new or expanded facilities or conduct of the new or expanded activity.

(b) For existing waste loads or activities, additional treatment or control facilities necessary to correct specific unacceptable water quality conditions must be provided in accordance with a specific program and timetable incorporated into the waste discharge permit for the individual discharger or activity. In developing treatment requirements and implementation schedules for existing installations or activities, consideration will be given to the impact upon the overall environmental quality, including air, water, land use, and aesthetics.

(c) Wherever minimum design criteria for waste treatment and control facilities set forth in this plan are more stringent than applicable federal standards and treatment levels currently being provided, upgrading to the more stringent requirements will be deferred until it is necessary to expand or otherwise modify or replace the existing treatment facilities. Such deferral will be acknowledged in the permit for the source.

(d) Where planning, design, or construction of new or modified waste treatment and controls to meet prior applicable state or federal requirements is underway at the time this plan is adopted, such plans, design, or construction may be completed under the requirements in effect when the project was initiated. Upgrading to meet more stringent future requirements will be timed in accordance with section (3) of this rule.

(5) Confined animal feeding operations (CAFOs) are regulated under OAR 340-051-0005 through 340-051-0080 to minimize potential adverse effect on water quality (see also OAR 603-074-0005 through 603-074-0070).

(6) Programs for control of pollution from nonpoint sources when developed by the department or by other agencies pursuant to section 208 of the federal Clean Water Act and approved by the department will be incorporated into this plan by amendment via the same process used to adopt the plan unless other procedures are established by law.

(7) Where minimum requirements of federal law or enforceable regulations are more stringent than specific provisions of this plan, the federal requirements will prevail.

(8) Within the framework of statewide priorities and available resources, the department will monitor water quality within the basin for the purposes of evaluating conformance with the plan and developing information for additions or updates.

(9) The commission recognizes that the potential exists for conflicts between water quality management plans and the land use plans and resource management plans that local governments and other agencies are required to develop. If conflicts develop, the department will meet with the local governments or responsible agencies to resolve the conflicts. Revisions will be presented for adoption via the same process used to adopt the plan unless other specific procedures are established by law.

(10) The department will calculate and include effluent limits specified in pounds per day, which will be the mass load limits for biochemical oxygen demand or carbonaceous biochemical oxygen demand and total suspended solids in National Pollutant Discharge Elimination System permits issued to all sewage treatment facilities. These limits must be calculated as follows.

(a) Except as noted in paragraph (H) of this subsection, the following requirements apply to existing facilities and to facilities receiving departmental approval for engineering plans and specifications for new treatment facilities or treatment facilities expanding the average dry weather treatment capacity before June 30, 1992:

(A) During periods of low stream flows (approximately May 1 through October 31), the monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0.

(B) During the period of high stream flows (approximately November 1 through April 30), the monthly average mass load expressed as pounds per day may not exceed the monthly concentration effluent limit times the design average wet weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0.

(C) On any day that the daily flow to a sewage treatment facility exceeds the lesser hydraulic capacity of the secondary treatment portion of the facility or twice the design average dry weather flow, the daily mass load limit does not apply. The permittee must operate the treatment facility at highest and best practicable treatment and control.

(D) The design average wet weather flow used in calculating mass loads must be approved by the department in accordance with prudent engineering practice and must be based on a facility plan approved by the department, engineering plans and specifications approved by the department, or an engineering evaluation. The permittee must submit documentation describing and supporting the design average wet weather flow with the permit application, application for permit renewal, or modification request or upon request by the department. The design average wet weather flow is defined as the average flow between November 1 and April 30 when the sewage treatment facility is projected to be at design capacity for that portion of the year.

(E) Mass loads assigned as described in paragraphs (B) and (C) of this subsection will not be subject to OAR 340-041-0004(7);

(F) Mass loads as described in this rule will be included in permits upon renewal or upon a request for permit modification.

(G) Within 180 days after permit renewal or modification, a permittee receiving higher mass loads under this rule and having a separate sanitary sewer system must submit to the department for review and approval a proposed program and time schedule for identifying and reducing inflow. The program must include the following:

(i) Identification of all overflow points and verification that sewer system overflows are not occurring up to a 24-hour, five-year storm event or equivalent;

(ii) Monitoring of all pump station overflow points;

(iii) A program for identifying and removing all inflow sources into the permit holder's sewer system over which the permit holder has legal control; and

(iv) For those permit holders not having the necessary legal authority for all portions of the sewer system discharging into the permit holder's sewer system or treatment facility, a program and schedule for gaining legal authority to require inflow reduction and a program and schedule for removing inflow sources.

(H) Within one year after the department's approval of the program, the permit holder must begin implementation of the program.

(I) Paragraphs (A) through (G) of this subsection do not apply to the cities of Athena, Elgin, Adair Village, Halsey, Harrisburg, Independence, Carlton, and Sweet Home. Mass load limits have been individually assigned to these facilities.

(b) For new sewage treatment facilities or treatment facilities expanding the average dry weather treatment capacity and receiving engineering plans and specifications approval from the department after June 30, 1992, the mass load limits must be calculated by the department based on the pro-

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posed treatment facility capabilities and the highest and best practicable treatment to minimize the discharge of pollutants.

(c) Mass load limits as defined in this rule may be replaced by more stringent limits if required by waste load allocations established in accordance with a TMDL for treatment facilities discharging to water quality limited streams or if required to prevent or eliminate violations of water quality standards.

(d) If the design average wet weather flow or the hydraulic secondary treatment capacity is not known or has not been approved by the department at the time of permit issuance, the permit must include as interim mass load limits the mass load limits in the previous permit issued to the permit holder for the treatment facility. The permit must also include a requirement that the permit holder submit to the department the design average wet weather flow and hydraulic secondary treatment capacity within 12 months after permit issuance. Upon review and approval of the design flow information, the department will modify the permit and include mass load limits as described in subsection (a) of this section.

(e) Each permit holder with existing sewage treatment facilities otherwise subject to subsection (a) of this section may choose mass load limits calculated as follows:

(A) The monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34 pounds per gallon.

(B) The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5.

(C) The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0. If existing mass load limits are retained by the permit holder, the terms and requirements of subsection (a) of this section do not apply.

(f) The commission may grant exceptions to subsection (a) of this section. In allowing increased discharged loads, the commission must make the findings specified in OAR 340-041-0004(9)(a) for waste loads and the following findings:

(A) Mass loads calculated in subsection (a) of this section cannot be achieved with the existing treatment facilities operated at maximum efficiency at projected design flows; and

(B) There are no practicable alternatives to achieving the mass loads as calculated in subsection (a) of this section.

(11) Forestry on state and private lands. For forest operations on state or private lands, water quality standards are intended to be attained and are implemented through best management practices and other control mechanisms established under the Forest Practices Act (ORS 527.610 to 527.992) and rules thereunder, administered by the Oregon Department of Forestry. Therefore, forest operations that are in compliance with the Forest Practices Act requirements are (except for the limits set out in ORS 527.770) deemed in compliance with this division. DEQ will work with the Oregon Department of Forestry to revise the Forest Practices program to attain water quality standards.

(12) Agricultural water quality management plans to reduce agricultural nonpoint source pollution are developed and implemented by the Oregon Department of Agriculture (ODA) through a cooperative agreement with the department to implement applicable provisions of ORS 568.900 to 568.933 and 561.191. If the department has reason to believe that agricultural discharges or activities are contributing to water quality problems resulting in water quality standards violations, the department may consult with the ODA. If water quality impacts are likely from agricultural sources and the department determines that a water quality management plan is necessary, the director may write a letter to the director of the ODA requesting that such a management plan be prepared and implemented to reduce pollutant loads and achieve the water quality criteria.

(13) Agriculture and forestry on federal lands. Agriculture and forestry activities conducted on federal land must meet the requirements of this division and are subject to the department's jurisdiction. Pursuant to Memoranda of Agreement with the U.S. Forest Service and the Bureau of Land Management, water quality standards are expected to be met through the development and implementation of water quality restoration plans, best management practices, and aquatic conservation strategies. Where the department designates a federal agency as a designated management agency, implementation of these plans, practices, and strategies is deemed compliance with this division.

(14) Testing methods. The analytical testing methods for determining compliance with the water quality standards in this rule must comply with 40 CFR Part 136 or, if Part 136 does not prescribe a method, with the most

recent edition of Standard Methods for the Examination of Water and Waste Water published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation; if the department has published an applicable superseding method, testing must comply with the superseding method. Testing in accordance with an alternative method must comply with this rule if the department has published the method or has approved the method in writing.

(15) Reservoirs or managed lakes are deemed in compliance with water quality criteria for temperature, pH, or dissolved oxygen (DO) if all of the following circumstances exist.

(a) The water body has thermally stratified naturally or due to the presence of an impoundment.

(b) The water body has three observable layers, defined as the epilimnion, metalimnion, and hypolimnion.

(c) A layer exists in the reservoir or managed lake in which temperature, pH, and DO criteria are all met, and the layer is sufficient to support beneficial uses.

(d) All practicable measures have been taken by the entities responsible for management of the reservoir or managed lake to maximize the layers meeting the temperature, pH, and DO criteria.

(e) One of the following conditions is met:

(A) The streams or river segments immediately downstream of the water body meet applicable criteria for temperature, pH, and DO.

(B) All practicable measures have been taken to maximize downstream water quality potential and fish passage.

(C) If the applicable criteria are not met in the stream or river segment immediately upstream of the water body, then no further measurable downstream degradation of water quality has taken place due to stratification of the reservoir or managed lake.

(16) Compliance schedules. In a permit issued under OAR 340, division 045 or in a water quality certification under OAR 340, division 48, the department may include compliance schedules for the implementation of effluent limits derived from water quality criteria in this division. A compliance schedule in an NPDES permit is allowed only for water quality based effluent limits that are newly applicable to the permit and must comply with provisions in 40 CFR §122.47 (including the requirement that water quality criteria must be achieved as soon as possible).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04

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**Adm. Order No.:** DEQ 4-2004(Temp)

**Filed with Sec. of State:** 6-8-2004

**Certified to be Effective:** 6-8-04 thru 12-5-04

**Notice Publication Date:**

**Rules Amended:** 340-016-0055

**Subject:** The rule amendments address statutory changes made by the 2001 Legislative Assembly that pertain to filing deadlines and sunset dates.

**Rules Coordinator:** Roberta Young—(503) 229-6408

**340-016-0055**

**Application Procedures**

Any Oregon taxpayer may apply for the certification of a pollution control facility to take relief from their Oregon tax liability. The applicant and the facility shall be eligible under ORS 307.405, 315.304, and 468.150 to 468.190. The applicant shall submit the application to the Department on the application form provided by the Department.

(1) Application for Preliminary Certification. An applicant may apply for preliminary certification of a pollution control facility to determine if a future facility would meet the certification requirements as set forth in OAR 340-016-0060. The applicant may submit the optional preliminary application anytime before the construction of the pollution control facility is complete. If the Commission issues a preliminary certificate and if the applicant constructs the facility as represented on the preliminary application and the preliminary certificate then the facility shall meet the requirements as set forth in OAR 340-016-0060. The preliminary certification of a facility does not exempt the applicant from submitting a timely application for final certification as set forth in section (2) of this rule.

(2) Application for Final Certification. The applicant shall submit all information, exhibits and substantiating documents requested on the application for final certification. The Department shall reject the application for final certification if the applicant fails to submit the application:

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(a) After the construction of the facility is substantially complete and the facility is placed in service;

(b) Within one year after construction of the facility is substantially completed; and

(c) On or before December 31, 2008.

(3) Complete Application. The applicant shall submit to the Department an application as set forth in section (1) or section (2) that is complete and ready to process. For an application to be complete and ready to process, the applicant shall:

(a) Complete all required application fields;

(b) Provide all appropriate exhibits;

(c) Explain how the facility is eligible for a pollution control tax credit as set forth in OAR 340-016-0060. The applicant shall include supporting documentation if the facility is eligible for certification based upon orders or permit limitations;

(d) Include the appropriate fees established in OAR 340-016-0065;

(e) Provide documentation that substantiates the facility cost as claimed on the application for final certification and as set forth in OAR 340-016-0070;

(f) Contain a statement that the facility is in compliance with Department statutes, rules and standards, and any documentation regarding non-compliance;

(g) Sign the application certifying that all claims made on the application are true and accurate;

(h) Provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit if the applicant is claiming a tax credit for a leased facility. The applicant shall provide a copy of the cover, first and signature pages of the complete and current lease agreement for the facility. The Department may request a copy of the complete agreement; and

(i) Provide a copy of a written and signed agreement between the owners designating the party or parties to receive the tax credit certificate if the applicant is claiming the tax credit for a facility with more than one owner.

(4) Department Notification. The Department shall notify the applicant in writing when:

(a) Rejecting an application for the applicant's failure to file a timely application as set forth in sections (1) and (2) of this rule or rejecting an application for failure to provide a timely response as set forth in subsection (5)(a) of this rule.

(b) Requiring additional information from the applicant. The Department shall request additional information within 60 days from the date the Department received the application if the Department is unable to complete the review;

(c) Requiring additional information, for applications for final certification only, if the Department is unable to determine the actual cost of the facility or the portion of the actual cost of the facility properly allocable to pollution control;

(d) Notifying the applicant of the date, time and place of the Commission meeting where the Commission shall take action on the application; and

(e) Notifying the applicant of the action taken by the Commission. If the Commission rejects an application for certification; certifies a lesser actual cost of the facility; or certifies a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than the applicant claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant.

(5) Applicant Response to Notification. The applicant:

(a) Shall respond to the Department within 60 days of receipt of the Department's written notification when the Department requests additional information as set forth in section (4) of this rule. The applicant shall respond by providing the additional information requested or by submitting a written estimate of the time needed to provide the information necessary to complete the application.

(b) May appeal from the rejection or reduction as provided in ORS 468.170(3) and 468.110.

(6) Extension of Time. The Commission may grant an extension of time to submit an application for final certification. An extension of time:

(a) Shall only be considered for applications that may exceed the time limits set forth in section (2) of this rule;

(b) Shall not extend the period for filing an application beyond December 31, 2008; and

(c) Shall only be granted for circumstances beyond the control of the applicant that would make filing a timely application unreasonable.

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

Stat. Auth.: ORS 468.150

Stats. Implemented: ORS 468.150 - ORS 468.190

Hist.: DEQ 5-1998, f. 4-24-98, cert. ef. 5-1-98; DEQ 4-2004(Temp), f. & cert. ef. 6-8-04 thru 12-5-04

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**Adm. Order No.:** DEQ 5-2004

**Filed with Sec. of State:** 6-11-2004

**Certified to be Effective:** 6-11-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 340-035-0110

**Rules Amended:** 340-035-0035

**Subject:** The purpose of this rulemaking proceeding is to recognize the special characteristics of wind energy facilities while protecting the public from unreasonable or harmful noise levels.

1) Maintain the Commission's Table 8 limits on all wind energy facilities.

2) Provide that the background baseline is 26 dBA for ambient wind energy facility noise unless evidence shows that the actual background level is higher.

3) Provide that any willing landowner may waive the ambient noise degradation standard for his or her property, while maintaining the Table 8 limits; such waiver must be recorded with the county to accompany the legal title to the property.

4) Create a standard protocol based on IEC 61400, developed by the International Electrotechnical Commission, the recognized international body for standards development activities. This standard would be used for modeling and measuring noise impacts from wind energy facilities to ensure compliance with the Commission's standards.

5) Add a provision clarifying the Commission's suspension of the administration of the noise program.

**Rules Coordinator:** Roberta Young—(503) 229-6408

## 340-035-0035

### Noise Control Regulations for Industry and Commerce

(1) Standards and Regulations:

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 7**, except as otherwise provided in these rules.

(b) New Noise Sources:

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 8**, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in **Table 8**, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

(iii) For noise levels generated or caused by a wind energy facility:

(I) The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 26 dBA or the actual ambi-

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ent background level. The person owning the wind energy facility may conduct measurements to determine the actual ambient L10 and L50 background level.

(II) The “actual ambient background level” is the measured noise level at the appropriate measurement point as specified in subsection (3)(b) of this rule using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with windspeed measurements of hub height conditions at the nearest wind turbine location. “Actual ambient background level” does not include noise generated or caused by the wind energy facility.

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits specified in Table 8), if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L10 or L50 on the sensitive property by more than 10 dBA at the appropriate measurement point.

(IV) For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility’s turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured. The facility complies with the noise ambient background standard if this comparison shows that the increase in noise is not more than 10 dBA over this entire range of wind speeds.

(V) For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when the facility’s nearest wind turbine is operating over the entire range of wind speeds between cut-in speed and the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured, is not more than 10 dBA over this entire range of wind speeds.

(VI) For purposes of determining whether a proposed wind energy facility would satisfy the **Table 8** standards, noise levels at the appropriate measurement point are predicted by using the turbine’s maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all of the proposed wind facility’s turbines are operating at the maximum sound power level.

(VII) For purposes of determining whether an operating wind energy facility satisfies the **Table 8** standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility’s nearest wind turbine is operating at the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled.

(c) Quiet Areas. No person owning or controlling an industrial or commercial noise source located either within the boundaries of a quiet area or outside its boundaries shall cause or permit the operation of that noise source if the statistical noise levels generated by that source exceed the levels specified in **Table 9** as measured within the quiet area and not less than 400 feet (122 meters) from the noise source.

(d) Impulse Sound. Notwithstanding the noise rules in **Tables 7** through 9, no person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the sound pressure levels specified below, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule:

(A) Blasting. 98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.

(B) All Other Impulse Sounds. 100 db, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.

(f) Octave Bands and Audible Discrete Tones. When the Director has reasonable cause to believe that the requirements of subsection (1)(a), (b), or (c) of this rule do not adequately protect the health, safety, or welfare of the

public as provided for in ORS Chapter 467, the Department may require the noise source to meet the following rules:

(A) Octave Bands. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceeds applicable levels specified in **Table 10**.

(B) One-third Octave Band. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

(i) 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(ii) 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(iii) 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;

(iv) This rule shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in Table 10 for the octave band which contains such one-third octave band.

(2) Compliance. Upon written notification from the Director, the owner or controller of an industrial or commercial noise source operating in violation of the adopted rules shall submit a compliance schedule acceptable to the Department. The schedule will set forth the dates, terms, and conditions by which the person responsible for the noise source shall comply with the adopted rules.

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department;

(b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:

(A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;

(B) That point on the noise sensitive property line nearest the noise source.

(4) Monitoring and Reporting:

(a) Upon written notification from the Department, persons owning or controlling an industrial or commercial noise source shall monitor and record the statistical noise levels and operating times of equipment, facilities, operations, and activities, and shall submit such data to the Department in the form and on the schedule requested by the Department. Procedures for such measurements shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1);

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise tests and measurements. Therefore, when requested by the Department, the owner or operator of an industrial or commercial noise source shall provide the following:

(A) Access to the site;

(B) Reasonable facilities, where available, including but not limited to, electric power and ladders adequate to perform the testing;

(C) Cooperation in the reasonable operation, manipulation, or shut-down of various equipment or operations as needed to ascertain the source of sound and measure its emission.

(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(ii) of this rule, the rules in section (1) of this rule shall not apply to:

(a) Emergency equipment not operated on a regular or scheduled basis;

(b) Warning devices not operating continuously for more than 5 minutes;

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(c) Sounds created by the tires or motor used to propel any road vehicle complying with the noise standards for road vehicles;

(d) Sounds resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad only to the extent that such equipment or facility is regulated by pre-emptive federal regulations as set forth in Part 201 of Title 40 of the Code of Federal Regulations, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-576; but this exemption does not apply to any standard, control, license, regulation, or restriction necessitated by special local conditions which is approved by the Administrator of the EPA after consultation with the Secretary of Transportation pursuant to procedures set forth in Section 17(c)(2) of the Act;

(e) Sounds created by bells, chimes, or carillons;

(f) Sounds not electronically amplified which are created by or generated at sporting, amusement, and entertainment events, except those sounds which are regulated under other noise standards. An event is a noteworthy happening and does not include informal, frequent, or ongoing activities such as, but not limited to, those which normally occur at bowling alleys or amusement parks operating in one location for a significant period of time;

(g) Sounds that originate on construction sites.

(h) Sounds created in construction or maintenance of capital equipment;

(i) Sounds created by lawn care maintenance and snow removal equipment;

(j) Sounds generated by the operation of aircraft and subject to pre-emptive federal regulation. This exception does not apply to aircraft engine testing, activity conducted at the airport that is not directly related to flight operations, and any other activity not pre-emptively regulated by the federal government or controlled under OAR 340-035-0045;

(k) Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030(1)(e);

(l) Sounds created by agricultural activities;

(m) Sounds created by activities related to the growing or harvesting of forest tree species on forest land as defined in subsection (1) of ORS 526.324.

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:

(a) Unusual and/or infrequent events;

(b) Industrial or commercial facilities previously established in areas of new development of noise sensitive property;

(c) Those industrial or commercial noise sources whose statistical noise levels at the appropriate measurement point are exceeded by any noise source external to the industrial or commercial noise source in question;

(d) Noise sensitive property owned or controlled by the person who controls or owns the noise source;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 77, f. 9-5-74, ef. 9-25-74; DEQ 135, f. & ef. 6-7-77; DEQ 8-1980, f. & ef. 3-11-80; DEQ 7-1983, f. & ef. 4-22-83; DEQ 5-2004, f. & cert. ef. 6-11-04

## 340-035-0110

### Suspension of Commission and Department Responsibilities

In 1991, the Legislative Assembly withdrew all funding for implementing and administering ORS chapter 467 and the Department's noise program. Accordingly, the Commission and the Department have suspended administration of the noise program, including but not limited to processing requests for exceptions and variances, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints. Similarly, the public's obligations to submit plans or certifications to the Department are suspended.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467

Hist.: DEQ 5-2004, f. & cert. ef. 6-11-04

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## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 43-2004(Temp)

**Filed with Sec. of State:** 5-17-2004

**Certified to be Effective:** 5-19-04 thru 7-31-04

### Notice Publication Date:

**Rules Amended:** 635-041-0090

**Subject:** Amend rules in the spring salmon season for Treaty Indian fishers in the Columbia River above Bonneville Dam consistent with action taken May 17, 2004 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-041-0090

#### Spring Salmon Season

(1) Salmon, steelhead, walleye, carp, and shad may be taken for commercial purposes in the Columbia River above Bonneville Dam from 6 a.m., May 19, 2004 to 6 p.m., May 21, 2004.

(2) There are no mesh size restrictions.

(3) Closed areas set forth in OAR 635-041-0045 remain in effect with the exception of the Spring Creek sanctuary.

(4) Sturgeon may not be sold. Sturgeon between 4 and 5 feet in length in The Dalles and John Day pools and sturgeon between 45-60 inches in the Bonneville pool may be kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish and catch from Drano Lake, Wind River, Klickitat River and White Salmon River is allowed from 6 a.m., May 11, 2004 through 6 p.m. May 31, 2004; only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation Tribal subsistence fisheries.

Stat. Auth.: ORS 496.118 & 506.119

Stats Implemented: ORS 506.109, 506.129 & 507.030

Hist: DFW 37-2004(Temp), f. 4-30-04, cert. ef. 5-4-04 thru 7-31-04; DFW 41-2004(Temp), f. 5-7-04, cert. ef. 5-11-04 thru 7-31-04; DFW 43-2004(Temp), f. 5-17-04, cert. ef. 5-19-04 thru 7-31-04

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**Adm. Order No.:** DFW 44-2004(Temp)

**Filed with Sec. of State:** 5-17-2004

**Certified to be Effective:** 5-20-04 thru 7-31-04

### Notice Publication Date:

**Rules Amended:** 635-023-0125, 635-042-0145, 635-042-0160, 635-042-0180

**Subject:** Amend rules to reopen Select Areas fisheries for harvest opportunities, both commercial and sport. Modifications to regulations are consistent with Compact Action and Oregon State jurisdiction.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-023-0125

#### Spring Sport Fishery

(1) The 2004 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 **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2004 through May 15, 2004, from the mouth at Buoy 10 upstream to the I-5 Bridge; from March 16, 2004 through May 15, 2004 from I-5 Bridge upstream to Bonneville Dam and from Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead, and shad 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 salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River from I-5 Bridge upstream to Bonneville Dam is closed to angling for salmon, steelhead and shad effective Thursday, 12:01 AM, April 22, 2004 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2004.

(4) The Columbia River from Buoy 10 upstream to I-5 Bridge is closed to angling for salmon, steelhead and shad effective Saturday, 12:01 AM, May 1, 2004 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2004.

(5) The Columbia River from Bonneville Dam upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines is closed to angling for salmon and steelhead effective Thursday, 12:01 AM, May 6, 2004 and reverts to permanent angling regulations effective 12:01 AM, June 16, 2004.

(6) Effective March 10, 2004 through May 15, 2004, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlaw-

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ful when fishing from vessels which are less than 30' in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(7) Effective 12:01 a.m., May 20, 2004, The Youngs Bay Select Area, the Deep River Select Area and the Blind Slough/Knapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge is open for the retention of adipose fin-clipped chinook, adipose fin-clipped steelhead, and shad.

(8) All other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** apply.

[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

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes in those 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).

(a) In the fishing period of March 20 to March 21, 2004, and on April 12, 2004, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Highway 101 Bridge (old Youngs Bay Bridge) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(b) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

#### (A) Winter Season:

6 p.m. February 14 - 12 Noon February 15, 2004;  
6 a.m. to 6 p.m. February 18, 2004;  
6 p.m. February 21 - 12 Noon February 22, 2004;  
6 a.m. to 6 p.m. February 25, 2004;  
6 p.m. February 28 - 12 Noon February 29, 2004;  
6 a.m. to 6 p.m. March 3, 2004;  
6 p.m. March 6 - 12 Noon March 7, 2004;  
6 p.m. March 13 - 12 Noon March 14, 2004;  
6 p.m. March 20 - 6 a.m. March 21, 2004;  
8 p.m. to 12 Midnight April 12, 2004.

#### (B) Spring Season:

6 p.m. April 22 - 6 a.m. April 23, 2004;  
6 p.m. April 26 - 6 a.m. April 27, 2004;  
6 p.m. April 29 - 6 a.m. April 30, 2004;  
6 p.m. May 3 - 12 Noon May 4, 2004;  
6 p.m. May 6 - 12 Noon May 7, 2004;  
12 Noon May 11 - 12 Noon May 14, 2004;  
12 Noon May 17 - 12 Noon May 21, 2004;  
12 Noon May 24 - 12 Noon May 28, 2004;  
12 Noon May 31 - 12 Noon June 4, 2004;  
12 Noon June 7 - 12 Noon June 11, 2004;  
12 Noon June 15 - 12 Noon June 18, 2004;

#### (C) Summer Season:

12 Noon June 23 - 12 Noon June 25, 2004;  
12 Noon June 30 - 12 Noon July 2, 2004;  
12 Noon July 7 - 6 p.m. July 8, 2004;  
12 Noon July 14 - 6 p.m. July 15, 2004;  
12 Noon July 21 - 6 p.m. July 22, 2004;  
12 Noon July 28 - 6 p.m. July 29, 2004;

(b) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-1/4 inches during February 14, 2004 to March 21, 2004 and during the April 12, 2004 fishing period. It is unlawful to use a gill net having a mesh size that is more than 8 inches April 22, 2004 to June 18, 2004 and June 23, 2004 to July 29, 2004.

(c) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 21, 2004.

(2) Effective Thursday, 12:01 AM, May 6, 2004, the fishing area as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(3) Effective May 20, 2004, salmon, sturgeon, and shad may be taken for commercial purposes in those 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).

(a) The open fishing periods are established as follows:

7 p.m. May 20 - 7 a.m. May 21, 2004;

7 p.m. May 24 - 7 a.m. May 25, 2004;  
7 p.m. May 27 - 7 a.m. May 28, 2004;  
12 Noon May 31 - 12 Noon June 4, 2004;  
12 Noon June 7 - 12 Noon June 11, 2004;  
12 Noon June 15 - 12 Noon June 18, 2004;

#### (b) Summer Season:

12 Noon June 23 - 12 Noon June 25, 2004;  
12 Noon June 30 - 12 Noon July 2, 2004;  
12 Noon July 7 - 6 p.m. July 8, 2004;  
12 Noon July 14 - 6 p.m. July 15, 2004;  
12 Noon July 21 - 6 p.m. July 22, 2004;  
12 Noon July 28 - 6 p.m. July 29, 2004;

(c) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches May 20, 2004 to June 18, 2004 and June 23, 2004 to July 29, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 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. 5-25-92; 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; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & 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. 2-20-02 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

## 635-042-0160

### Blind Slough and Knapa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the early spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knapa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knapa Slough is 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. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

#### (A) Blind Slough Only:

February 14 - February 15, 2004;  
February 21 - February 22, 2004;  
February 28 - February 29, 2004;  
March 6 - March 7, 2004;  
March 13 - March 14, 2004;  
March 20 - March 21, 2004 and April 12, 2004.

#### (B) Blind and Knapa Sloughs:

April 22 - April 23, 2004;  
April 29 - April 30, 2004;  
May 3 - May 4, 2004;  
May 6 - May 7, 2004;  
May 10 - May 11, 2004;

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May 13 - May 14, 2004;  
May 17 - May 18, 2004;  
May 20 - May 21, 2004;  
May 24 - May 25, 2004;  
May 27 - May 28, 2004;  
May 31 - June 1, 2004;  
June 3 - June 4, 2004;  
June 7 - June 8, 2004;  
June 10 - June 11, 2004;  
June 14 - June 15, 2004; and June 17 - June 18, 2004.

(b) During the April 12, 2004 winter fishery, as identified in (1)(a)(A), the open fishing period is restricted to 8:00 p.m. to 12 Midnight (4 hours).

(c) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 21, 2004.

(d) Gear restrictions are as follows:

(A) During the winter fishery (see paragraph (1)(a)(A) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-1/4 inches;

(B) During the spring fishery (see paragraphs (1)(a)(B) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(2) Effective Thursday, 12:01 AM, May 6, 2004, the fishing areas as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(3) Effective May 20, 2004, salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described in those waters of Blind Slough and Knappa Slough.

(a) Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(b) Knappa Slough is 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.

(4) The open fishing periods for those areas as described in 635-042-0160(3)(a)(b) are nightly from 7:00 PM until 7:00 AM the following morning (12 hours), as follows:

May 20 - May 21, 2004;  
May 24 - May 25, 2004;  
May 27 - May 28, 2004;  
May 31 - June 1, 2004; June 3 - June 4, 2004;  
June 7 - June 8, 2004;  
June 10 - June 11, 2004;  
June 14 - June 15, 2004; and June 17 - June 18, 2004.

(5) Gear is restricted to gill nets not exceeding 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(6) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162, 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

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from Highway 4 Bridge, downstream to the Deep River boat ramp.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

April 22 - April, 23, 2004;  
April 29 - April 30, 2004;  
May 3 - May 4, 2004;  
May 6 - May 7, 2004;  
May 10 - May 11, 2004;

May 13 - May 14, 2004;  
May 17 - May 18, 2004;  
May 20 - May 21, 2004;  
May 24 - May 25, 2004;  
May 27 - May 28, 2004;  
May 31 - June 1, 2004;  
June 3 - June 4, 2004;  
June 7 - June 8, 2004;  
June 10 - June 11, 2004;  
June 14 - June 15, 2004; and June 17 - June 18, 2004.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8 inches.

(4) Effective Thursday, 12:01 AM, May 6, 2004, the fishing area as described in (1) is closed to the harvest of salmon, steelhead and shad until further notice.

(5) Effective May 20, 2004, salmon, shad, and sturgeon may be taken for commercial purposes from Highway 4 Bridge, downstream to the Deep River boat ramp. The fishing seasons are again open nightly, 7:00 PM to 7:00 AM the following morning (12 hours), as follows:

May 20 - May 21, 2004;  
May 24 - May 25, 2004;  
May 27 - May 28, 2004;  
May 31 - June 1, 2004;  
June 3 - June 4, 2004;  
June 7 - June 8, 2004;  
June 10 - June 11, 2004;  
June 14 - June 15, 2004; and June 17 - June 18, 2004.

Stat. Auth.: ORS 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

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**Adm. Order No.:** DFW 45-2004(Temp)

**Filed with Sec. of State:** 5-21-2004

**Certified to be Effective:** 5-24-04 thru 6-30-04

**Notice Publication Date:**

**Rules Amended:** 635-003-0076

**Subject:** Amend regulation to re-open the commercial troll fishery North of Cape Falcon effective 00:01 Monday, May 24 through 23:59 Wednesday, May 26 with an open period landing limit of 70 Chinook per vessel.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-003-0076

### US-Canada Border to Cape Falcon, May/June All-Except-Coho Season and July-September All Species Season

(1) Vessels must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

### Humburg Mountain to the Oregon/California Border, June-September All-Salmon Except-Coho Season

(2) Vessels must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(3) Effective 12:01 a.m. Monday, May 24, 2004 through 11:59 p.m. Wednesday May 26,

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: 506.129  
Hist.: FWC 37-1990, f. & cert. ef. 5-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; DFW 34-2001, f. & cert. ef. 5-10-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 38-2004(Temp), f. & cert. ef. 5-5-04 thru 6-30-04; DFW 42-2004(Temp), f. 5-14-04, cert. ef. 5-15-04 thru 6-30-04; DFW 45-2004(Temp), f. 5-21-04, cert. ef. 5-24-04 thru 6-30-04

# ADMINISTRATIVE RULES

**Adm. Order No.:** DFW 46-2004(Temp)  
**Filed with Sec. of State:** 5-21-2004  
**Certified to be Effective:** 5-22-04 thru 7-1-04  
**Notice Publication Date:**  
**Rules Amended:** 635-019-0090  
**Subject:** Amend rules to reopen a portion of the Umatilla River from Hwy 730 Bridge upstream to Three Mile Dam to angling for spring chinook salmon.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The 2004 Oregon Sport Fishing provide requirements for the Northeast 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 **2004 Oregon Sport Fishing Regulations**.

(2) The Umatilla River from Highway 730 Bridge upstream to Three Mile Dam is open to angling for spring chinook effective May 22, 2004 through May 31, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04

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**Adm. Order No.:** DFW 47-2004(Temp)  
**Filed with Sec. of State:** 5-25-2004  
**Certified to be Effective:** 5-26-04 thru 7-31-04  
**Notice Publication Date:**  
**Rules Amended:** 635-041-0090  
**Subject:** Amend rules in the spring salmon season for Treaty Indian fishers in the Columbia River above Bonneville Dam consistent with action taken May 25, 2004 by the Columbia River Compact.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-041-0090

### Spring Salmon Season

(1) Salmon, steelhead, walleye, carp, and shad may be taken for commercial purposes in the Columbia River above Bonneville Dam from 6 a.m., May 26, 2004 to 6 p.m., May 28, 2004.

(2) There are no mesh size restrictions.

(3) Closed areas set forth in OAR 635-041-0045 remain in effect with the exception of the Spring Creek sanctuary.

(4) Sturgeon may not be sold. Sturgeon between 4 and 5 feet in length in The Dalles and John Day pools and sturgeon between 45-60 inches in the Bonneville pool may be kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish and catch from Drano Lake, Wind River, Klickitat River and White Salmon River is allowed from 6 a.m., May 11, 2004 through 6 p.m. May 31, 2004; only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation Tribal subsistence fisheries.

Stat. Auth.: ORS 496.118 & 506.119  
Stats Implemented: ORS 506.109, 506.129 & 507.030  
Hist.: DFW 37-2004(Temp), f. 4-30-04, cert. ef. 5-4-04 thru 7-31-04; DFW 41-2004(Temp), f. 5-7-04, cert. ef. 5-11-04 thru 7-31-04; DFW 43-2004(Temp), f. 5-17-04, cert. ef. 5-19-04 thru 7-31-04; DFW 47-2004(Temp), f. 5-25-04, cert. ef. 5-26-04 thru 7-31-04

**Adm. Order No.:** DFW 48-2004(Temp)  
**Filed with Sec. of State:** 5-26-2004  
**Certified to be Effective:** 5-28-04 thru 11-23-04  
**Notice Publication Date:**  
**Rules Amended:** 635-017-0090  
**Subject:** Amend rules regarding sport fishing regulations on the Willamette River and tributaries above Willamette Falls.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-017-0090

### Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits for 2004 are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1, 2004 through July 31, 2004 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during the 2004 lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31, 2004 to report catch. Permit holders who do not return the harvest record cards by August 31, 2004 will be ineligible to receive a permit in 2005.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Effective May 28, 2004 through November 23, 2004, notwithstanding all other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations**, anglers may retain one (1) additional adipose fin-clipped steelhead within the normal daily bag limit in those areas open to steelhead angling in the mainstem Willamette River and tributaries above Willamette Falls.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-

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03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04

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**Adm. Order No.:** DFW 49-2004(Temp)

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 5-28-04 thru 9-5-04

**Notice Publication Date:**

**Rules Adopted:** 635-021-0095

**Subject:** Adopt rule to open a spring chinook fishery on the Powder River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-021-0095**

**Powder River Fishery**

Notwithstanding all other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** the following regulations apply:

(1) The Powder River from Mason Dam downstream to and including Thief Valley Reservoir is open for sport harvest of spring chinook from May 28, 2004 through September 5, 2004.

(2) The daily bag limit is two adipose fin-clipped spring chinook salmon.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.146 and ORS 506.119  
Stats. Implemented: ORS 496.162 and ORS 506.129  
Hist.: DFW 49-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 9-5-04

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**Adm. Order No.:** DFW 50-2004

**Filed with Sec. of State:** 6-2-2004

**Certified to be Effective:** 6-2-04

**Notice Publication Date:**

**Rules Amended:** 635-001-0005

**Subject:** Amend rules to adopt the most current Attorney General's Model Rules of Procedure.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-001-0005**

**Model Rules of Procedure**

Pursuant to ORS 183.341, the Oregon Department of Fish and Wildlife hereby adopts the Model Rules of Procedure as promulgated by the Attorney General under the Administrative Procedures Act, dated January 15, 2004.

[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 Agency.]  
Stat. Auth.: ORS 183.341(2)  
Stats. Implemented: ORS 183.341  
Hist.: GC 86, f. 8-26-58; GC 249, f. & ef. 12-1-71; GC 266, f. 10-18-73, ef. 11-11-73; FWC 25, f. & ef. 11-28-75, Renumbered from 630-001-0005; FWC 8-1978, f. & ef. 3-7-78; FWC 3-1981, f. & ef. 1-21-81; FWC 2-1982, f. & ef. 1-11-82; FWC 64-1983, f. & ef. 11-17-83; FWC 21-1986, f. & ef. 6-20-86; FWC 112-1991, f. & cert. ef. 9-30-91; FWC 28-1992, f. & cert. ef. 4-22-92; FWC 8-1994, f. & cert. ef. 2-7-94; DFW 1-2002, f. & cert. ef. 1-3-02; DFW 83-2003, f. & cert. ef. 8-28-03; DFW 50-2004, f. & cert. ef. 6-2-04

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**Adm. Order No.:** DFW 51-2004(Temp)

**Filed with Sec. of State:** 6-9-2004

**Certified to be Effective:** 6-16-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-023-0125

**Subject:** Amend rule to open summer chinook sport fishing opportunities in the Columbia River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-023-0125**

**Spring Sport Fishery**

(1) The **2004 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 **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2004 through May 15, 2004, from the mouth at Buoy 10 upstream to the I-5 Bridge; from

March 16, 2004 through May 15, 2004 from I-5 Bridge upstream to Bonneville Dam and from Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead, and shad 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 salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River from I-5 Bridge upstream to Bonneville Dam is closed to angling for salmon, steelhead and shad effective Thursday, 12:01 AM, April 22, 2004 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2004.

(4) The Columbia River from Buoy 10 upstream to I-5 Bridge is closed to angling for salmon, steelhead and shad effective Saturday, 12:01 AM, May 1, 2004 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2004.

(5) The Columbia River from Bonneville Dam upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines is closed to angling for salmon and steelhead effective Thursday, 12:01 AM, May 6, 2004 and reverts to permanent angling regulations effective 12:01 AM, June 16, 2004.

(6) Effective March 10, 2004 through May 15, 2004, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30' in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(7) Effective 12:01 a.m., May 20, 2004, The Youngs Bay Select Area, the Deep River Select Area and the Blind Slough/Knapka Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge is open for the retention of adipose fin-clipped chinook, adipose fin-clipped steelhead, and shad.

(8) Effective June 16, 2004 through July 31, 2004, the Columbia River from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border is open to the retention of adipose fin-clipped adult chinook.

(9) All other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** apply.

[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

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**Adm. Order No.:** DFW 52-2004(Temp)

**Filed with Sec. of State:** 6-11-2004

**Certified to be Effective:** 6-25-04 thru 12-21-04

**Notice Publication Date:**

**Rules Amended:** 635-023-0090

**Subject:** Amend sturgeon rules to implement closure on the mainstem Columbia River from the Bonneville Dam to The Dalles Dam.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-023-0090**

**Inclusions and Modifications**

(1) The **2004 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 **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, all adjacent Washington tributaries, and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Sunday, February 1, 2004 through Saturday, July 31, 2004, and (b) Friday, October 1, 2004 through Friday, December 31, 2004.

(3) The Columbia River from Beacon Rock upstream to Bonneville Dam is closed to all sturgeon angling effective Saturday, May 1, 2004 through Sunday, July 31, 2004.

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(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, and all adjacent Washington tributaries, is open to the retention of sturgeon seven days per week during the following periods:

- (a) Thursday, January 1, 2004 through Friday, April 30, 2004, and
- (b) Saturday, May 15, 2004 through Friday, July 23, 2004.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(6) The Columbia River from the Bonneville Dam upstream to The Dalles Dam including the tributaries between the dams is closed to the retention of sturgeon effective 12 midnight, Friday, June 25, 2004. Catch and release of sturgeon is allowed. All sturgeon must be immediately released unharmed.

(7) All other specifications and restrictions as outlined in the current 2004 Oregon Sport Fishing Regulations apply.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1996, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp) f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04

## Department of Forestry Chapter 629

**Adm. Order No.:** DOF 6-2004  
**Filed with Sec. of State:** 6-10-2004  
**Certified to be Effective:** 6-10-04

## Notice Publication Date:

**Rules Amended:** 629-001-0005

**Subject:** Adopting the Model Rules of Procedure under the Administrative Procedures Act promulgated by the Oregon Attorney General effective January 15, 2004.

**Rules Coordinator:** Gayle Birch—(503) 945-7210

## 629-001-0005

### Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedures Act, promulgated by the Attorney General effective January 15, 2004, are hereby adopted as the rules of procedure of the Board of Forestry and the State Forester.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Forestry.]

Stat. Auth.: ORS 526.016(4) & 526.041

Stats. Implemented: ORS 183.341

Hist.: FB 27, f. 11-12-71, ef. 12-1-71; FB 34, f. 10-19-73, ef. 11-11-73; FB 46, f. & ef. 4-19-76; FB 4-1978, f. & ef. 3-13-78; FB 1-1980, f. & ef. 1-9-80; FB 8-1980, f. & ef. 3-20-80; FB 1-1982(Temp), f. & ef. 2-8-82; FB 2-1982, f. & ef. 3-3-82; FB 1-1984, f. & ef. 1-6-84; FB 5-1986, f. & ef. 6-17-86; FB 6-1988, f. & cert. ef. 9-9-88; FB 3-1992, f. & cert. ef. 3-10-92; FB 1-1994, f. & cert. ef. 3-11-94; FB 1-1996, f. & cert. ef. 3-13-96; DOF 3-1998, f. 3-10-98, cert. ef. 4-22-98; DOF 4-2000, f. 10-25-00, cert. ef. 10-31-00; DOF 1-2002, f. & cert. ef. 3-13-02; DOF 6-2004, f. & cert. ef. 6-10-04

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## Department of Human Services, Child Welfare Programs Chapter 413

**Adm. Order No.:** CWP 10-2004

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 2-1-04

**Rules Adopted:** 413-330-0097, 413-330-0098

**Rules Amended:** 413-330-0085, 413-330-0087, 413-330-0090, 413-330-0095

**Rules Repealed:** 413-330-0085(T), 413-330-0087(T), 413-330-0090(T), 413-330-0095(T), 413-330-0097(T), 413-330-0098(T)

**Subject:** These Criminal History Checks for System of Care Contractors rules set the parameters for checking for and evaluating criminal history of individuals seeking to contract with DHS for the purpose of providing personal services to child welfare clients. These rules have also been changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-330-0085

### Purpose

It is the goal of the Department of Human Services (Department or DHS) to reduce the risk of exploitation and abuse of children in the care of or receiving services from DHS. To that end, DHS will conduct criminal offender information background checks on individuals before they provide services to DHS clients under contracts paid for with the flexible funds allocated by DHS under the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc. These rules (OAR 413-330-0085 to 413-330-0098) establish procedures by which DHS obtains criminal offender information on these individuals and considers the information when determining the individual's suitability for working with children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

## 413-330-0087

### Definitions

(1) "Child" means an unmarried person who is under 18 years of age. A person between 18 and 21 years of age and in the custody of DHS is also considered a child for the purposes of these rules.

(2) "Client" means a child or adult receiving services from DHS.

(3) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, and includes the OSP Computerized Criminal History System.

(4) "FBI" means the Federal Bureau of Investigation.

(5) "OSP" means the Oregon State Police.

# ADMINISTRATIVE RULES

(6) "Subject individual" means, in the context of these rules, a contractor seeking to enter into a system-of-care contract with DHS. If the contractor is a business with more than one employee, the executive director, president, CEO, or equivalent is the subject individual. A contractor certified by DHS as provided for in OAR 413-200-0301 to 413-200-0401, "Safety Standards for Foster Care, Relative Care and Adoptive Families," and a contractor licensed by DHS as provided for in OAR 413-220-0000 to 413-220-0160, "Private Child-Caring Agency Licensing Standards," are not subject individuals.

(7) "System-of-care contractor" means an individual or business that has contracted with DHS and is paid with flexible funds allocated by DHS as part the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc.

(8) "System-of-care settlement agreement" means the agreement between the Department of Human Services and the Juvenile Rights Project, Inc. that includes provisions for the use of flexible funds to meet the individual needs of children and their families in order to promote safety, permanency, and well being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

## 413-330-0090

### System of Care Contractor Criminal History Policy

(1) As a result of the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc., DHS enters into personal service contracts with community service providers. Many of these providers are not licensed or certified by DHS, but they can provide important services to clients such as mentoring, tutoring, and therapeutic support. Before the Department contracts with one of these providers, the Department will complete a criminal background check as described below.

(2) DHS will not enter into a contract with a subject individual unless the subject individual consents to a criminal offender information records check and consents to be fingerprinted when required by these rules. DHS may decide not to contract with the subject individual if the individual makes a false statement about having been arrested for or convicted of a crime.

(3) A subject individual must provide all information required for a criminal offender information records check, including fingerprints, if required, on forms provided by DHS and according to procedures established by DHS, including:

(a) The subject individual must complete and sign form CF 1011F.

(b) If the subject individual acknowledges a prior arrest or a conviction of a crime, the subject individual must provide an explanation of the facts that supported the arrest or conviction and of the intervening circumstances and must provide written authorization required by DHS to verify the information.

(c) When required by these rules, two properly completed FBI fingerprint cards (form FD 258) with red overprinting in the "reason fingerprinted" block from the subject individual.

(4) In the process of obtaining a subject individual's consent to a criminal records check, DHS may ask the subject individual to consent to the Department's use of his or her social security number in conducting the criminal records check. Subject individuals will indicate their consent by their signatures.

(5) DHS will obtain and forward fingerprint cards to request criminal offender information on subject individuals from OSP and FBI as follows:

(a) If the subject individual lives or has lived outside the State of Oregon during any part of the five years prior to application, DHS will instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(b) If the subject individual has disclosed an arrest or conviction for a crime, DHS will instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI.

(c) If the subject individual's Oregon record indicates an arrest or conviction for a crime, DHS will forward the fingerprint cards to OSP for a positive identification verification and instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(6) DHS may grant an exception to the fingerprint requirement as described in this rule if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to the applicant or staff. For the exception to be effective, a form DHS 1011D, "Criminal History Exception Request," must be signed by the SDA manager or designee.

(7) DHS will not enter into a system-of-care contract with a subject individual unless:

(a) A check of Oregon LEADS has been completed and documented;

(b) All processes required by these rules to complete the criminal history check process, including a fingerprint-based criminal offender check for a subject individual, have been authorized and have commenced; and

(c) An exception authorized by OAR 413-330-0095 regarding a criminal conviction, if necessary for approval, has been granted and documented.

(8) If after the Department enters into a contract with a contractor it learns the contractor has a potentially disqualifying record, the Department will rescind the contract unless an exception is granted.

(9) DHS will review the criminal offender information of subject individuals. The assessment of the subject individual's suitability will be documented and filed in the contractor's file. Criminal offender information received from the OSP or the FBI is confidential and will not be released.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

## 413-330-0095

### Crimes to Be Considered

(1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be a system-of-care contractor because the criminal conduct is fundamentally inconsistent with having responsibility for the care, treatment, or supervision of children. It may also be inappropriate for them to have contact with a child likely to occur while providing services to the child's family. Unless an exception is granted under these rules, a conviction for a crime listed in these rules or a false statement about a conviction may disqualify a subject individual from being approved as a system-of-care contractor.

(2) If a subject individual has been convicted of a crime described in section (3) of this rule, DHS will not enter into a system-of-care contract with the subject individual, and no exception will be granted.

(3)(a) DHS will not enter into a system-of-care contract with a subject individual, and no exception will be granted, if a subject individual has been convicted in Oregon or in another jurisdiction of any of the following crimes:

(A) A felony or misdemeanor crime of violence against a child.

(B) A felony involving:

(i) Rape, sodomy, or sexual abuse;

(ii) Intentional starvation or torture;

(iii) Murder or voluntary manslaughter;

(iv) Child abuse or neglect;

(v) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a child;

(vi) Violence, including domestic violence; or

(vii) A felony drug-related offense.

(b) Crimes described in section (3)(a) of this rule include the following crimes under Oregon law and substantially similar crimes in Oregon and other jurisdictions:

(A) ORS 163.095 Aggravated murder;

(B) ORS 163.115 Murder;

(C) ORS 163.118 Manslaughter in the first degree;

(D) ORS 163.125 Manslaughter in the second 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 163.425 Sexual abuse in the second degree;

(N) ORS 163.427 Sexual abuse in the first degree;

(O) ORS 163.525 Incest, if the victim of the offense is a child;

(P) ORS 163.537 Buying or selling a person under 18 years of age;

(Q) ORS 163.670 Using a child in display of sexually explicit conduct;

(R) ORS 162.155 Escape in the second degree, if the offense involves the use or threatened use of violence;

(S) ORS 162.165 Escape in the first degree, if the offense involves the use or threatened use of violence or a dangerous or deadly weapon;

(T) ORS 162.325 Hindering prosecution, if the crime involves the use of violence;

# ADMINISTRATIVE RULES

(U) ORS 163.145 Criminally negligent homicide;

(V) ORS 163.160 Assault in the fourth degree, if the victim is a spouse or a child and the person has previously been convicted of assaulting the same victim;

(W) ORS 163.160 Assault in the fourth degree, if person previously convicted of assaulting same victim or assault witnessed by child/step child of defendant or victim or other child living in household of defendant or victim;

(X) ORS 163.160 Assault in the fourth degree if the victim is a child (misdemeanor);

(Y) ORS 163.165 Assault in the third degree;

(Z) ORS 163.175 Assault in the second degree;

(AA) ORS 163.185 Assault in the first degree;

(BB) ORS 163.205 Criminal mistreatment in the first degree, if the victim is a child or if the crime involves violence;

(CC) ORS 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree;

(DD) ORS 163.225 Kidnapping in the second degree, if the victim is a child or spouse or if the crime involves violence;

(EE) ORS 163.235 Kidnapping in the first degree, if the victim is a child or spouse or if the crime involves violence;

(FF) ORS 163.535 Abandonment of a child;

(GG) ORS 163.547 Child neglect in the first degree;

(HH) ORS 163.555 Criminal nonsupport;

(II) ORS 163.684 Encouraging child sexual abuse in the first degree;

(JJ) ORS 163.686 Encouraging child sexual abuse in the second degree;

(KK) ORS 163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree;

(LL) ORS 163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree;

(MM) ORS 164.125 Theft of services, if the theft is by force for services valued at \$750 or more;

(NN) ORS 164.225 Burglary in the first degree, if the offense involves violence;

(OO) ORS 164.395 Robbery in the third degree;

(PP) ORS 164.405 Robbery in the second degree;

(QQ) ORS 164.415 Robbery in the first degree;

(RR) ORS 166.015 Riot;

(SS) ORS 166.165 Intimidation in the first degree;

(TT) ORS 166.220 Unlawful use of weapon;

(UU) ORS 167.017 Compelling prostitution;

(VV) ORS 167.212 Tampering with drug records;

(WW) ORS 167.262 Adult using minor in commission of controlled substance offense (for controlled substance other than less than 5 grams of marijuana);

(XX) ORS 475.992(1) Manufacture or delivery of Schedule I, II or III counterfeit substance;

(YY) ORS 475.992(2) Delivery of marijuana for consideration;

(ZZ) ORS 475.992(3) Creation or delivery of Schedule I, II or III counterfeit substance;

(AAA) ORS 475.992(4) Possession of Schedule I or II controlled substance;

(BBB) ORS 475.993 Prohibited acts for registrants related to Schedule I controlled substance;

(CCC) ORS 475.995 Distribution of Schedule I, II or III controlled substances to minors;

(DDD) ORS 475.999 Manufacture or delivery of Schedule I, II or III controlled substance within 1000 feet of school.

(4) The Department will not enter into a system-of-care contract with a contractor who has been convicted of a crime not described in section (3) of this rule unless an exception is granted in accordance with this rule. The following persons are authorized to grant an exception:

(a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA Manager may authorize the SDA Assistant Manager, the SDA Child Welfare Manager, or a child welfare supervisor to grant an exception authorized by this subsection.

(b) If a subject individual has been convicted of a felony or of a crime involving domestic violence, other than one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA manager may authorize the SDA Assistant Manager or the SDA Child Welfare Manager to grant an exception under this subsection.

(5) A person authorized by section (4) of this rule to grant an exception must determine whether the subject individual is suitable to be a system-of-care contractor notwithstanding the criminal convictions. The person authorized to grant an exception must consider the following factors and must document the bases for the approval or denial on form DHS 1011D, "Criminal History Exception Request":

(a) The severity and nature of the crime.

(b) The number of criminal offenses.

(c) The time elapsed since commission of the crime.

(d) The circumstances surrounding the crime.

(e) Content of police reports concerning the crime.

(f) The subject individual's explanation of the crime.

(g) The relationship of the criminal activity to the subject individual's capacity to safely provide the proposed services.

(h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.

(6) An exception granted with respect to a specific conviction need only be granted one time.

(7) An exception granted under this rule does not establish a precedent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537 & 181.010 - 181.560

Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; SOSCF 28-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

## 413-330-0097

### Consideration of Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's suitability to be a system-of-care contractor. If a subject individual has a history of arrests for crimes involving any of the following conduct, the Department's field staff must consider the behavior that resulted in the arrests and assess whether or not the subject individual is suitable to be a system-of-care contractor:

(a) Child abuse or neglect.

(b) Spousal abuse.

(c) A crime against children, including pornography.

(d) A crime involving violence, including rape, sexual abuse, manslaughter or homicide.

(e) Physical assault.

(f) Battery.

(g) Drug or alcohol offenses.

(h) Weapons-related offenses.

(2) If a subject individual has been arrested for any of the crimes listed in section (1) of this rule, the supervisor and caseworker, in consultation with the management staff as designated by the SDA Manager, must assess the suitability of the subject individual to be a system-of-care contractor and document their findings. The persons conducting the assessment must consider and document their findings regarding the behavior or conduct that led to each arrest, how that behavior relates to the subject individual's qualifications to be a system-of-care contractor, and whether, given the behavior that led to the arrests, the subject individual is qualified to be a system-of-care contractor.

(3) In conducting the assessment, the supervisor and caseworker must consider the following with regard to the arrests:

(a) The subject individual's explanation of the circumstances surrounding and the behavior that led to each arrest.

(b) The severity and nature of the behavior that led to the arrests.

(c) Whether the subject individual's behavior that led to the arrests relates to or raises concerns about the individual's qualifications to be a system-of-care contractor.

(d) The time elapsed since the arrests.

(e) The circumstances surrounding each arrest.

(f) Whether the subject individual was charged with or indicted for a crime related to the arrests.

(g) The disposition of any charge or indictment related to the arrests.

(h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.

(i) Any other information related to the circumstances of the arrests or the behavior that led to the arrests that may relate to the subject individual's qualifications to be a system-of-care contractor.

(j) The number of arrests.

(4) The supervisor and worker may also obtain and review a copy of the police report of the arrest and interview the subject individual about the arrest.

# ADMINISTRATIVE RULES

(5) Under no circumstances will DHS bar or refuse to approve an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 181.537 & 181.010 - 181.560  
Hist.: CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

## 413-330-0098

### Rights for Review and Contested Case Hearings

(1) If DHS determines that the subject individual is not suitable to be a System of Care Contractor based on criminal history or false statement on the application form (unless the subject individual voluntarily withdraws from the process), DHS will notify the subject individual, by certified mail, that the subject individual:

(a) Has the right to inspect and challenge Oregon criminal offender information through the OSP procedures (ORS 181.555(3)).

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C., 20537-9700.

(c) May appeal DHS's determination of unsuitability and may indicate an intent to challenge information in the OSP or FBI report by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 provided that DHS receives a request for a contested case hearing in writing within 10 calendar days after the notice is mailed.

(2) A contested case hearing is conducted in accordance with ORS 183.413 to 183.470, OAR 137-003-0501 to 137-003-0700, and OAR 413-120-0470.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 181.537  
Hist.: CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04; CWP 10-2004, f. & cert. ef. 6-1-04

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**Adm. Order No.:** CWP 11-2004

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 413-330-0900, 413-330-0910, 413-330-0920, 413-330-0930, 413-330-0940, 413-330-0950, 413-330-0960, 413-330-0970, 413-330-0980, 413-330-0990, 413-330-1000, 413-330-1010

**Rules Repealed:** 413-330-0900(T), 413-330-0910(T), 413-330-0920(T), 413-330-0930(T), 413-330-0940(T), 413-330-0950(T), 413-330-0960(T), 413-330-0970(T), 413-330-0980(T), 413-330-0990(T), 413-330-1000(T), 413-330-1010(T)

**Subject:** The 2003 Legislative Session, DHS Budget Authorization (HB 5030) authorized dollars to implement the System of Care Needs Based Service program providing flexible funds to the Department to meet the individual needs of children and their families in order to promote safety, permanency and well-being. These services are provided by the Department under an agreement between the Oregon Department of Human Services and the Juvenile Rights Project, Inc. These administrative rules describe how, when and who may use and authorize the use of the System of Care Short Form Personal Services Contract for the delivery of System of Care-funded individualized services to children and families. These rules have also been changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-330-0900

### Purpose

These administrative rules (OAR 413-330-0900 to 413-330-1010) describe the use of the system-of-care short-form personal-services contract. These rules also describe how approval authority for these contracts is delegated to agency managers and supervisors.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 279.727 & 279.729  
Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0910

### Definitions

As used in OAR 413-330-0900 to 413-330-1010:

(1) "Approval authority" means the authority to approve and execute a contract. OAR 125-020-0220(1) gives the Department of Administrative Services (DAS) approval authority for all state agency contracts. DAS has delegated the approval authority to the Department of Human Services (the Department) for client services contracts (*see* OAR 125-020-0600(1)(a)).

(2) "Child" means an unmarried person under 18 years of age. A person between 18 and 21 years of age and in the custody of the Department is also considered a child for purposes of these rules.

(3) "Client" means a child or adult receiving services from the Department.

(4) "Contract authority" means the authority to select a contractor, negotiate a contract, and sign a contract.

(5) "Family member" means a person related to the child.

(6) "Independent contractor" means an individual at least 18 years of age or a business that is an independent contractor as defined in ORS 670.600.

(7) "Nontraditional contractor" means an individual at least 18 years of age or a business not currently licensed by the Department as a child-caring agency who has contracted with the Department if the total authorized expenditure of all contracts is less than \$8,000.

(8) "Primary care giver" means a person who is responsible for providing care and supervision of a child.

(9) "System-of-care short-form personal-services contract" or "SOC short-form contract" means a class of personal services contracts funded by flexible funds allocated by the Department as part of the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc., and developed by the Department to provide expedited service delivery to children and families as allowed by these rules.

(10) "System-of-care contractor" or "SOC contractor" means an individual or business that has contracted with the Department and is paid with flexible funds allocated by the Department as part of the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc.

(11) "System-of-care settlement agreement" means the agreement between the Oregon Department of Human Services and the Juvenile Rights Project, Inc., which includes provisions for the use of flexible funds in meeting the individual needs of children and their families to promote safety, permanency, and well being.

(12) "Traditional contractor" means an individual at least 18 years of age who has exceeded \$8,000 in total SOC contracts during the preceding 12 month period, regardless of funding source or purpose; or a business currently licensed by the Department as provided for by OAR 413-220-0000 to 413-220-0160.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 279.727 & 279.729  
Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0920

### Policy

(1) The Department's implementation of its strengths-and-needs-based system-of-care model for delivering client services has placed an increased emphasis on providing the child and the child's primary care giver with the individualized services they need in a timely manner. The client's strengths and needs are collaboratively identified by the following parties:

- The child, if appropriate;
- The primary care giver;
- Members in addition to the primary care giver;
- Appropriate employees of the Department;
- Other interested parties.

(2) Services are designed to meet the child's needs and reach the agreed-upon outcomes.

(3) The SOC short-form contract helps the Department's staff expedite the contracting. It is designed to:

- Provide nonresidential services to meet the needs of a child.
- Increase the resource pool of service contractors by allowing the use of both traditional and nontraditional contractors.
- Provide more timely delivery of services by delegating approval authority for SOC short-form contracts to local Child Welfare program managers and supervisors.

(4) An SOC short-form contract can be used when the following conditions are met:

- The contractor is an independent contractor.
- The services are:
  - Provided for a specific child, sibling group, or primary care giver.

# ADMINISTRATIVE RULES

(B) Provided to help the caseworker, the child, and the child's family reach mutually agreed-upon outcomes.

(C) Nonresidential.

(D) Limited to a maximum length of 12 months. The expectation is that the mutually agreed-upon outcomes will be reached within that time period.

(E) Limited to a maximum dollar amount of \$4,000. The expectation is that the mutually agreed-upon outcomes will be reached without spending more than that amount.

(c) The contracted services do not include:

(A) Services the recipient is eligible to receive that are available from another public agency or institution or from a private contractor under an existing contract; or

(B) The same services or services similar to those being provided by Department staff.

(d) Funds are available and authorized for the type of service and client to be served by the contract, and the cost is reasonable and commensurate with the cost of similar services.

(5) The statement of work, in an SOC short-form contract, is written to describe the agreed-upon outcomes and the services to be provided. Outcomes must be specifically related to one or more of the following goals:

(a) Safety — to prevent placement or re-entry into care and to ensure the child's safety in the home.

(b) Permanency — to prevent movement in care and to ensure stability in the living situation or facilitate permanency for a child for whom the plan is categorized as an "other planned permanent living arrangement."

(c) Facilitate reunification — to facilitate the child's return home and preserve continuity of family relationships and permanency for the child.

(d) Permanency — to facilitate the child's permanency plan of adoption or guardianship.

(e) Well-being — to facilitate the child's well-being by enhancing the family's capacity to provide for its children's needs.

(f) Well-being — to facilitate the child's well-being by ensuring the child receives adequate and appropriate services to meet medical, physical, mental health, social, emotional-development, or educational needs.

(6) Contracted services must be provided by the contractor. The SOC short-form contract does not allow subcontracting. A traditional contractor may use an employee or volunteer to provide the contracted services. A nontraditional contractor must provide the services himself or herself and cannot use an employee or volunteer to provide the contracted services.

(7) The Department may terminate an SOC short-form contract upon written notice to the contractor.

(8) The printed contract cannot be altered. If the format is changed by anyone, regardless of the reason or circumstances, the contract cannot be executed and is void.

(9) Within 24 hours after the contract is signed by both parties, the contract and cover sheet must be sent by facsimile to the Technical Assistance Unit.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0930

### Contractor

(1) A short-form contract is used by the Department only to contract with a provider who is an independent contractor.

(2) An SOC contractor must be at least 18 years of age.

(3) A contractor for an SOC short-form contract is selected by direct negotiations. The Department negotiates directly with the contractor who is determined to be the best able to provide the services at a reasonable price. No informal or formal contractor selection and solicitation process is required.

(4) A nontraditional contractor is considered a traditional contractor once the total dollar amount of all contracts the individual has with the Department, regardless of funding source or purpose, exceeds \$8,000 during a 12-month period. At that point, the insurance and liability coverage requirements increase. A traditional contractor is required to meet all contractual insurance requirements, including the requirement to obtain professional liability insurance, if the contractor must be licensed or accredited to do the contracted work. The 12-month period is measured from the earliest contract effective date to the latest contract end date for all contracts that the nontraditional contractor has with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0940

### Types of Service

(1) The Department uses an SOC short-form contract with a traditional contractor for such services as the following:

(a) Housing and food services — including housing deposits, utilities, home repairs, food, household necessities, cleaning services, supplies, and equipment.

(b) Transportation — including transportation for visitation, bus passes, other fares, automobile repair, and reimbursement when the family is transported by a community or family member.

(c) Assessment, testing, and evaluations — including psychiatric, psychological, psycho-social, behavioral, developmental, medical, or educational services not available through other resources such as other programs operated by the Department or from a school district.

(d) Therapeutic and rehabilitative services — including family, group, and individual therapy (including drug and alcohol treatment services) not available through other sources, such as from other programs operated by the Department or from family-based service contracts, including intensive family services (IFS), and family sex abuse treatment (FSAT), and parent training.

(e) Skills training and support — including parent coaching, mentoring, psycho-social skills training and support, shadowing or one-on-one supervision, and support of daily activities, transition support services, sub-care or in-home behavior support or management, and educational services not available through other programs operated by the Department or from a school districts.

(f) Support services for care givers — including time-limited services for parents, foster parents, and relative care takers not provided by other sources.

(g) Well-being and developmental needs — including expenses related to school or recreational activities, such as fees for sports, camps, school trips, music, arts, and other activities, and activities related to a child's traditional or cultural needs or developmental milestones.

(2) The nontraditional contractor is a contractor chosen for his or her unique capacity to connect with the child based on the specific strengths and needs of the child as identified in the strengths-and-needs-based service planning process. The nontraditional contractor focuses on working with the family in addressing the specific strengths and needs of the child. The nontraditional contractor gives special care to planning activities that can eventually be maintained without the contractor's involvement. A short-form contract can be used with a nontraditional contractor only for the following services:

(a) Individual Mentoring: Social, behavioral, and recreational skill development. Assisting the child in exploring special talents or interests, arranging for on-going social or recreational opportunities, and modeling appropriate interaction with others with special care given to planning activities that can eventually be maintained without the mentor.

(b) Family Mentoring: Engagement of families for parenting skill development, including modeling appropriate interactions with children in the home, effective problem-solving, establishment of routines, and assisting with development of natural helping systems to enable the family to function independently with success.

(c) Individual Tutoring: Educational support services tailored specifically to the needs of the child. This assistance should be offered when the child's developmental functioning is significantly compromised without tutoring and is not obtainable through an Individual Education Plan (IEP) or any other appropriate resource.

(d) Developmental Support: Chosen activities requiring adult supervision at all times to meet the child's identified developmental needs or milestones.

(e) Therapeutic Visitation: Visitation services to address the child's needs and encompass specific therapeutic goals. The contractor, if not licensed, must obtain supervision from a licensed therapist, at his or her own expense, for consultation and feedback on the therapeutic process and progress of the visitation.

(3) The Department's worker must enter the System of Care Service Codes, Open Reasons, and Disposition in the Department's Integrated Information System (IIS), including the person letter for the parents and children who benefit from or participate in the authorized service.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

# ADMINISTRATIVE RULES

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0950

### Insurance

(1) Traditional contractor insurance requirements. The coverage and limits of insurance required for a traditional contractor are specified in the contract. The Department requires a traditional contractor to provide proof that all required insurance is effective and in force before the SOC short-form contract can be executed.

(2) Nontraditional contractor insurance requirements.

(a) If a nontraditional contractor is providing a service that requires transporting the client, the Department requires the nontraditional contractor to provide proof of:

(A) A valid Oregon driver's license; and

(B) Automobile liability coverage that has limits not less than required by ORS 806.060. The nontraditional contractor must have automobile insurance in effect during the term of the SOC short-form contracts.

(b) The State of Oregon, through the Risk Management Division of the Department of Administrative Services provides nontraditional contractors with general liability insurance coverage including legal defense and excess automobile liability coverages. These coverages are provided to a nontraditional contractor, while acting within the course and scope of duties listed in the short-form contract, to the extent that a claim arises out of the provisions of services pursuant to the Short Form Contract's terms and statement of work. The provision of general liability coverage does not make the nontraditional contractor an agent of the Department or of the State of Oregon or subject the contractor to ORS 30.260 to 30.300 (the Oregon Tort Claims Act).

(c) The coverage described in subsection (b) of this section is not provided for acts, errors, or omissions due to malfeasance; for willful or wanton neglect of duty; for acts outside the short-form contract's specified scope of work; or for punitive damages.

(d) Following are the limits of coverage provided by the State to non-traditional contractors:

(A) \$50,000 to a claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence;

(B) \$100,000 to a claimant as general and special damages for all other claims arising out of a single accident or occurrence;

(C) \$200,000 for all claims arising out of a single accident or occurrence;

(D) The dollar limits for defense cost coverage are included in the above dollar limits. Once this dollar limit is reached, further defense costs are the responsibility of the nontraditional contractor.

(e) The nontraditional contractor must report, in writing, each claim and each occurrence that reasonably may give rise to a claim to the contract administrator, who will forward the information to the Risk Management Division as promptly as practicable.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0960

### Dispute Resolution: Short-Form Contracts

(1) When a short-form contract is used to contract with a nontraditional contractor, the child's case worker requests that the client sign a "Dispute Resolution Agreement." The client and the Department are parties to the "Dispute Resolution Agreement." The agreement provides a procedure to resolve disputes between the client and the nontraditional contractor. The client is encouraged to participate in good-faith in the dispute resolution process.

(2) The client's signature and participation in the dispute resolution process are voluntary.

(3) Dispute resolution between the client and a nontraditional contractor must be conducted in accordance with procedures established by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & ORS 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; Suspended by CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0970

### Criminal History Records Check for SOC Contractors

(1) The Department has determined that persons who engage in certain criminal conduct may not be qualified to be system-of-care contractors because their criminal conduct is fundamentally inconsistent with having any responsibility for the care, treatment, or supervision of children or other vulnerable persons.

(2) SOC contractors are subject to a criminal-history-records check as described in OAR 413-330-0085 to 413-330-0105 (see Child Welfare policy "System of Care Short Form Contracts," policy III-D.1.1.2). In the case of a non-traditional contractor, the Department will perform the check. If the SOC contractor is a business with more than one employee, the executive director, or equivalent, of the business is considered the contractor under those rules.

(3) Once the contractor has been approved and the contract has been executed, and prior to services being performed, the contractor must verify that each employee and each volunteer who will have contact with children in the course of their duties has not been convicted of child abuse, an offense against persons, a sexual offense, child neglect, or any other offense bearing a substantial relation to the qualifications, functions, or duties of an employee or volunteer who will have contact with children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0980

### DHS Abuse and Neglect Information Check

(1) To further protect children from abuse and neglect, the Department checks all SOC contractors against the Department's child-abuse and neglect-assessment information.

(2) The Department maintains the confidentiality of client information in accordance with its administrative rules on confidentiality, OAR 413-010-0000 to 413-010-0075.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-0990

### Unauthorized Services

The state is not obligated to pay for services obtained before the contract has been written, approved, and signed by the contractor and a representative of the Department who has contract approval authority. A Department employee who authorizes a service that requires a contract, prior to a contract being fully executed, or obtains a service not covered by a contract, may be held personally liable for the cost of the service.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727 & 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-1000

### Delegation of Short-Form Contract Approval Authority

(1) Authority to approve short-form contracts is hereby delegated to the Administrator for Program Performance and Reporting.

(2) The Administrator for Program Performance and Reporting may delegate to a Child Welfare program manager or supervisor representing the SDA or the local office, upon written request, authority to approve SOC short-form contracts. The authority may be granted when the following conditions have been met:

(a) Management staff, including the Child Welfare program manager, line manager or supervisor, office manager or equivalent, and system-of-care resource developer or equivalent have received specific training regarding SOC short-form contract policy and procedure from Program Performance and Reporting staff and staff from the Department's Contracts and Procurement unit.

(b) The Child Welfare program manager has submitted an implementation plan to the Administrator for Program Performance and Reporting or the Administrator's delegate that describes how SOC short-form contracts will be processed at the local field office. The field office implementation plan may be submitted only after the management staff has received the SOC short-form contract training.

(c) Staff from the Program Performance and Reporting program have reviewed the implementation plans to ensure compliance with these administrative rules and sound business and fiscal practices.

# ADMINISTRATIVE RULES

(d) The Administrator for Program Performance and Reporting, or the Administrator's delegate, may, with consent of the Department's Office of Contracts and Procurement, delegate authority to approve SOC short-form contracts to a Child Welfare program manager or supervisor. The Administrator or the Administrator's delegate may delegate short-form contract approval authority only after the field office management staff has received training and the implementation plan has been approved. Once authority has been delegated, the Child Welfare program manager or supervisor is responsible for the proper processing and use of the SOC short-form contract. Except as authorized in OAR 413-330-1010, a Child Welfare program manager or supervisor cannot further delegate approval authority or contract responsibilities.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 279.727 & 279.729  
Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; SOSCF 29-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

## 413-330-1010

### Responsibilities of Child Welfare Program Managers and Supervisors with Delegated Authority

(1) A Child Welfare program manager or supervisor with delegated approval authority is responsible for the following duties relating to SOC short-form contracts. The responsibility for the duties may or may not be further delegated by either as follows:

(a) A Child Welfare program manager or supervisor may delegate the duty:

- (A) To determine whether a contractor is an independent contractor.
- (B) To determine whether a contractor is a traditional or nontraditional SOC contractor.
- (C) To determine whether a contractor has the required insurance.
- (D) To negotiate the following contract conditions:
  - (i) Services;
  - (ii) Outcomes;
  - (iii) Contract begin date;
  - (iv) Contract end date;
  - (v) Contract payment rate and number of services units.
- (E) To monitor and act as the Department's contract administrator for the SOC short-form contract.

(b) A Child Welfare program manager or supervisor cannot delegate the duty:

- (A) To determine whether the services being contracted for are the same as services provided by Department staff.
- (B) To determine whether the contractor has a criminal history record that would prevent the Department from contracting with the contractor (see OAR 413-330-0085 to 413-330-0097).
- (C) To determine whether there are concerns or reasons why using the contractor may not be in the best interests of the child by checking the Department's child abuse and neglect assessment information.
- (D) To sign and execute the short-form contract as the authorized agency representative. Services can begin only after the contractor and an authorized Child Welfare program manager or supervisor have both signed the short-form contract.
- (E) To authorize payments due for the performance of contracted services.

(2) A Child Welfare program manager or supervisor may be held personally liable for the cost of services provided before an SOC short-form contract has been fully executed or for services provided outside the scope of the contract.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 279.727 & 279.729  
Hist.: SOSCF 21-2000(Temp), f. 8-31-00, cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04; CWP 11-2004, f. & cert. ef. 6-1-04

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**Department of Human Services,  
Departmental Administration and  
Medical Assistance Programs  
Chapter 410**

**Adm. Order No.:** OMAP 33-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 410-120-1295, 410-141-0420

**Subject:** The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for serv-

ices provided to clients. Effective March 23, 2004, OMAP temporarily amended OAR 410-120-1295 and OAR 410-141-0420 as follows: OAR 410-120-1295 is revised to add a reimbursement table (Table 120-1295) necessary to apply the formula established by the reimbursement methodology in ORS 414.743, and OAR 410-120-1295. This table gives clarification for hospitals and managed care organizations about how to apply the formula established under the new reimbursement methodology to claims for reimbursement for services to medical assistance clients. Table 120-1295 is effective for dates of service for the budget period from October 1, 2003 through September 30, 2004. OAR 410-141-0420 is revised to reference OAR 410-120-1295. This is to permanently amend OAR 410-120-1295 and OAR 410-141-0420.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1295

### Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a nonparticipating provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted FCHP that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(B) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(A) and for outpatient service rates for subsection (3)(B), are calculated by the department's contracted actuarial firm. The inpatient and outpatient reimbursement table adopted for the period October 1, 2003 to September 30, 2004 will be posted on the departments website at <http://www.dhs.state.or.us/policy/healthplan/guides/hospital/>.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.743  
Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04

## 410-141-0420

### Billing and Payment Under the Oregon Health Plan

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to OMAP, shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable OMAP billing rules. Submissions shall be made to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the OMAP Member's eligibility); or

(e) Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal

## ADMINISTRATIVE RULES

Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with OMAP to be eligible for Fee-for-Service (FFS) payment by OMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Office of Mental Health and Addiction Services (OMHAS) before enrollment with OMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider enrollment.

(3) Providers, including mental health Providers, do not have to be enrolled with OMAP to be eligible for payment for services by PHPs except that Providers who have been excluded as Medicare/Medicaid Providers by OMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, that the OMAP Member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform OMAP Members of any charges for non-covered services prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to OMAP Members. These services are referred to as Capitated Services

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or OMAP specifies otherwise. PHPs may require Providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to Providers for Capitated Services is a matter between the PHP and the Provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any Provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization; (vi) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify Providers of such determination within 2 working days of receipt of the request;

(C) For all other pre-authorization requests, PHPs shall notify Providers of an approval, a denial or a need for further information within 14 calendar working days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that fourteen (14) day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies the need for additional information and how the delay is in the interest of the OMAP Member. The PHP shall make a determination as the OMAP Member's health condition requires, but no later than the expiration of the extension. PHPs shall notify OMAP Members of a denial within five (5) working days from the final determination using an OMAP or OMHAS approved client notice format.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the OMAP Member may be financially responsible. Such notice shall be provided to the OMAP Member and the treating Provider within fourteen

(14) calendar days of the final determination. The notice to the OMAP Member shall be an OMAP or OMHAS approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (OMAP 3030) shall be attached. The notice to the Provider shall include the reason for the denial;

(D) PHPs shall not require Providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved Providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the OMAP Member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the OMAP Member receives within the PHP, for authorized referral care, and for Urgent Care Services or Emergency Services the OMAP Member receives from non-contracted Providers. FCHPs and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care OMAP Members receive from non-PHP Providers;

(d) FCHPs shall pay transportation, meals and lodging costs for the OMAP Member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP has arranged and authorized when those services are available within the state, unless otherwise approved by OMAP;

(e) PHPs shall be responsible for payment of covered services provided by a Non-Participating Provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the Participating Provider ordered or directed the covered services to be delivered by a Non-Participating Provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered services that would have been pre-authorized with a Participating Provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to Non-Participating Providers (Providers enrolled with OMAP that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to Providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other Services:

(a) OMAP Members enrolled with PHPs may receive certain services on an OMAP FFS basis. Such services are referred to as Non-Capitated Services;

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by OMAP on an OMAP FFS basis. Before providing services, Providers should contact the PHPs identified on the OMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the Provider may call the OMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate OMAP administrative rules and Provider guides, including rates and billing instructions;

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(d) Providers shall bill OMAP directly for Non-Capitated Services in accordance with billing instructions contained in the Provider guides;

(e) OMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and Provider guides;

(f) OMAP will not pay a Provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of OMAP, OMHAS, nor a PHP except as provided for in OMAP rules and Provider guides (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate).

(h) FCHPs that contract with non-public teaching hospitals will reimburse those hospitals for Graduate Medical Education (GME), if the hospitals are:

(A) Neither a type A nor type B hospitals;

(B) Not paid according to a type A or type B payment methodology; and,

(C) In remote areas greater than 60 miles from the nearest acute care hospital, with a graduate medical student teaching program.

(i) FCHPs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. OMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM Managed Services are covered services that shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP Provider guides;

(d) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Provider guides.

(10) OHP Clients who are not enrolled with a PHP receive services on an OMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled OMAP Provider;

(b) All services shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP Provider guides;

(c) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Provider guides.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; 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 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04

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**Adm. Order No.:** OMAP 34-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 410-121-0030

**Subject:** The Pharmaceutical Services program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0030 is amended, effective June 1, 2004, to update Table

121-0030-1 to modify for Estrogens and Hypoglycemics drug classes to add and delete drugs based on drug class reviews.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0030

### Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Decisions concerning the clinical effectiveness of the prescription drugs are made by licensed health practitioners, informed by the latest peer-reviewed research;

(b) Decisions also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that has been determined to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, their drug will also be included in the PDL;

(e) A copy of the current PDL is available on the web at [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/).

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. Relative price will be determined using the methodology described in subsection (4);

(c) Drug classes and selected drug(s) for the drug classes will be reviewed annually:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) New drugs will not be added to the PDL until they have been reviewed by the HRC;

(C) All changes or revisions to the PDL will be made publicly, using the rulemaking process, and will be published on OMAP's Pharmaceutical Services provider rules web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. These factors will be weighed with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0180), in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, the cost of the other FDA-approved drugs in the class will be recalculated using EAC for retail pharmacies in effect on the first of the month in which DHS reviews that specific drug class (OAR 410-121-0180), less average available rebate. Drugs with prices under the benchmark drug cost will be included on the PDL.

(5) Regardless of the PDL, prescriptions shall be dispensed in the generic form unless practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155.

Table 121-0030-1, PMPDP PDL (updated effective 06/01/2004)

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

Stat. Auth.: ORS 409

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 414.065  
Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02;  
OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03;  
OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003,  
f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04;  
OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04;  
OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04

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**Adm. Order No.:** OMAP 35-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 6-1-04

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**Rules Amended:** 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265, 410-141-0266, 410-141-0480

**Subject:** The Oregon Health Plan (OHP) Services program rules govern Office of Medical Assistance Programs' payment for services provided to clients. Rules 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265, 410-141-0266 and 410-141-0480 are revised to change the complaint and grievance rules to parallel Code of Federal Regulations (CFR). For clarification purposes, OMAP included a definition section, changed the heading of the rules and separated the complaint (grievance) process from the appeals and hearings processes.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0260

### Oregon Health Plan Prepaid Health Plan Grievance System: PHP Complaint and Appeal Procedures

(1) Definitions:

(a) Action — In the case of a PHP:

(A) The denial or limited authorization of a requested covered service, including the type or level of service;

(B) The reduction, suspension or termination of a previously authorized service;

(C) The denial in whole or in part, of payment for a service;

(D) The failure to provide services in a timely manner, as defined by OMAP;

(E) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(F) For an OMAP Member in a single PHP Service Area, the denial of a request to obtain covered services outside of the PHP's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(b) Appeal — A request by an OMAP Member or Representative for a PHP to review an "Action" as defined in this Section;

(c) Complaint — An OMAP Member's or OMAP Member's Representative's expression of dissatisfaction to a PHP or to a Practitioner about any matter other than an Action, as "Action" is defined in this section;

(d) Grievance System — The overall system that includes Complaints and Appeals handled at the PHP level, and access to the OMAP Administrative Hearing process.

(2) The purpose of OAR 410-141-0260 through 410-141-0266 is to describe the requirements for the overall Grievance System that includes Complaint and Appeal procedures, which are handled at the PHP level, and that provides for access to the OMAP Administrative Hearing process. These rules will apply to all PHPs as defined in OAR 410-141-0000, excluding MHOs.

(3) All PHPs shall have written policies and procedures for a Grievance System that ensures that they meet the requirements of sections OAR 410-141-0260 to 410-141-0266.

(4) Information provided to the OMAP Member shall include at least:

(a) Written material describing the PHP's Complaint and Appeal procedures, and how to make a Complaint or file an Appeal; and

(b) Assurance in all written, oral, and posted material of OMAP Member confidentiality in the Complaint and Appeal processes.

(5) An OMAP Member or an OMAP Member's Representative may file a Complaint and a PHP level Appeal orally or in writing, and may request an OMAP Administrative Hearing.

(6) PHPs shall keep all information concerning an OMAP Member's Complaint or Appeal confidential as specified in OAR 410-141-0261 and 410-141-0262.

(7) Consistent with confidentiality requirements, the PHP's staff person who is designated to receive Complaints or Appeals, shall begin to

obtain documentation of the facts concerning the Complaint or Appeal upon receipt of the Complaint or Appeal.

(8) PHPs shall afford OMAP Members full use of the Grievance System procedures. If the OMAP Member decides to pursue a remedy through the OMAP Administrative Hearing process, the PHP will cooperate by providing relevant information required for the hearing process.

(9) A request for an OMAP Administrative Hearing made to OMAP outside of the PHP's Appeal procedures, or without previous use of the PHP's Appeal procedures shall be reviewed by the PHP through the PHP's Appeal process upon notification by OMAP as provided for in OAR 410-141-0264.

(10) Under no circumstances may a PHP discourage an OMAP Member or an OMAP Member's Representative from using the OMAP Administrative Hearing process.

(11) Neither implementation of an OMAP hearing decision nor an OMAP Member's request for a hearing may be a basis for a request by the PHP for an OMAP member's disenrollment.

(12) PHPs shall make available a supply of blank Complaint forms (OMAP 3001) in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to Complaints or Appeals. PHPs shall develop an Appeal form and shall make the forms available in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to Complaints or Appeals.

(13) The PHP must provide information about the Grievance System to all participating providers and subcontractors at the time they enter into a contract.

(14) The PHP must maintain logs that are in compliance with OAR 410-141-0266 to document Complaints and Appeals received by the PHP, and the State must review the information as part of the State quality strategy.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; 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

## 410-141-0261

### PHP Complaint Procedures

(1) A Complaint procedure applies only to those situations in which the OMAP Member or their representative expresses concern or dissatisfaction about any matter other than an "Action." PHPs shall have written procedures to acknowledge the receipt, disposition and documentation of each Complaint from OMAP Members. The PHP's written procedures for handling Complaints, shall, at a minimum:

(a) Address how the PHP will accept, process and respond to each Complaint from an OMAP Member or their Representative, including:

(A) Acknowledgment to the OMAP Member or representative of receipt of each Complaint;

(B) Ensuring that OMAP Members who indicate dissatisfaction or concern are informed of their right to file a Complaint and how to do so;

(C) Ensuring that each Complaint is transmitted timely to staff who have authority to act upon it;

(D) Ensuring that each Complaint is investigated and resolved in accordance with these rules; and

(E) Ensuring that the Practitioner(s) or staff person(s) who make decisions on the Complaint must be persons who are:

(F) Not involved in any previous level of review or decision-making; and

(G) Who are health care professionals who have appropriate clinical expertise in treating the OMAP Member's condition or disease if the Complaint concerns denial of expedited resolution of an Appeal or if the Complaint involves clinical issues.

(b) Describe how the PHP informs OMAP Members, both orally and in writing, about the PHP's Complaint procedures;

(c) Designate the PHP staff member(s) or a designee who will be responsible for receiving, processing, directing, and responding to Complaints;

(d) Include a requirement for Complaints to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(2) The PHP must provide OMAP Members with any reasonable assistance in completing forms and taking other procedural steps related to filing and disposition of a Complaint. This includes, but is not limited to, providing interpreter services and toll free phone numbers that have adequate TTY/TTD and interpreter capabilities.

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(3) The PHP shall assure OMAP Members that Complaints are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the OMAP Member's right to confidentiality of information about the Complaint as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning an OMAP Member's Complaint is kept confidential, consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any Practitioner whose services, items or quality of care is alleged to be involved in the Complaint have a right to use this information for purposes of the PHP resolving the Complaint, for purposes of maintaining the log required in OAR 410-141-0266, and for health oversight purposes, without a signed release from the OMAP Member;

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the OMAP Member to authorize a release of information regarding the Complaint to other individuals as needed for resolution. Before any information related to the Complaint is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the Complaint file. Copies of the form for obtaining the release of information shall be included in the PHP's written process.

(4) The PHPs procedures shall provide for the disposition of Complaints within the following timeframes:

(a) The PHP must resolve each Complaint, and provide notice of the disposition, as expeditiously as the OMAP Member's health condition requires, within the timeframes established in this rule;

(b) For standard disposition of Complaints and notice to the affected parties, within 5 working days from the date of the PHP's receipt of the Complaint, the PHP must either:

(A) Make a decision on the Complaint and notify the OMAP Member; or

(B) Notify the OMAP Member in writing that a delay in the PHP's decision of up to 30 calendar days from the date the Complaint was received by the PHP is necessary to resolve the Complaint. The PHP shall specify the reasons the additional time is necessary.

(5) The PHP's decision about the disposition of a Complaint shall be communicated to the OMAP Member orally or in writing within the timeframes specified in (4) of this rule:

(a) An oral decision about a Complaint shall address each aspect of the OMAP Member's Complaint and explain the reason for the PHP's decision;

(b) A written decision must be provided if the Complaint was received in writing. The written decision on the Complaint shall review each element of the OMAP Member's Complaint and address each of those concerns specifically, including the reasons for the PHP's decision.

(6) All Complaints made to the PHP's staff person designated to receive Complaints shall be entered into a log and addressed in the context of Quality Improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(7) All Complaints that the OMAP Member chooses to resolve through another process, and that the PHP is notified of, shall be noted in the Complaint log.

(8) OMAP Members who are dissatisfied with the disposition of a Complaint may present their complaint to the OMAP Ombudsman.

Stat. Auth.: ORS 409

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 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

## 410-141-0262

### PHP Appeal Procedures

(1) The PHP must have a system in place for OMAP Members that includes an Appeal process. For purposes of this rule, an Appeal means a request to the PHP for review of an Action, as Action is defined in OAR 410-141-0260. An OMAP Member must complete the PHP's Appeal process before requesting an OMAP Administrative Hearing. If the OMAP Member initiates an Appeal, it shall be documented in writing by the PHP and handled as an Appeal.

(2) An Appeal must be filed with the PHP no later than 45 calendar days from the date on the Notice of Action required under OAR 410-141-0263.

(3) The OMAP Member or OMAP Member's Representative may file an Appeal with the PHP either orally or in writing and, unless he or she

requests expedited resolution, must follow an oral filing with a written and signed Appeal.

(4) Each PHP must adopt written policies and procedures for handling Appeals that, at a minimum, meet the following requirements:

(a) Give OMAP Members any reasonable assistance in completing forms and taking other procedural steps related to filing and resolution of an Appeal. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capacity;

(b) Address how the PHP will accept, process and respond to such Appeals, including how the PHP will acknowledge receipt of each Appeal;

(c) Ensuring that OMAP Members who receive a Notice of Action described in OAR 410-141-0263 are informed of their right to file an Appeal and how to do so;

(d) Ensuring that each Appeal is transmitted timely to staff who have authority to act on it;

(e) Ensuring that each Appeal is investigated and resolved in accordance with these rules; and

(f) Ensuring that the individuals who make decisions on Appeals are individuals:

(A) Who were not involved in any previous level of review or decision making; and

(B) Who are health care professionals who have the appropriate clinical expertise in treating the OMAP Member's condition or disease if an Appeal of a denial is based on lack of Medical Appropriateness or if an Appeal involves clinical issues.

(g) Include a requirement for Appeals to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(5) The PHP shall assure OMAP Members that Appeals are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the OMAP Member's right to confidentiality of information about the Appeal as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning an OMAP Member's Appeal is kept confidential consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any Practitioner whose authorization, treatment, services, items, quality of care, or request for payment is alleged to be involved in the Appeal have a right to use this information for purposes of resolving the Appeal and for purposes of maintaining the log required in OAR 410-141-0266 and for health oversight purposes by OMAP, without a signed release from the OMAP Member. The Administrative Hearing regarding the Appeal without a signed release from the OMAP Member, pursuant to OAR 410-120-1360(4);

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the OMAP Member to authorize a release of information regarding the Appeal to other individuals. Before any information related to the Appeal is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the Appeal file.

(6) The process for Appeals must:

(a) Provide that oral inquiries seeking to Appeal an Action are treated as Appeals (to establish the earliest possible filing date for the Appeal) and must be confirmed in writing, unless the OMAP Member or OMAP Member's Representative requests expedited resolution;

(b) Provide the OMAP Member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. (The PHP must inform the OMAP Member or the OMAP Member's Representative of the limited time available in the case of an expedited resolution);

(c) Provide the OMAP Member and/or the OMAP Member's Representative an opportunity, before and during the Appeals process, to examine the OMAP Member's file, including medical records and any other documents or records to be considered during the Appeals process; and

(d) Include as parties to the Appeal the OMAP Member, the OMAP Member's Representative, or the legal Representative of a deceased OMAP Member's estate;

(7) The PHP must resolve each Appeal and provide a client notice of the Appeal resolution as expeditiously as the OMAP Member's health condition requires and within the time frames in this section:

(a) For the standard resolution of Appeals and client notices to the OMAP Member and/or OMAP Member's Representative, the PHP shall resolve the Appeal and provide a client notice no later than 45 calendar

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days from the day the PHP receives the Appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(b) When the PHP has granted a request for expedited resolution of an Appeal, the PHP shall resolve the Appeal and provide a client notice no later than 3 working days after the PHP receives the Appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(c) The PHP may extend the timeframes from subsections (a) or (b) of this section by up to 14 calendar days if:

(A) The OMAP Member requests the extension; or

(B) The PHP shows (to the satisfaction of OMAP, upon its request) that there is need for additional information and how the delay is in the OMAP Member's interest.

(d) If the PHP extends the timeframes, it must, for any extension not requested by the OMAP Member, give the OMAP Member a written notice of the reason for the delay.

(8) For all Appeals, the PHP must provide written Notice of Appeal Resolution to the OMAP Member or their Representative. For notice on an expedited resolution, the PHP must also make reasonable efforts to provide oral notice.

(9) The written Notice of Appeal Resolution must include the following:

(a) The results of the resolution process and the date it was completed; and

(b) For Appeals not resolved wholly in favor of the OMAP Member, the notice must also include the following information:

(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the Appeal;

(B) The right to request an OMAP Administrative Hearing, and how to do so, which includes attaching the "Notice of Hearing Rights (OMAP 3030) and the Hearing Request Form (AFS 443);

(C) The right to request to receive benefits while the hearing is pending, and how to make the request; and

(D) That the OMAP Member may be held liable for the cost of those benefits if the hearing decision upholds the PHP's Action.

(10) An OMAP Member may request an OMAP Administrative Hearing not later than 45 calendar days from the date on the PHP's Notice of Appeal Resolution, consistent with section (7)(a) of this rule. The parties to the OMAP Administrative Hearing include the PHP as well as the OMAP Member and/or OMAP Member's Representative, or the Representative of the deceased OMAP Member's estate.

(11) Each PHP shall establish and maintain an expedited review process for Appeals, consistent with OAR 410-141-0265.

(12) Each PHP shall maintain records of Appeals, enter Appeals and their resolution into a log, and address the Appeals in the context of Quality Improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(13) Continuation of benefits pending Appeal:

(a) As used in this section, "timely" filing means filing on or before the later of the following:

(A) Within 10 calendar days of the PHP mailing the Notice of Action; or

(B) The intended effective date of the PHP's proposed Action.

(b) The PHP must continue the OMAP Member's benefits if:

(A) The OMAP Member or OMAP Member's Representative files the Appeal timely;

(B) The Appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(C) The services were ordered by an authorized Provider;

(D) The original period covered by the original authorization has not expired; and

(E) The OMAP Member requests extension of benefits.

(c) Continuation of benefits pending Administrative Hearing — If, at the OMAP Member's request, the PHP continues or reinstates the OMAP Member's benefits while the Appeal is pending and the Notice of Appeal Resolution is adverse to the OMAP Member, the benefits must be continued pending Administrative Hearing pursuant to OAR 410-141-0264.

(14) If the final resolution of the Appeal is adverse to the OMAP Member, that is, upholds the PHP's Action, the PHP may recover the cost of the services furnished to the OMAP Member while the Appeal was 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 431.230(b).

(15) If the PHP, or an OMAP hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the Appeal was

pending, the PHP must authorize or provide the disputed services promptly, and as expeditiously as the OMAP Member's health condition requires.

(16) If the PHP, or the OMAP hearing decision reverses a decision to deny authorization of services, and the OMAP Member received the disputed services while the Appeal was pending, the PHP or OMAP must pay for the services in accordance with OMAP policy and regulations.

Stat. Auth.: ORS 409

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 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04

## 410-141-0263

### Notice of Action by a Prepaid Health Plan

(1) When a PHP (or authorized Practitioner acting on behalf of the PHP) takes or intends to take any Action, including but not limited to denials or limiting prior authorizations of a requested covered service(s) in an amount, duration, or scope that is less than requested, or reductions, suspension, discontinuation or termination of a previously authorized service, or any other Action, the PHP (or authorized Practitioner acting on behalf of the PHP) shall mail a written client Notice of Action in accordance with section (2) of this rule to the OMAP Member within the timeframes specified in subsection (3) of this rule.

(2) The written client Notice of Action must be an OMAP approved format and it must be used for all denials of a requested covered service(s), reductions, discontinuations or terminations of previously authorized services, denials of claims payment, or other Action. The client Notice of Action must meet the language and format requirements of 42 CFR 438.10(c) and (d) and shall inform the OMAP Member of the following:

(a) Relevant information shall include, but is not limited to, the following:

(A) Date of client Notice of Action;

(B) PHP name;

(C) PCP/PCD name;

(D) OMAP Member's name and ID number;

(E) Date of service or item requested or provided;

(F) Who requested or provided the item or service; and

(G) Effective date of the Action.

(b) The Action the PHP or its Participating Provider has taken or intends to take;

(c) Reasons for the Action, including but not limited to the following reasons:

(A) Treatment is not covered;

(B) The item requires pre-authorization and it was not pre-authorized;

(C) The service is not Dentally or Medically Appropriate;

(D) The service or item is received in an emergency care setting and does not qualify as an Emergency Service under the prudent layperson standard;

(E) The person was not an OMAP Member at the time of the service or is not an OMAP Member at the time of a requested service; and

(F) The Provider is not on the PHP's panel and prior approval was not obtained (if such prior authorization would be required under the Oregon Health Plan Rules).

(d) A reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Action pursuant to subsection (b) of this section, in compliance with the notice requirements in ORS 183.415(2)(c);

(e) The OMAP Member's right to file an Appeal with the PHP and how to exercise that right as required in OAR 410-141-0262;

(f) The circumstances under which expedited Appeal resolution is available and how to request it;

(g) The OMAP Member's right to have benefits continue pending resolution of the Appeal, how to request that benefit(s) be continued, and the circumstances under which the OMAP Member may be required to pay the costs of these services; and

(h) The telephone number to contact the PHP for additional information.

(3) The PHP or Practitioner(s) acting on behalf of the PHP must mail the Notice of Action within the following time frames:

(a) For termination, suspension, or reduction of previously authorized OHP covered services, the following time frames apply:

(A) The notice must be mailed at least 10 calendar days before the date of Action, except as permitted under subsections (B) or (C) of this section;

(B) The PHP (or authorized Practitioner acting on behalf of the PHP) may mail a notice not later than the date of Action if:

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(i) The PHP or Practitioner receives a clear written statement signed by the OMAP Member that he or she no longer wishes services or gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying the information;

(ii) The OMAP Member has been admitted to an institution where he or she is ineligible for covered services from the PHP;

(iii) The OMAP Member's whereabouts are unknown and the post office returns PHP or Practitioner's mail directed to him or her indicating no forwarding address;

(iv) The PHP establishes the fact that another State, territory, or commonwealth has accepted the OMAP Member for Medicaid services;

(v) A change in the level of medical or dental care is prescribed by the OMAP Member's PCP or PCD; or

(vi) The date of Action will occur in less than 10 calendar days, in accordance with 42 CFR 483.12(a)(5)(ii), related to discharges or transfers and long-term care facilities.

(C) The PHP may shorten the period of advance notice to 5 calendar days before the date of the Action if the PHP has facts indicating that an Action should be taken because of probable fraud by the OMAP Member. Whenever possible, these facts should be verified through secondary sources.

(b) For denial of payment, at the time of any Action affecting the claim;

(c) For standard prior authorizations that deny a requested service or that authorize a service in an amount, duration, or scope that is less than requested, the PHP must provide Notice of Action as expeditiously as the OMAP Member's health condition requires and within 14 calendar days following receipt of the request for service, except that:

(A) The PHP may have a possible extension of up to 14 additional calendar days if the OMAP Member or the Provider requests the extension; or if the PHP justifies (to OMAP upon request) a need for additional information and how the extension is in the OMAP Member's interest;

(B) If the PHP extends the timeframe, in accordance with subsection (A) of this section, it must give the OMAP Member written notice of the reason for the decision to extend the timeframe and inform the OMAP Member of their right to file a Complaint if he or she disagrees with that decision. The PHP must issue and carry out its prior authorization determination as expeditiously as the OMAP Member's health condition requires and no later than the date the extension expires.

(d) For prior authorization decisions not reached within the timeframes specified in subsection (c) of this section, (which constitutes a denial and is thus an adverse Action), on the date that the timeframes expire;

(e) For expedited prior authorizations, within the timeframes specified in OAR 410-141-0265.

(4) Transition process for Notices of Action issued by PHPs:

(a) If a Notice of Action was issued prior to June 1, 2004, and if the OMAP Member sends a hearing request to OMAP without filing an Appeal with their PHP, the OMAP Member's hearing request will be handled according to the procedure that had been used prior to June 1, 2004, as follows:

(A) OMAP will refer the hearing request to the Office of Administrative Hearings; and

(B) OMAP will forward the hearing request to the PHP to be processed as an Appeal, except that the PHP will have 45 calendar days from the date of the hearing request to resolve the Appeal.

(b) If a Notice of Action was issued prior to June 1, 2004 and the Appeal has not been resolved by the PHP by May 31, 2004, the PHP must comply with 410-141-0260 through 410-141-0266 in effect on June 1, 2004.

(c) If a Notice of Action is issued on or after June 1, 2004, these rules adopted effective on June 1, 2004 shall apply to the Complaints, Appeals and Administrative Hearings, and subsections (a) and (b) of this Section shall not apply.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

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 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04

## 410-141-0264

### Administrative Hearings

(1) An individual who is or was an OMAP Member at the time of the Notice of Action is entitled to an Administrative Hearing by OMAP regarding the Notice of Appeal Resolution by a PHP that has denied requested

services, payment of a claim, or terminates, discontinues or reduces a course of treatment, or any other Action. There is no right to a state administrative hearing based solely on a Notice of Action. The OMAP Member must go through the appeal process with their PHP before they can request a state administrative hearing. The decision in the Notice of Appeal Resolution is the document that will trigger the right to request a state administrative hearing. OMAP does not need to grant an Administrative Hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all OMAP Members. Client 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 OMAP not later than the 45th day following the date of the Notice of Appeal Resolution.

(3) If, at the OMAP Member's request, the PHP continued or reinstated services while the Appeal was pending, the benefits must be continued pending the Administrative Hearing until one of the following occurs:

(a) The OMAP 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 OMAP Member, unless the OMAP Member within the 10-day timeframe, has requested an OMAP Administrative Hearing with continuation of benefits until the OMAP Administrative Hearing decision is reached;

(c) A final order is issued in an OMAP Administrative Hearing adverse to the OMAP Member; or

(d) The time period or service limits of a previously authorized service have been met.

(4) The OMAP Representative 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 an OMAP Member at the time the Action was taken, and whether the hearing request was timely.

(5) PHPs shall immediately transmit to OMAP any Administrative Hearing request submitted on behalf of an OMAP Member, including a copy of the OMAP Member's Notice of Appeal Resolution.

(6) If the OMAP Member files a request for an Administrative Hearing with OMAP, OMAP will send a copy of the hearing request to the PHP.

(7) 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 45 calendar days, pursuant to OAR 410-141-0262;

(b) The PHP's Notice of Appeal Resolution shall be in writing and shall be provide to the OMAP Member.

(8) When an Administrative Hearing is requested by an OMAP Member who has exhausted the PHP Appeal process, the PHP shall cooperate with providing relevant information required for the hearing process to OMAP, 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.

(9) Information about OMAP Members used for Administrative Hearings is handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. OMAP will safeguard the OMAP Member's right to confidentiality of information used in the Administrative Hearing as follows:

(a) OMAP, the OMAP Member and their representative, the PHP and any Practitioner 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 Administrative Hearing without a signed release from the OMAP Member. OMAP 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 OMAP Member seeks judicial review of the final order;

(b) Except as provided in subsection (a), OMAP will ask the OMAP 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, OMAP must have an authorization for release of information documented in the Administrative Hearing file.

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(10) The hearings request (AFS 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 OMAP Member and his or her Representative, or the Representative of a deceased OMAP 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 OMAP not later than 90 calendar days following OMAP's receipt of the request for Administrative Hearing. Delay due to a postponement or continuance granted at the request of a party or OMAP, or with the consent of the parties or OMAP, shall not be counted in computing the time limit. The final order is the final decision of OMAP.

(11) If the final resolution of the Administrative Hearing is adverse to the OMAP Member, that is, if the final order upholds the PHP's Action, the PHP may recover the cost of the services furnished to the OMAP 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.

(12) 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 OMAP Member, or OMAP and/or the PHP decides in the OMAP Member's favor before the hearing even if the OMAP Member has lost eligibility after the date the Action was taken:

(a) If the PHP, or an OMAP 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 OMAP Member's health condition requires;

(b) If the PHP, or the OMAP hearing decision reverses a decision to deny authorization of services, and the OMAP Member received the disputed services while the Administrative Hearing was pending, the PHP must pay for the services in accordance with OMAP policy and regulations in effect when the request for services was made by the OMAP Member.

Stat. Auth.: ORS 409

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

## 410-141-0265

### Request for Expedited Appeal or Expedited Administrative Hearing

(1) Each PHP shall establish and maintain an expedited review process for Appeals, when the PHP determines (upon request from the OMAP Member) or the Provider indicates (in making the request on an OMAP Member's behalf or supporting the OMAP Member's request) that taking the time for a standard resolution could seriously jeopardize the OMAP Member's life, health, or ability to attain, maintain or regain maximum function.

(2) The PHP must ensure that punitive action is not taken against a Provider who requests an expedited resolution or supports an OMAP Member's Appeal.

(3) If the PHP provides an expedited Appeal, but denies the services or items requested in the expedited Appeal, the PHP shall inform the OMAP Member of the right to request an expedited Administrative Hearing and shall provide the OMAP Member with a copy of both the AFS Form 443 and Notice of Hearing Rights (OMAP 3030) with the Notice of Appeal Resolution.

(4) If the PHP denies a request for expedited resolution on Appeal, it must:

(a) Transfer the Appeal to the time frame for standard resolution in accordance with OAR 410-141-0262;

(b) Make reasonable efforts to give the OMAP Member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

(5) An OMAP Member who believes that taking the time for a standard resolution of a request for an Administrative Hearing could seriously jeopardize the OMAP Member's life or health or ability to attain, maintain or regain maximum function may request an expedited Administrative Hearing.

(6) The PHP shall submit relevant documentation to OMAP's Medical Director within, as nearly as possible, 2 working days for a decision as to the necessity of an expedited Administrative Hearing. OMAP's Medical Director shall decide within, as nearly as possible, 2 working days

from the date of receiving the medical documentation applicable to the request, whether that OMAP Member is entitled to an expedited Administrative Hearing.

(7) If the OMAP Medical Director denies a request for expedited Administrative Hearing, OMAP must:

(a) Handle the request for Administrative Hearing in accordance with OAR 410-141-0264; and

(b) Make reasonable efforts to give the OMAP Member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

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

Stat. Auth.: ORS 409

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 39-1999, f. & cert. ef. 10-1-99; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04

## 410-141-0266

### PHP's Responsibility for Documentation and Quality Improvement Review of the Grievance System

(1) The PHP's documentation shall include, at minimum, a log of all oral and written Complaints and Appeals received by the PHP. The log shall identify the OMAP Member and the following additional information:

(a) For Complaints, the date of the Complaint, the nature of the Complaint, the disposition and date of disposition of the Complaint;

(b) For Appeals, the date of the Notice of Action, the date of the Appeal, the nature of the Appeal, whether continuing benefits were requested and provided, the resolution and date of resolution of the Appeal. If an Administrative Hearing was requested, whether continuing benefits were requested and provided, and the effect of the final order of the Administrative Hearing.

(2) The PHP shall also maintain a record for each of the Complaints and Appeals included in the log. The record shall include records of the review or investigation and resolution, including all written decisions and copies of correspondence with the OMAP Member. The PHPs shall retain documentation of Complaints and Appeals for the term of the OHP Demonstration Project plus two years to permit evaluation.

(3) The PHPs shall have written procedures for the review and analysis of the Grievance System, including all Complaints and Appeals received by the PHP. The analysis of the Grievance System shall be forwarded to the Quality Improvement committee as necessary to comply with the Quality Improvement standards:

(a) PHPs shall monitor the completeness and accuracy of the written log, on a monthly basis;

(b) Monitoring of Complaints and Appeals shall review, at minimum, completeness, accuracy, timeliness of documentation, and compliance with written procedures for receipt, disposition, and documentation of Complaints and Appeals, and compliance with Oregon Health Plan rules.

Stat. Auth.: ORS 409

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 35-2004, f. 5-26-04 cert. ef. 6-1-04

## 410-141-0480

### Oregon Health Plan Benefit Package of Covered Services

(1) OMAP Members are eligible to receive, subject to Section (12) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 section (4) for funded line coverage information.

(2) Diagnostic Services that are necessary and reasonable to diagnose the presenting condition of the OMAP Member are covered services, regardless of the placement of the condition on the Prioritized List of Health Services.

(3) Comfort care is a covered service for an OMAP Member with a Terminal Illness.

(4) Preventive Services promoting health and/or reducing the risk of disease or illness are covered services for OMAP Members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors, (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(5) Ancillary Services are covered, subject to the service limitations of the Medical Assistance Program rules, when the services are Medically or Dentally appropriate for the treatment of a covered condition-treatment pair, or the provision of ancillary services will enable the OMAP Member

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to retain or attain the capability for independence or self-care. A list of Ancillary Services is included in the Prioritized List of Health Services, adopted in OAR 410-141-0520.

(6) The provision of Chemical Dependency Services must be in compliance with the Office of Mental Health and Addiction Services (OMHAS) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the Chemical Dependency Prepaid Health Plan Standards in the Fully Capitated Health Plan Contract.

(7) In addition to the coverage available under section (1) of this rule, an OMAP Member may be eligible to receive, subject to section (12), services for treatments which are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP Client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded co-morbid conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by OMAP for fee-for-service OHP Clients or a finding by the Prepaid Health Plan (PHP) for OMAP Members that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

- (i) Treating physician opinion;
- (ii) Medical research;
- (iii) Community standards; and
- (iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any OMAP Member, especially an OMAP Member with a disability or with a comorbid condition, Providers must determine whether the OMAP Member has a funded condition and paired treatment that would entitle the OMAP Member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD-9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(8) OMAP shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of covered services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, OMAP shall make a retrospective determination under this subsection, provided OMAP is notified of the emergency situation during the next business day. If OMAP denies a requested service, OMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(9) If a condition/treatment pair is not on the Health Services Commission's list of prioritized services and OMAP determines the condition/treatment pair has not been identified by the Commission for inclusion on the list, OMAP shall make a coverage decision in consultation with the Health Services Commission.

(10) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients.

(11) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those OMAP Members with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure as outlined below:

(a) Children under three years old with dental needs determined by the dentist or oral surgeon as requiring general anesthesia;

(b) Children over three years old requiring substantial dental care determined by the dentist or oral surgeon as requiring general anesthesia that may protect the child from unnecessary trauma;

(c) OMAP Members with physical, mental or medically compromising conditions;

(d) OMAP Members with dental needs for who local anesthesia is ineffective because of acute infection, anatomic variations, or allergy;

(e) Acute situational anxiety, fearfulness, extremely uncooperative or uncommunicative client with dental needs, determined by the dentist or oral surgeon, sufficiently important that dental care cannot be deferred;

(f) OMAP Members who have sustained extensive orofacial and dental trauma; or

(g) OMAP Members with dental needs who otherwise would not obtain necessary dental care when, in the decision of the dentist or oral surgeon, the need for dental treatment outweighs the risks of general anesthesia. The OMAP Member's dental record must clearly document the justification for the level of anesthesia and why, in the estimation of the dentist or oral surgeon, the treatment in an office setting is not possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04

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**Adm. Order No.:** OMAP 36-2004  
**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 5-26-04

**Notice Publication Date:** 2-1-04

**Rules Repealed:** 410-009-0000, 410-009-0005, 410-009-0010, 410-009-0015, 410-009-0020, 410-009-0025, 410-009-0030, 410-009-0035, 410-009-0040

**Subject:** Repeals rules that govern the education and treatment services provided to individuals who enter into a marijuana diversion agreement with the courts. Since the creation of these rules, the outpatient treatment rule has been revised to assure that individuals receive the appropriate level of care and duration of treatment based on clinical needs and individual progress. These individuals will be referred and provided treatment within those programs that have a letter of approval to provide outpatient treatment services. For this reason, these rules are no longer needed and are being repealed.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

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**Adm. Order No.:** OMAP 37-2004(Temp)

**Filed with Sec. of State:** 5-27-2004

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**Notice Publication Date:**

**Rules Amended:** 410-141-0000, 410-141-0080, 410-141-0140, 410-141-0280, 410-141-0300, 410-141-0420

**Subject:** The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Rules 410-141-0000, 410-141-0080, 410-141-0140, 410-141-0280, 410-141-0300, 410-141-0420 are temporarily amended, effective June 1, 2004, to provide immediate clarification for managed care organizations regarding federal requirements imposed under the Balanced Budget Act consistent with changes to the managed care contracts to be in full compliance with federal law. OMAP intends to permanently amend these rules on or after August 1, 2004.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0000

### Definitions

(1) Action — In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested covered service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by OMAP;

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(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For an OMAP Member in a single FCHP or MHO Service Area, the denial of a request to obtain covered services outside of the FCHP or MHO's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Administrative Hearing — A DHS hearing related to an Action, including a denial, reduction, or termination of benefits which is held when requested by the OHP Client or OMAP Member. A hearing may also be held when requested by an OHP Client or OMAP Member who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(3) Advance Directive — A form that allows a person to have another person make health care decisions when he/she cannot make the decision and tells a doctor that the person does not want any life sustaining help if he/she is near death.

(4) Aged — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of age.

(5) Americans with Disabilities Act (ADA) — Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(6) Alternative Care Settings — Sites or groups of practitioners which provide care to OMAP Members under contract with the PHP. Alternative Care Settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, outpatient surgicenters.

(7) Ancillary Services — Those medical services under the Oregon Health Plan not identified in the definition of a Condition/Treatment Pair under the OHP Benefit Package, but Medically Appropriate to support a service covered under the OHP benefit package. A list of ancillary services and limitations is identified in OAR 410-141-0520, Prioritized List of Health Services, or specified in the Ancillary Services Criteria Guide.

(8) Appeal — A request for review of an "Action" as defined in this section.

(9) Automated Information System (AIS) — A computer system that provides information on the current eligibility status for clients under the Medical Assistance Program.

(10) Blind — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

(11) Capitated Services — Those services that a PHP or Primary Care Manager agrees to provide for a Capitation Payment under an OMAP Oregon Health Plan contract or agreement.

(12) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all Capitated Services needed by OHP Clients who are enrolled with the PHP;

(b) Monthly prepayment to a Primary Care Manager to provide Primary Care Management Services for an OHP Client who is enrolled with the PCM. Payment is made on a per OHP Client, per month basis.

(13) Centers for Medicare and Medicaid Services (CMS). The federal agency under the Department of Health and Human Services, responsible for approving the waiver request to operate the Oregon Health Plan Medicaid Demonstration Project.

(14) CFR- Code of Federal Regulations.

(15) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the "Chemical Dependency Placement, Continued Stay, and Discharge Criteria."

(16) Chemical Dependency Organization (CDO) — a Prepaid Health Plan that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as Capitated Services under the Oregon Health Plan. All chemical dependency services covered under the Oregon Health Plan are covered as Capitated Services by the CDO.

(17) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the "Chemical Dependency Placement, Continued Stay, and Discharge Criteria."

(18) Children's Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services, Office of Medical Assistance Programs (see Medical Assistance).

(19) Children Receiving CAF Child Welfare or OYA Services — Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of Children, Adults and Families Services, Department of Human Services or Oregon Youth Authority who are in placement outside of their homes.

(20) Claim — (1) A bill for services, (2) a line item of a service, or (3) all services for one recipient within a bill.

(21) Clinical Record — The Clinical Record includes the medical, dental, or mental health records of an OHP Client or OMAP Member. These records include the PCP's record, the inpatient and outpatient hospital records and the ENCC, Complaint and Disenrollment for cause records which may reside in the PHP's administrative offices.

(22) Cold Call Marketing — Any unsolicited personal contact by a PHP with a Potential Member for the purpose of Marketing as defined in this rule.

(23) Comfort Care — The provision of medical services or items that give comfort and/or pain relief to an individual who has a Terminal Illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with Terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort Care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort Care includes nutrition, hydration and medication for disabled infants with life-threatening conditions that are not covered under Condition/Treatment Pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable Comfort Care is provided consistent with Section 4751 OBRA 1990 — Patient Self-Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort Care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness and intended to prolong life.

(24) Community Mental Health Program (CMHP) — The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the DHS Office of Mental Health and Addiction Services.

(25) Comorbid Condition — A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(26) Complaint — An OMAP Member's or OMAP Member's Representative's expression of dissatisfaction to a PHP or Participating Provider about any matter other than an Action, as "Action" is defined in this Section.

(27) Community Standard — Typical expectations for access to the health care delivery system in the OMAP Member's or PCM Member's community of residence. Except where the Community Standard is less than sufficient to ensure quality of care, OMAP requires that the health care delivery system available to OMAP Members in Prepaid Health Plans and to PCM Members with Primary Care Managers take into consideration the Community Standard and be adequate to meet the needs of OMAP and PCM Members.

(28) Condition/Treatment Pair — Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9 CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the DHS Office of Mental Health and Addiction Services Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/Treatment Pairs may contain many diagnoses and treatments. The Condition/Treatment Pairs are listed in OAR 410-141-0520, Prioritized List of Health Services.

(29) Continuing Treatment Benefit — A benefit for OHP Clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to the OHP Benefit Package of covered services and

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that treatment is not covered under the OHP Benefit Package of covered services.

(30) Co-payment — The portion of a covered service that an OMAP Member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract — The contract between the State of Oregon, acting by and through its Department of Human Services (DHS), Office of Medical Assistance Programs (OMAP) and a Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), or a Chemical Dependency Organization (CDO), or between the Office of Mental Health and Addiction Services (OMHAS) and a Mental Health Organization (MHO) for the provision of covered services to eligible OMAP Members for a Capitation Payment. Also referred to as a Service Agreement.

(32) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Oregon Health Plan Member or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to an OMAP Member.

(33) Dental Care Organization (DCO) — A Prepaid Health Plan that provides and coordinates capitated dental services. All dental services covered under the Oregon Health Plan are covered as Capitated Services by the DCO; no dental services are paid by OMAP on a fee-for-service basis for Oregon Health Plan Clients enrolled with a DCO provider.

(34) Dental Case Management Services — Services provided to ensure that eligible OMAP Members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the Member plus the development and implementation of a plan to ensure that eligible OMAP Members obtain Capitated Services.

(35) Dental Emergency Services — Dental services may include but are not limited to severe tooth pain, unusual swelling of the face or gums, and an avulsed tooth.

(36) Dental Practitioner — A practitioner who provides dental services to OMAP Members under an agreement with a DCO, or is a Fee-For-Service Health Care Practitioner. Dental practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

(37) Department of Human Services (DHS) — DHS is made up of three program areas: Children, Adults and Families; Health Services; and Seniors and People with Disabilities. They are supported by the Director's Office; Administrative Services; and Finance and Policy Analysis. The Office of Medical Assistance Programs and the Office of Mental Health and Addiction Services are part of the Health Services Cluster.

(38) Diagnostic Services — Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(39) Disabled — Individuals who meet eligibility criteria established by the DHS Seniors and People with Disabilities for receipt of Medical Assistance because of a disability.

(40) Disenrollment — The act of discharging an Oregon Health Plan Client from a Prepaid Health Plan's or Primary Care Manager's responsibility. After the effective date of Disenrollment an Oregon Health Plan Client is no longer required to obtain Capitated Services from the Prepaid Health Plan or Primary Care Manager, nor be referred by the Prepaid Health Plan for Medical Case Managed Services or by the Primary Care Manager for PCM Case Managed Services.

(41) Dual Eligible — OHP Clients who are receiving both Medicaid and Medicare benefits.

(42) Emergency Medical Condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "Emergency Medical Condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a Health Care Professional) and includes cases in which the absence of immediate medical attention

would not in fact have had the adverse results described in the previous sentence.

(43) Emergency Services — Covered Services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition.

(44) Enrollment — Oregon Health Plan Clients, subject to OAR 410-141-0060 — Oregon Health Plan Managed Care Enrollment Requirements, become OMAP Members of a Prepaid Health Plan or PCM Members of a Primary Care Manager that contracts with OMAP to provide Capitated Services. An OHP Client's Enrollment with a PHP indicates that the OMAP Member must obtain or be referred by the PHP for all Capitated Services and referred by the PHP for all Medical Case Managed Services subsequent to the effective date of Enrollment. An Oregon Health Plan Client's Enrollment with a Primary Care Manager indicates that the PCM Member must obtain or be referred by the Primary Care Manager for preventive and primary care and referred by the Primary Care Manager for all PCM Case Managed Services subsequent to the effective date of Enrollment.

(45) Enrollment Area — Client enrollment is based on the client's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the DHS worker that Plan(s) are in the area.

(46) Enrollment Year — A twelve-month period beginning the first day of the month of Enrollment of the Oregon Health Plan Client in a PHP and, for any subsequent year(s) of continuous Enrollment, beginning that same day in each such year(s). The Enrollment Year of Oregon Health Plan Clients who re-enroll within a calendar month of Disenrollment shall be counted as if there were no break in Enrollment.

(47) End Stage Renal Disease (ESRD) — End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(48) Exceptional Needs Care Coordination (ENCC) — A specialized case management service provided by Fully Capitated Health Plans to OMAP Members who are Aged, Blind or Disabled, consistent with OAR 410-141-0405, Oregon Health Plan Prepaid Health Plan Exceptional Needs Care Coordination (ENCC). ENCC includes:

(a) Early identification of those OMAP Members who are Aged, Blind or Disabled who have disabilities or complex medical needs;

(b) Assistance to ensure timely access to providers and Capitated Services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of Capitated Services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(49) Family Health Insurance Assistance Program (FHIAP) — A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the FPL. FHIAP is funded with federal and states funds through either Title XIX, XXI or both.

(50) Family Planning Services — Services for clients of childbearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(51) Fee-for-Service Health Care Providers — Health care providers who bill for each service provided and are paid by OMAP for services as described in OMAP provider rules. Certain services are covered but are not provided by Prepaid Health Plans or by Primary Care Managers. The client may seek such services from an appropriate Fee-For-Service provider. Primary Care Managers provide primary care services on a fee-for-service basis and might also refer PCM Members to specialists and other providers for fee-for-service care. In some parts of the state, the State may not enter into contracts with any managed care providers. OHP Clients in these areas will receive all services from Fee-For-Service providers.

(52) FPL — Federal Poverty Level.

(53) Free-Standing Mental Health Organization (MHO) — The single MHO in each county that provides only mental health services and is not affiliated with a Fully Capitated Health Plan for that service area. In most cases this "carve-out" MHO is a county Community Mental Health Program or a consortium of Community Mental Health Programs, but may be a private behavioral health care company.

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(54) Fully Capitated Health Plan (FCHP) — Prepaid Health Plans that contract with OMAP to provide capitated services under the Oregon Health Plan. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(55) Grievance System — The overall system that includes Complaints and Appeals handled at the PHP level and access to the state fair hearing process. (Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a Provider or employee, or failure to respect the OMAP Member's rights.)

(56) Health Care Professionals — Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: Medical Doctors (including Psychiatrists), Dentists, Osteopathic Physicians, Psychologists, Registered Nurses, Nurse Practitioners, Licensed Practical Nurses, Certified Medical Assistants, Licensed Physicians Assistants, Qualified Mental Health Professionals (QMHPs), and Qualified Mental Health Associates (QMHAAs), Dental Hygienists, Denturists, and Certified Dental Assistants. These professionals may conduct health, mental health or dental assessments of OMAP members and provide Screening Services to OHP Clients within their scope of practice, licensure or certification.

(57) Health Insurance Portability and Accountability Act (HIPAA) of 1996 — HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(58) Health Maintenance Unit (HMU) — The OMAP unit responsible for adjustments to enrollments, retroactive Disenrollment and enrollment of newborns.

(59) Health Plan New/Noncategorical Client (HPN) — A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an Oregon Health Plan Client.

(60) Health Services Commission — An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(61) Hospice Services — A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(62) Hospital Hold — A hospital hold is a process that allows a hospital to assist an individual who is admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the Oregon Health Plan due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP, if clients become eligible through a hospital hold process and are placed in the Adults/Couples category.

(63) Line Items — Condition/Treatment Pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the Oregon Health Plan Medicaid Demonstration Project.

(64) Local and Regional Allied Agencies include the following: local Mental Health Authority; Community Mental Health Programs; local DHS offices; Commission on Children and Families; Oregon Youth Authority; Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(65) Marketing — Any communication from a PHP to a Medicaid recipient who is not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the recipient:

- (a) To enroll in that particular PHP;
- (b) To either Disenroll or not to enroll with another PHP.

(66) Marketing Materials — Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for Marketing as defined in this rule.

(67) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department of Human Services.

(68) Medical Assistance Program — A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Office of Medical Assistance Programs (OMAP), of the Department of Human Services. Coordination of the Medical Assistance Program is the responsibility of the Office of Medical Assistance Programs.

(69) Medical Care Identification — The preferred term for what is commonly called the "medical card." It is a letter-sized document issued monthly to Medical Assistance Program clients to verify their eligibility for services and enrollment in PHPs.

(70) Medical Case Management Services — Services provided to ensure that OMAP Members obtain health care services necessary to maintain physical and emotional development and health. Medical Case Management Services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a plan to obtain needed medical or dental services that are Capitated Services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(71) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
- (c) Not solely for the convenience of an Oregon Health Plan Client or a provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an OMAP Member or PCM Member in the PHP's or Primary Care Manager's judgment.

(72) Medicare — The federal health insurance program for the Aged and Disabled administered by the Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act.

(73) Medicare HMO — A capitated health plan that meets specific referral rules and contracts with CMS to provide Medicare benefits to Medicare enrollees.

(74) Mental Health Assessment — The determination of an OMAP Member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a Member's mental status, psychosocial history and current problems through interview, observation and testing.

(75) Mental Health Case Management — Services provided to OMAP Members who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the OMAP Member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring OMAP Members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(76) Mental Health Organization (MHO) — A Prepaid Health Plan under contract with the Office of Mental Health and Addiction Services that provides mental health services as capitated services under the Oregon Health Plan. MHOs can be Fully Capitated Health Plans, community mental health programs or private behavioral organizations or combinations thereof.

(77) Non-Capitated Services — Those OHP-covered services which are paid for on a fee-for-service basis and for which a capitation payment has not been made to a PHP.

(78) Non-covered services — Services or items for which the Medical Assistance Program is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the Oregon Health Plan. Non-covered services for the Oregon Health Plan are identified in:

- (a) OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients;
- (b) Exclusions and limitations described in OAR 410-120-1200; and
- (c) The individual provider administrative rules.

(79) Non-Participating Provider — A provider who does not have a contractual relationship with the Prepaid Health Plan, i.e. is not on their panel of providers.

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(80) Office of Medical Assistance Programs (OMAP) — The Office of the Department of Human Services responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and the Children's Health Insurance Program (CHIP). OMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of client eligibility and processes and pays OMAP providers.

(81) Office of Mental Health and Addiction Services (OMHAS) — The Department of Human Services office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(82) OMAP Member — An Oregon Health Plan Client enrolled with a Prepaid Health Plan.

(83) Ombudsman Services — Services provided by DHS to Aged, Blind and Disabled Oregon Health Plan Clients by DHS Ombudsman Staff who may serve as the Oregon Health Plan Client's advocate whenever the Oregon Health Plan Client, Representative, a physician or other medical personnel, or other personal advocate serving the Oregon Health Plan Client, is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the Oregon Health Plan. Ombudsman Services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about Oregon Health Plan systems.

(84) Oregon Health Plan (OHP) — The Medicaid demonstration project which expands Medicaid eligibility to eligible Oregon Health Plan Clients. The Oregon Health Plan relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(85) Oregon Health Plan (OHP) Plus Benefit Package — A benefit package available to eligible Oregon Health Plan clients as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-120-0520, Prioritized List of Health Services.

(86) Oregon Health Plan (OHP) Standard Benefit Package — A benefit package available to eligible Oregon Health Plan clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-141-0520, Prioritized List of Health Services.

(87) Oregon Health Plan Client — An individual found eligible by DHS to receive services under the Oregon Health Plan. The individual is not yet enrolled with a PHP, but may or may not be enrolled with a Primary Care Manager. The OHP categories eligible to enroll in Prepaid Health Plans are defined as follows:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible with income under current eligibility rules;

(b) Children's Health Insurance Program (CHIP) — children under one year of age who have income under 170% FPL and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) Adults under 100% Federal Poverty Level (FPL) are OHP recipients who are pregnant women with income under 100% of FPL;

(d) PLM Adults over 100% FPL are OHP recipients who are pregnant women with income between 100% and 170% of the FPL;

(e) PLM children under one year of age have family income under 133% FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;

(h) OHP Adults and Couples are OHP recipients aged 19 or over and not Medicare eligible, with income below 100% FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP Families are OHP recipients, aged 19 or over and not Medicare eligible, with income below 100% of FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) Recipients are OHP Clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare Eligibles are OHP recipients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare Eligibles are OHP recipients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP recipients who are children with medical eligibility determined by Children, Adults and Families or the Oregon Youth Authority receiving OHP under ORS 414.025(2)(f), (I), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of the Children, Adults and Families or the Oregon Youth Authority who are in placement outside of their homes.

(88) Oregon Youth Authority — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(89) Participating Provider — An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to OMAP Members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(90) PCM Case Managed Services include the following: Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics and Tribal Health Clinics, Community Mental Health Programs, Mental Health Organizations; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(91) PCM Member — An Oregon Health Plan Client enrolled with a Primary Care Manager.

(92) PHP Coordinator — the DHS OMAP employee designated by OMAP as the liaison between OMAP and the PHP.

(93) Post Hospital Extended Care Benefit — A 20 day benefit for non-Medicare OMAP Members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(94) Post Stabilization Services — covered services, related to an Emergency Medical Condition that are provided after an OMAP Member is stabilized in order to maintain the stabilized condition or to improve or resolve the OMAP Member's condition.

(95) Potential OMAP Member — An OHP client who is subject to mandatory enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(96) Practitioner — A person licensed pursuant to State law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(97) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, or mental health care organization that contracts with OMAP and/or OMHAS on a case managed, prepaid, capitated basis under the Oregon Health Plan. Prepaid Health Plans may be Dental Care Organizations (DCOs), Fully Capitated Health Plans (FCHPs), Mental Health Organizations (MHOs), or Chemical Dependency Organizations (CDOs).

(98) Preventive Services — Those services as defined under Expanded Definition of Preventive Services for Oregon Health Plan clients in OAR 410-141-0480, The Oregon Health Plan Benefit Package of covered services, and OAR 410-141-0520, Prioritized List of Health Services.

(99) Primary Care Management Services — Primary Care Management Services are services provided to ensure PCM Members obtain health care services necessary to maintain physical and emotional development and health. Primary Care Management Services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that are preventive or primary care services or PCM Case Managed Services and follow-up, as appropriate, to assess the impact of care.

(100) Primary Care Manager (PCM) — A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician back-

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ups, who agrees to provide Primary Care Management Services as defined in rule to PCM Members. Primary Care Managers may also be hospital primary care clinics, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics or Tribal Health Clinics. The PCM provides Primary Care Management Services to PCM Members for a Capitation Payment. The PCM provides preventive and primary care services on a fee-for-service basis.

(101) Primary Care Dentist (PCD) — A Dental Practitioner who is responsible for supervising, coordinating initial and primary dental care within their scope of practice for OMAP Members. Primary Care Dentists initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(102) Primary Care Provider (PCP) — A practitioner who has responsibility for supervising, coordinating initial and primary care within their scope of practice for OMAP Members, Primary care providers initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically or dental appropriate care.

(103) Prioritized List of Health Services — The listing of condition and treatment pairs developed by the Health Services Commission for the purpose of implementing the Oregon Health Plan Demonstration Project. See OAR 410-141-0520, Prioritized List of Health Services, for the listing of condition and treatment pairs.

(104) Proof of Indian Heritage — Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an "Indian" in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service — services provided by Indian Health Service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

(105) Provider — An individual, facility, institution, corporate entity, or other organization which supplies medical, dental or mental health services or medical and dental items.

(106) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where "quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge."

(107) Representative — A person who can make Oregon Health Plan related decisions for Oregon Health Plan Clients who are not able to make such decisions themselves. A Representative may be, in the following order of priority, a person who is designated as the Oregon Health Plan Client's health care representative, a court-appointed guardian, a spouse, or other family member as designated by the Oregon Health Plan client, the Individual Service Plan Team (for developmentally disabled clients), a DHS case manager or other DHS designee.

(108) Rural — A geographic area 10 or more map miles from a population center of 30,000 people or less.

(109) Seniors and People with Disabilities (SPD) — The Cluster within DHS responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through General Assistance and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

(110) Service Area — The geographic area in which the PHP has identified in their Contract or Agreement with DHS to provide services under the Oregon Health Plan.

(111) Stabilize — no material deterioration of the Emergency Medical Condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

(112) Urgent Care Services — Covered Services that are Medically Appropriate and immediately required in order to prevent a serious deterioration of an OMAP Member's health that results from an unforeseen ill-

ness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(113) Terminal Illness — An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(114) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the OMAP Member to the most appropriate setting for Medically Appropriate care.

(115) Urban — A geographic area less than 10 map miles from a population center of 30,000 people or more.

(116) Urgent Care Services — covered services required in order to prevent a serious deterioration of an OMAP Member's or PCM Member's health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(117) Valid Claim — An invoice received by the PHP for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules; and

(c) A Valid Claim means a Claim received by a PHP for payment of Covered Services rendered to an OMAP client which (1) Can be processed without obtaining additional information from the Provider of the service or from a third party; and (2) Has been received within the time limitations prescribed in OHP Rules. A Valid Claim does not include a Claim from a Provider who is under investigation for fraud or abuse, or a Claim under review for Medical Appropriateness. A Valid Claim is synonymous with the federal definition of a Clean Claim as defined in 42 CFR 447.45(b).

(118) Valid Pre-Authorization — A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; 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 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04, cert. ef. 6-1-04 thru 11-15-04

## 410-141-0080

### Oregon Health Plan (OHP) Disenrollment from Prepaid Health Plans (PHPs)

(1) OMAP Member Requests for Disenrollment:

(a) All Oregon Health Plan (OHP) OMAP Member-initiated requests for Disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For OMAP Members who are not able to request Disenrollment on their own, the request may be initiated by the OMAP Member's Representative;

(b) Primary person or Representative requests for Disenrollment shall be honored:

(A) Without cause:

(i) After six months of OMAP Member's Enrollment. The effective date of Disenrollment shall be the first of the month following the Department's approval of Disenrollment;

(ii) Whenever an OMAP Member's eligibility is redetermined by the Department of Human Services (DHS) and the primary person requests Disenrollment without cause. The effective date of Disenrollment shall be the first of the month following the date that the OMAP Member's eligibility is redetermined by the Department;

(B) With cause:

(i) At any time;

(ii) OMAP Members who disenroll from a Medicare Health Maintenance Organization (HMO) shall also be Disenrolled from the corresponding Fully Capitated Health Plan (FCHP). The effective date of Disenrollment shall be the first of the month that the OMAP Member's Medicare HMO Disenrollment is effective;

(iii) OMAP Members who are receiving Medicare and who are enrolled in a FCHP that has a corresponding Medicare HMO/Medicare+Choice (M+C) component may disenroll from the FCHP at any time if they

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also request Disenrollment from the Medicare HMO. The effective date of Disenrollment from the FCHP shall be the first of the month following the date of request for Disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the OMAP Member seeks;

(v) The OMAP Member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the OMAP Members' Primary Care Provider or another Provider determines that receiving the services separately would subject the OMAP Member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the Contract, or lack of access to Participating Providers experienced in dealing with the OMAP Member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The OMAP Member moves out of the PHP's Service Area;

(II) It would be detrimental to the OMAP Member's health to remain enrolled in the PHP;

(III) The OMAP Member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(IV) Continuity of care that is not in conflict with any section of 410-141-0060 or 410-141-0080.

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP Client has just been re-determined eligible and was not enrolled in a FCHP within the past 3 months; and

(ii) The new FCHP the OMAP Member is enrolled with does not contract with the OMAP Member's current OB Provider and the OMAP Member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs or return to FFS is made prior to the date of delivery.

(c) In addition to the Disenrollment constraints listed in (b), above, OMAP Member Disenrollment requests are subject to the following requirements:

(A) The OMAP Member shall join another PHP, unless the OMAP Member resides in a Service Area where Enrollment is voluntary, or the OMAP Member meets the exemptions to Enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the OMAP Member wishes to disenroll, the OMAP Member may not disenroll without cause;

(C) The effective date of Disenrollment shall be the end of the month in which Disenrollment was requested unless retroactive Disenrollment is approved by OMAP;

(D) If the Department fails to make a Disenrollment determination by the first day of the second month following the month in which the OMAP Member files a request for Disenrollment, the Disenrollment is considered approved.

(2) Prepaid Health Plan requests for Disenrollment:

(a) Causes for Disenrollment:

(A) OMAP may Disenroll OMAP Members for cause when requested by the PHP subject to ADA requirements and approval by the Centers for Medicare and Medicaid Services (CMS), if a Medicare member Disenrolled in a FCHP's Medicare HMO/M+C. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the OMAP Member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's Medicare HMO/M+C;

(ii) OMAP Member's behavior is disruptive, unruly, or abusive to the point that his/her Enrollment seriously impairs the Provider's ability to furnish services to either the OMAP Member or other members, except as excluded in (b)(B)(vii);

(iii) OMAP Member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff;

(iv) OMAP Member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription,

theft or other criminal acts committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP Clients who have been exempted from mandatory Enrollment with a FCHP, due to the OHP Client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(C);

(vi) OMAP Member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230 and/or 410-120-1235.

(B) OMAP Members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the OMAP Member's health;

(iii) Because of the OMAP Member's utilization of services, either excessive or lack thereof;

(iv) Because the OMAP Member requests a hearing;

(v) Because the OMAP Member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the OMAP Member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior resulting from the OMAP Member's special needs (except when continued Enrollment seriously impairs the PHP's ability to furnish services to either this OMAP Member or other members.

(C) Requests by the PHP for Disenrollment of specific OMAP Members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting Disenrollment of an OMAP Member (except in cases of threats or acts of physical violence, and fraudulent or illegal acts). In cases of threats or acts of physical violence, OMAP will consider an oral request for Disenrollment, with written documentation to follow: In cases of fraudulent or illegal acts, the PHP must submit written documentation for review by the OMAP PHP Coordinators:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the OMAP Member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the OMAP Member either verbally or in writing, depending on the severity of the problem, to develop an agreement regarding the issue(s). If contact is verbal, it shall be documented in the OMAP Member's record. The PHP shall inform the OMAP Member that his/her continued behavior may result in Disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions in a serious effort to resolve the problem;

(iv) The PHP shall contact the OMAP Member's DHS caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of Provider, caseworker, OMAP Member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the OMAP Member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the OMAP Member's record;

(vi) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the OMAP Member as their patient. If needed, the PHP shall obtain an authorization for release of information from the OMAP Member in order to share the information necessary for a new Provider to evaluate if they can treat the OMAP Member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) If the problem persists, the PHP may request Disenrollment of the OMAP Member by submitting a written request to Disenroll the OMAP Member to the PHP's OMAP PHP Coordinator, with a copy to the OMAP Member's caseworker. Documentation with the request shall include the following:

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(i) The reason the PHP is requesting Disenrollment; a summary of the PHP's efforts to resolve the problem and other options attempted before requesting Disenrollment;

(ii) Documentation should be objective, with as much specific details and direct quotes as possible when problems involve disruptive, unruly, abusive or threatening behaviors;

(iii) Where appropriate, background documentation including a description of the OMAP Member's age, diagnosis, mental status (including their level of understanding of the problem and situation), functional status (their level of independence) and social support system;

(iv) Where appropriate, separate statements from PCPs, caseworker and other agencies, Providers or individuals involved;

(v) If reason for the request is related to the OMAP Member's substance abuse treatment, the PHP shall notify the OHP Coordinator in the Office of Mental Health and Addiction Services;

(vi) If the OMAP Member is disabled, the following documentation shall also be submitted as appropriate:

(I) A written assessment of the relationship of the behavior to the disability including: current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) An interdisciplinary team review that includes a mental health professional and/or behavioral specialists to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment that the behavior will not respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Any additional information or assessments requested by the OMAP PHP Coordinators.

(E) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by a team of PHP Coordinators who may request additional information from Ombudsman, mental health or other agencies as needed;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request;

(iv) If the request is approved, the Disenrollment date is 30 days after the date of approval, except as provided in (F) and (G) below. The PHP must send the OMAP Member a letter within 14 days after the request was approved, with a copy to the OMAP Member's DHS caseworker and OMAP's Health Management Unit (HMU), except in cases where the OMAP Member is also enrolled in a FCHP's Medicare HMO/M+C. The letter must give the Disenrollment date, the reason for Disenrollment, and the notice of OMAP Member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing;

(v) In cases where the OMAP Member is also enrolled in a FCHP's Medicare HMO/M+C, the letter shall be sent after the approval by CMS and the date of Disenrollment shall be the date of Disenrollment as approved by CMS. If CMS does not approve the Disenrollment, the OMAP Member shall not be disenrolled from the PHP's OHP Plan;

(vi) If the OMAP Member requests a hearing, the OMAP Member will continue to be disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OMAP Member and the PHP;

(vii) The PHP Coordinator will determine when Enrollment in another PHP or with a PCM is appropriate. The PHP Coordinator will contact the OMAP Member's DHS caseworker to arrange Enrollment;

(viii) When the Disenrollment date has been determined, HMU sends a letter to the OMAP Member with a copy to the OMAP Member's DHS caseworker and the PHP. The letter shall inform the OMAP Member of the requirement to be enrolled in another PHP.

(F) If the PHP Coordinator approves a PHP's request for Disenrollment because the OMAP Member threatens or commits an act of physical violence directed at a medical Provider, the Provider's staff, or other patients, the following procedures shall apply:

(i) OMAP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) All OMAP Members in the OMAP Member's benefit group, as defined in OAR 461-110-0720, may be Disenrolled if the PHP requests;

(iv) OMAP may require the OMAP Member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(v) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request.

(G) If the PHP Coordinator approves the PHP's request for Disenrollment because the OMAP Member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following procedures shall apply:

(i) The PHP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request;

(iv) If an OMAP Member who has been Disenrolled for cause is reenrolled in the PHP, the PHP may request a Disenrollment review by the PHP's PHP Coordinator. An OMAP Member may not be Disenrolled from the same PHP for a period of more than 12 months. If the OMAP Member is reenrolled after the 12-month period and is again Disenrolled for cause, the Disenrollment will be reviewed by DHS for further action.

(b) Other reasons for the PHP's requests for Disenrollment include the following:

(A) If the OMAP Member is enrolled in the FCHP or MHO on the same day the OMAP Member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the OMAP Member is enrolled after the first day of the inpatient stay, the OMAP Member shall be Disenrolled, and the date of Enrollment shall be the next available Enrollment date following discharge from inpatient hospital services;

(B) The OMAP Member has surgery scheduled at the time their Enrollment is effective with the PHP, the Provider is not on the PHP's Provider panel, and the OMAP Member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Cost Plan and was receiving Hospice Services at the time of Enrollment in the PHP;

(D) The OMAP Member had End Stage Renal Disease at the time of Enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the OMAP Member has a third party insurer. If after contacting The Health Insurance Group, the Disenrollment is not effective the following month, PHP may contact HMU to request Disenrollment;

(F) If a PHP has knowledge of an OMAP Member's change of address, PHP shall notify DHS. DHS will verify the address information and Disenroll the OMAP Member from the PHP, if the OMAP Member no longer resides in the PHP's Service Area. OMAP Members shall be Disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(G) The OMAP Member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include OMAP Members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the OMAP Members and providing sufficient proof of incarceration to HMU for review of the Disenrollment request. OMAP will approve requests for Disenrollment from PHPs for OMAP Members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time an OMAP Member was an inmate;

(H) The OMAP Member is in a state psychiatric institution.

(3) OMAP Initiated Disenrollments:

(a) OMAP may initiate and Disenroll OMAP Members as follows:

(A) If OMAP determines that the OMAP Member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, OMAP may Disenroll the OMAP Member. The effective date of Disenrollment shall be the end of the month in which OMAP makes such a determination. OMAP may specify a retroactive

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effective date of Disenrollment if the OMAP Member's third party coverage is through the PHP, or in other situations agreed to by the PHP and OMAP;

(B) If the OMAP Member moves out of the PHP's Service Area(s), the effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the OMAP Member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of Disenrollment shall be the date specified by OMAP;

(D) If the OMAP Member dies, the effective date of Disenrollment shall be the end of the month following the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare HMO/M+C, OMAP Members with Medicare shall be Disenrolled from the existing PHP. The effective date of Disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If OMAP determines that Contractor's OMAP Member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the Disenrollment shall be the OMAP Member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the OMAP notification of Disenrollment to the PHP, all Disenrollments are effective the end of the month after the request for Disenrollment is approved by OMAP;

(c) OMAP shall inform the OMAP Members of the Disenrollment decision in writing, including the right to request an Administrative Hearing. Oregon Health Plan Clients may request an OMAP hearing if they dispute a Disenrollment decision by OMAP;

(d) If the OHP Client requests a hearing, the OHP Client will continue to be Disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OHP Client.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04

## 410-141-0140

### Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services

(1) PHPs shall have written policies and procedures and monitoring systems that ensure the provision of appropriate Urgent, Emergency, and Triage services 24-hours a day, 7-days-a-week for all OMAP Members. PHPs shall:

(a) Communicate these policies and procedures to Participating Providers;

(b) Regularly monitor Participating Providers' compliance with these policies and procedures; and

(c) Take any corrective action necessary to ensure Participating Providers compliance. PHPs shall document all monitoring and corrective action activities.

(2) PHPs shall have written policies and procedures and monitoring processes to ensure that a Practitioner provides a Medically or Dentally Appropriate response as indicated to urgent or emergency calls consisting of the following elements:

(a) Telephone or face-to-face evaluation of the OMAP Member to determine the nature of the situation and the OMAP Member's immediate need for services;

(b) Capacity to conduct the elements of an assessment that is needed to determine the interventions necessary to begin stabilizing the urgent or emergency situation;

(c) Development of a course of action at the conclusion of the assessment;

(d) Provision of services and/or referral needed to address the urgent or emergency situation, begin Post-Stabilization Care or provide outreach services in the case of an MHO;

(e) Provision for notifying a referral emergency room, when applicable concerning the presenting problem of an arriving OMAP Member, and whether or not the Practitioner will meet the OMAP Member at the emergency room; and

(f) Provision for notifying other Providers requesting approval to treat OMAP Members of the determination.

(3) PHPs shall ensure the availability of an after-hours call-in system adequate to Triage urgent care and emergency calls from OMAP Members. Urgent calls shall be returned appropriate to the OMAP Member's condition but in no event more than 30 minutes after receipt. If information is not adequate to determine if the call is urgent, the call shall be returned within 60 minutes in order to fully assess the nature of the call. If information is adequate to determine the call may be emergent in nature, the call shall be returned immediately.

(4) If a screening examination in an Emergency Room leads to a clinical determination by the examining physician that an actual emergency medical condition exists under the prudent layperson standard as defined in Emergency Services, the PHP must pay for all services required to stabilize the patient. The PHP may not require prior authorization for Emergency Services:

(a) The PHP may not retroactively deny a claim for an emergency screening examination because the condition, which appeared to be an emergency medical condition under the prudent layperson standard, turned out to be non-emergency in nature;

(b) The PHP may not limit what constitutes an emergency medical condition based on lists of diagnoses or symptoms;

(c) The PHP may not deny a claim for emergency services merely because the Primary Care Physician (PCP) was not notified, or because the PHP was not billed within 10 calendar days of the service.

(5) When an OMAP Member's Primary Care Provider, designated Practitioner or other health plan representative instructs the OMAP Member to seek emergency care, in or out of the network, the PHP is responsible for payment of the screening examination and for other Medically Appropriate services. The PHP is responsible for payment of Post-Stabilization Care that was:

(a) Pre-authorized by the PHP; or

(b) Not pre-authorized by the PHP if the PHP (or the on-call Provider) failed to respond to a request for pre-authorization within one hour of the request being made, or the PHP or Provider on call could not be contacted;

(c) If the PHP and the treating physician cannot reach an agreement concerning the OMAP Member's care and a PHP representative is not available for consultation, the PHP must give the treating physician the opportunity to consult with a PHP physician and the treating physician may continue with care of the patient until a PHP physician is reached or one of the following criteria is met:

(A) The Participating Provider with privileges at the treating hospital assumes responsibilities for the OMAP Member's care;

(B) The Participating Provider assumes responsibility for the OMAP Member's care through transfer;

(C) A Contractor representative and the treating physician reach an agreement concerning the OMAP Member's care; or

(D) The OMAP Member is discharged.

(6) PHPs shall have methods for tracking inappropriate use of emergency care and shall take action, including individual OMAP Member counseling, to improve appropriate use of urgent and emergency care settings. DCOs and MHOs shall be responsible for taking action to improve appropriate use of urgent and emergency care settings for dental or mental health related care when inappropriate use of emergency care is made known to them through reporting or other mechanisms.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04

## 410-141-0280

### Oregon Health Plan Prepaid Health Plan Informational Requirements

(1) Prepaid Health Plans (PHPs) shall develop informational materials for potential Office of Medical Assistance Programs (OMAP) Members:

(a) PHPs shall provide OMAP and/or Office of Mental Health and Addiction Services (OMHAS) with informational materials sufficient for the potential OMAP Member to make an informed decision about PHP selection and Enrollment. Information on Participating Providers must be made available from the PHP, upon request to potential OMAP Members, and must include Participating Providers' name, location, qualification and the availability of the PCP, clinic and specialists. Informational materials may be included in the application packet for potential OMAP Members;

(b) PHPs shall ensure that all PHP's staff who have contact with potential OMAP Members are fully informed of PHP and OMAP and/or OMHAS policies, including Enrollment, Disenrollment, Complaint and Grievance policies and the provision of interpreter services including which Participating Providers' offices have bilingual capacity;

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(c) PHPs shall cooperate and provide accurate information to OMAP for the updating of the comparison charts.

(2) Informational materials that PHPs develop for OMAP Members and Potential OMAP Members shall meet the language requirements of, and be culturally sensitive to the PHP's OMAP membership including members with disabilities or reading limitations, and including substantial populations whose primary language is not English in its particular Service Area(s)

(a) PHPs shall be required to follow OMAP's substantial household criteria required by ORS 411.062, which determines and identifies those populations that are considered non-English speaking households; however, PHP shall only be responsible for those identified languages, if the substantial population is 35 or more non-English speaking households with the same language in its Service Area. The PHP shall be required to provide informational materials, which at a minimum, shall include the OMAP Member handbook and information about Complaints and Appeals in the primary language of each substantial population. Alternative forms may include, but are not limited to audio tapes, close-captioned videos, large type and Braille;

(b) Form correspondence sent to OMAP Members, including but not limited to, Enrollment information, choice and OMAP Member counseling letters and denial of service notices shall include instructions in the appropriate languages of each substantial population of non-English speaking OMAP Members on how to receive an oral translation of the material;

(c) All written informational materials distributed to OMAP Members shall be written at the sixth grade reading level and printed in 12 point print or larger;

(d) PHPs shall provide written notice to affected OMAP Members of any significant changes in program or service sites that impacts the OMAP Members' ability to access care or services from PHP's Participating Providers. Such notice shall be provided at least 30 calendar days prior to the effective date of that change, or as soon as possible if the Participating Provider(s) has not given the PHP sufficient notification to meet the 30 days notice requirement. OMAP and/or OMHAS will review and approve such materials within two working days.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04

## 410-141-0300

### Oregon Health Plan Prepaid Health Plan Member Education

DHS: Department of Human Services

ENCC: Exceptional Needs Care Coordination

FCHP: FullyCapitated Health Plans

PCD: Primary Care Dentist

PCP: Primary Care Provider

PHP: Prepaid Health Plan

OHP: Oregon Health Plan

OMHAS: Office of Mental Health and Addiction Services

OMAP: Office of Medical Assistance Programs

(1) PHPs shall have an ongoing process of OMAP Member education and information sharing that includes orientation to the PHP, a PHP OMAP Member handbook and health education. OMAP Member education shall include:

(a) The availability of ENCC through FCHPs for OMAP Members with special health care needs, who are Aged, Blind or Disabled; and

(b) The appropriate use of the delivery system, including a proactive and effective education of OMAP Members on how to access Emergency Services and Urgent Care Services appropriately.

(2) PHPs shall offer PHP orientation to new OMAP Members by mail, phone, or in person within 30 days of Enrollment unless no address can be obtained, a telephone number is not provided by OMAP, and a DHS agency is unable to assist in delivering the information to the OMAP Member.

(3) PHP OMAP Member handbook materials:

(a) The PHP OMAP Member handbook shall be made available for new OMAP Members, as described in OAR 410-141-0280, Oregon Health Plan PHP Informational Requirements, and shall be distributed within 14 calendar days of the OMAP Member's effective date of coverage with PHP;

(b) At a minimum the information in the PHP OMAP Member handbook shall contain the following elements:

(A) Location(s), office hours and availability of physical access for OMAP Members with disabilities to PHP and PHP's PCPs, PCDs offices;

(B) Telephone number(s) (including TTY) for OMAP Members to call for more information and telephone numbers relating to information listed below;

(C) OMAP Member's choice and use of PCPs, PCDs and policies on changing PCPs, PCDs;

(D) Use of the PHP's appointment system;

(E) Use of the PHP's referral system, including procedures for obtaining benefits, including authorization requirements;

(F) How OMAP Members are to access Urgent Care Services and advice;

(G) How and when OMAP Members are to use Emergency Services including information on Post-Stabilization Care Services, related to an emergency medical condition that are provided after an OMAP Member is stabilized in order to maintain the stabilized condition, or, under the circumstances to improve or resolve the OMAP Member's condition;

(H) Information on the PHP's Complaint] process and information on fair hearing procedures;

(I) How OMAP Members are to access interpreter services including sign interpreters;

(J) Information on the OMAP Member's rights and responsibilities;

(K) Information on the OMAP Member's possible responsibility for charges including Medicare deductibles and coinsurances (if they go outside of PHP for non-emergent care), co-payments, and charges for non-covered services;

(L) The transitional procedures for new OMAP Members to obtain prescriptions, supplies and other necessary items and/or services in the first month of Enrollment with the PHP if they are unable to meet with a PCP, PCD, other prescribing Practitioner or obtain new orders during that period;

(M) What services can be self-referred to both Participating and Non-Participating Providers (FCHP's and MHO's only);

(N) To adult OMAP Members in FCHPs and MHOs only, written information on Advance Directive policies including:

(i) A description of applicable state law;

(ii) OMAP Member rights under Oregon law;

(iii) The contractor's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(O) How to request information on the PHP's Physician Incentives;

(P) The OMAP Members right to request and obtain copies of their Clinical Records (and that they may be charged a reasonable copying fee) and to request that the record be amended or corrected;

(Q) How OMAP Members are to obtain emergent and non-emergent ambulance services (FCHP only) and other medical transportation to appointments, as appropriate;

(R) Explanation of the amount, scope and duration of covered and Non-covered Services in sufficient detail to ensure that OMAP Members understand the benefits to which they are entitled;

(S) How OMAP Members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs (FCHP's only);

(T) PHP's Confidentiality Policy;

(U) Name, locations, telephone numbers of, and non-English languages offered by current Participating Providers, including information on PHP's PCPs/PCDs that are not accepting new OMAP Members (not MHOs) including at a minimum, information on PCPs, specialists and hospitals in the OMAP Member's Service Area;

(V) The extent to which; and how, OMAP Members may obtain benefits, including family planning services, from out of network Providers;

(W) Any restrictions on the OMAP Member's freedom of choice among network Providers;

(X) Policies on referrals for specialty care and for other benefits not furnished by the OMAP Member's PCP;

(Y) How and where OMAP Members are to access any benefits that are available under OHP but are not covered under the PHPs' Contract, including any cost sharing, and how transportation is provided.

(c) If the PHP OMAP Member handbook is returned with a new address, the PHP shall remail the PHP OMAP Member handbook or use the telephone number provided by DHS to reach the OMAP Member. If the PHP is unable to reach the OMAP Member by either mail or telephone, the PHP shall retain the PHP OMAP Member handbook and have it available upon request for the OMAP Member;

(d) PHPs shall, at a minimum, annually and upon request provide the PHP OMAP Member handbook to OMAP Members, OMAP Member's Representative and to clinical offices for distribution to OMAP Members;

(e) The PHP OMAP Member handbook shall be reviewed by PHP for accuracy at least yearly and updated with new or corrected information as needed to reflect the PHP's internal changes and regulatory changes. If

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changes impact the OMAP Members' ability to use services or benefits, the updated materials shall be distributed to all OMAP Members;

(f) The 'DHS Client Handbook for the OHP' is in addition to the PHP OMAP Member handbook and cannot be used to substitute for the PHP OMAP Member handbook.

(4) PHPs shall have written procedures and criteria for health education of OMAP Members. Health education shall include: information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. Health education may be provided by PHP's Practitioner(s) or other individual(s) or program(s) approved by the PHP. PHPs shall endeavor to provide health education in a culturally sensitive manner in order to communicate most effectively with individuals from nondominant cultures: PHPs shall ensure development and maintenance of an individualized health educational plan for OMAP Members who have been identified by their Practitioner as requiring specific educational intervention. DHS may assist in developing materials that address specifically identified health education problems to the population in need.

(5) PHPs shall provide an identification card to OMAP Members, unless waived by OMAP and/or OMHAS, which contains simple, readable and usable information on how to access care in an urgent or emergency situation. Such identification cards shall confer no rights to services or other benefits under the Oregon Health Plan and are solely for the convenience of the PHP's, OMAP Members and Providers.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stat. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04

## 410-141-0420

### Oregon Health Plan Prepaid Health Plan Billing and Payment Under the Oregon Health Plan

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to Office of Medical Assistance Programs (OMAP), shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable OMAP billing rules. Submissions shall be made to PHPs within the four-month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the OMAP Member's eligibility); or

(e) Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with OMAP to be eligible for Fee-for-Service (FFS) payment by OMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Office of Mental Health and Addiction Services (OMHAS) before enrollment with OMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider enrollment.

(3) Providers, including mental health Providers, do not have to be enrolled with OMAP to be eligible for payment for services by PHPs except that Providers who have been excluded as Medicare/Medicaid Providers by OMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, that the OMAP Member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform OMAP Members of any charges for non-covered services prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to OMAP Members. These services are referred to as Capitated Services;

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or OMAP specifies otherwise. PHPs may require Providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to Providers for Capitated Services is a matter between the PHP and the Provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any Provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify Providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the Provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the OMAP Member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the OMAP Member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the OMAP Member requests an extension, or if the PHP justifies to OMAP a need for additional information and how the extension is in the OMAP Member's interest.

(D) For all other pre-authorization requests, PHPs shall notify Providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14 day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies the need for additional information and how the delay is in the interest of the OMAP Member. The PHP shall make a determination as the OMAP Member's health condition requires, but no later than the expiration of the extension. PHPs shall notify OMAP Members of a denial within five working days from the final determination using an OMAP or OMHAS approved client notice format.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

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(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the OMAP Member may be financially responsible. Such notice shall be provided to the OMAP Member and the treating Provider within 14calendar days of the final determination. The notice to the OMAP Member shall be an OMAP or OMHAS approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (OMAP 3030) shall be attached. The notice to the Provider shall include the reason for the denial;

(D) PHPs shall not require Providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved Providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the OMAP Member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the OMAP Member receives within the PHP, for authorized referral care, and for Urgent Care Services or Emergency Services the OMAP Member receives from non-contracted Providers. FCHPs and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care OMAP Members receive from non-PHP Providers;

(d) FCHPs shall pay transportation, meals and lodging costs for the OMAP Member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP has arranged and authorized when those services are available within the state, unless otherwise approved by OMAP;

(e) PHPs shall be responsible for payment of covered services provided by a Non-Participating Provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the Participating Provider ordered or directed the covered services to be delivered by a Non-Participating Provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered service that would have been pre-authorized with a Participating Provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to Non-Participating Providers (Providers enrolled with OMAP that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to Providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other Services:

(a) OMAP Members enrolled with PHPs may receive certain services on an OMAP FFS basis. Such services are referred to as Non-Capitated Services;

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by OMAP on an OMAP FFS basis. Before providing services, Providers should contact the PHPs identified on the OMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the Provider may call the OMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate OMAP administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill OMAP directly for Non-Capitated Services in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(e) OMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and OMAP administrative rules and supplemental information;

(f) OMAP will not pay a Provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of OMAP, OMHAS, nor a PHP except as

provided for in OMAP administrative rules and supplemental information (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs that contract with non-public teaching hospitals will reimburse those hospitals for Graduate Medical Education (GME), if the hospitals are:

(A) Neither a type A nor type B hospitals;

(B) Not paid according to a type A or type B payment methodology; and,

(C) In remote areas greater than 60 miles from the nearest acute care hospital, with a graduate medical student teaching program.

(i) FCHPs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. OMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM Managed Services are covered services that shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(d) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate OMAP administrative rules and supplemental information.

(10) OHP Clients who are not enrolled with a PHP receive services on an OMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled OMAP Provider;

(b) All services shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(c) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate OMAP administrative rules and supplemental information.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; 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 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04

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**Adm. Order No.:** OMAP 38-2004(Temp)

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 6-1-04 thru 11-15-04

**Notice Publication Date:**

**Rules Adopted:** 410-120-1390

**Subject:** The General Rules administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for products and services provided to clients. Rule 410-120-1390 is temporarily adopted to describe the circumstances under which OMAP would accept or decline sponsorships, the types and classes of sponsorship, and identifying some conditions and limitations to sponsorship benefiting one or more OMAP Clients.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-120-1390**

**Sponsorships**

(1) Donations made for the benefit of one or more specified OMAP clients shall be referred to as a sponsorship and the donor shall be referred to as a sponsor.

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(2) DHS may accept sponsorships consistent with the requirements of this rule. DHS may adopt such forms and reporting requirements, and change the forms and reporting requirements, as necessary to carry out its functions under this rule. DHS may identify one or more designees to perform one or more of the functions of DHS under this rule.

(3) This rule does not create or establish any sponsorship program. DHS does not operate or administer a sponsorship program. DHS does not find sponsors for clients or take requests or applications to be sponsored from clients.

(4) This rule does not create a right for any OMAP client to be sponsored. Sponsorship is based solely on the decisions of sponsors; DHS only applies the sponsorship funds that are accepted by DHS as instructed by the sponsor. DHS does not determine who may be sponsored. Any operations of a sponsorship program are solely the responsibility of the sponsoring entity.

(5) A sponsorship amount that is not actually received by the OMAP client shall not be deemed to be cash or other resource attributed to the OMAP client, except to the extent otherwise required by federal law. An OMAP client's own payment of his or her obligation, or payment made by an authorized representative of the OMAP client, is not a sponsorship except to the extent that the authorized representative is otherwise subject to subsection (7) of this rule.

(6) Nothing in this rule alters the OMAP client's personal responsibility for assuring that his or her own payments (including current or past due premium payments) are made on time as required under any rule of the Department of Human Services. If a sponsorship payment is accepted by DHS for the benefit of a specified client, DHS or its designee will credit the amount of the sponsorship payment toward any outstanding amount owed by the specified client. DHS or its designee is not responsible for notifying the client that a sponsorship payment is made or that a sponsorship payment has stopped being made.

(7) If a sponsor is a health care provider, or an entity related to a health care provider, or an organization making a donation on behalf of such provider or entity, the following requirements apply.

(a) DHS will decline to accept sponsorships that are not "bona fide donations" within the meaning of 42 CFR 433.54. A sponsorship is a "bona fide donation" if the sponsorship has no direct or indirect relationship to Medicaid payments made to the health care provider, a related entity providing health care items or services, or other providers furnishing the same class of items or services as the provider or entity;

(b) For purposes of this rule, terms "health care provider," "entity related to a health care provider" and "provider-related donation" shall have the same meaning as those terms are defined in 42 CFR 433.52. Sponsorships made by a health care provider or an entity related to a health care provider must be a "bona fide donation" within the meaning of subsection (a) of this section;

(c) If a health care provider or an entity related to a health care provider donates money to an organization, which in turn donates money in the form of a sponsorship to DHS (referred to as an organizational sponsor), the organizational sponsor is subject to this rule. The sponsorship must be a "bona fide donation" within the meaning of subsection (a) of this section;

(d) Any sponsor that is a health care provider or entity related to a health care provider, or causing another to make a sponsorship on its behalf, and any organizational sponsor, is solely responsible for compliance with laws and regulations applicable to any donation, including but not limited to 42 CFR 1001.951 and 1001.952.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 38-2004(Temp), f. 5-28-04 cert. ef. 6-1-04 thru 11-15-04

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**Adm. Order No.:** OMAP 39-2004(Temp)

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-19-04 thru 11-30-04

**Notice Publication Date:**

**Rules Amended:** 410-120-1230

**Subject:** The General Rules in OAR 410-120-0000 et.seq. govern the Office of Medical Assistance Programs (OMAP) payment for products and services provided to clients. Rule 410-120-1230 is temporarily amended to eliminate Oregon Health Plan (OHP) Standard copayments effective June 19, 2004 pursuant to Spry, et al. v. Thompson, et al., court order. General Rules supersede individual OMAP program rules relative to OHP Standard copayment references.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1230

### Client Copayment

(1) Client Copayment — OHP Plus

(a) OHP Plus clients shall be responsible for paying a copayment for some services. This copayment shall be paid directly to the provider.

(b) The following services are exempt from copayment:

(A) Emergency services, as defined in OAR 410-120-0000;

(B) Family planning services and supplies;

(C) Prescription drugs ordered through Office of Medical Assistance Program's (OMAP) Mail Order Pharmacy program;

(D) Any service not listed in (5) below.

(c) The following clients are exempt from copayments:

(A) Services provided to pregnant women;

(B) Children under age 19;

(C) Any client receiving services under the Home and Community based waiver and Developmental Disability waiver, or is an inpatient in a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR);

(D) American Indian/Alaska Native (AI/AN) clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under P.L. 93-638.

(d) Clients enrolled in an OMAP contracted managed care plan (Fully Capitated Health Plan, Dental Plan, or Mental Health Plan) will be exempt from copayments for any services paid for by their plan(s).

(e) Services to a client cannot be denied solely because of an inability to pay an applicable copayment. This does not relieve the client of the responsibility to pay, nor does it prevent the provider from attempting to collect any applicable copayments from the client; the amount is a legal debt, and is due and payable to the provider of service.

(f) A client must pay the copayment at the time service is provided unless exempted (see (b), (c) and (d) above).

(2) Client Copayment — OHP Standard. Copayments are eliminated for OHP Standard clients effective June 19, 2004. Elimination of copayments by this rule shall supercede any other General Rule, 410-120-0000 et seq; any Oregon Health Plan Rule, OAR 410-141-0000 et seq; or individual OMAP program rule(s), that contain or refer to OHP Standard copayment requirements.

(3) The provider should not deduct the copayment amount from the usual and customary fee submitted on the claim. Except as provided in subsection (2) of this rule, DHS will deduct the amount of the copayment from the amount paid to the provider (whether or not provider collects the copayment from the client. If the OMAP paid amount is less than the required copayment, the copayment amount will be equal to what OMAP would have paid, unless the client or services is exempt according to exclusions listed in (1) above.

(4) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 1001.951-1001.952, a provider is not required by OMAP to bill or collect a copayment from the Medicaid recipient. The provider may choose not to bill or collect a copayment from a Medicaid recipient, however, the agency will still deduct the copayment amount from the Medicaid reimbursement made to the provider.

(5) Services which require copayments are listed in Table 120-1230-1. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stat. Implemented: 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04

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**Adm. Order No.:** OMAP 40-2004(Temp)

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04 thru 12-11-04

**Notice Publication Date:**

**Rules Adopted:** 410-050-0400, 410-050-0410, 410-050-0420, 410-050-0430, 410-050-0440, 410-050-0450, 410-050-0460, 410-050-0470, 410-050-0480, 410-050-0490, 410-050-0500, 410-050-0510, 410-050-0520, 410-050-0530, 410-050-0540, 410-050-0550, 410-050-0560, 410-050-0570, 410-050-0580, 410-050-0590

**Subject:** Effective June 15, 2004, the Office of Finance and Policy Analysis is adopting as temporary rules, Oregon Administrative Rules 410-050-0400 through 410-050-0590, Long Term Care Facil-

# ADMINISTRATIVE RULES

ity Tax, relating to the taxation of long term care facilities in the State of Oregon.

**Rules Coordinator:** Patricia Bougher—(503) 945-6927

## 410-050-0400

### Definitions

(1) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the facility. If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(2) "Delinquency" means the facility failed to pay the tax as correctly computed when the tax was due.

(3) "Department" means the Oregon Department of Human Services or its successor organization.

(4) "Director" means the Director of the Oregon Department of Human Services or the Director's designee or agent.

(5) "Gross Revenue" means the revenue paid to a long term care facility for patient care, room, board and services, less contractual adjustments. It does not include revenue derived from sources other than operations, including but not limited to interest and guest meals.

(6) "Long Term Care Facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director, to provide treatment for two or more unrelated patients. "Long term care facility" includes licensed skilled nursing facilities and licensed intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455. Long Term Care Facility does not include any Intermediate Care Facility for the Mentally Retarded.

(7) "Patient Days" means the total number of patients occupying beds in a long term care facility, determined as of 12:01 a.m. of each day, for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a Long Term Care facility patient is admitted and discharged on the same day, the patient is deemed present on 12:01 a.m. of that day.

Stat. Auth.: ORS 410, ORS 411

Stats. Implemented: ORS 736 § 15

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0410

### General Administration

(1) The purpose of these rules is to implement the long term care facility tax imposed on long term care facilities in the State of Oregon.

(2) The Department will administer, enforce and collect the Long Term Care Facility tax.

(3) The Department may assign employees, auditors and such other agents as the Director may designate to assist in the administration, enforcement and collection of the taxes.

(4) The Department may make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce and collect the taxes.

(5) The Department may prescribe such forms and reporting requirements, and change the forms and reporting requirements, as necessary to administer, enforce and collect the taxes.

Stat. Auth.: ORS 410, ORS 411

Stats. Implemented: ORS 736 §§15-38

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0420

### Disclosure of Information

(1) Except as otherwise specifically provided by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. "Particulars" includes but is not limited to, social security numbers, employer number or other facility identification number, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties or interest payable or paid, or otherwise administer, enforce or collect a health care assessment to the extent that such information would be exempt from disclosure under ORS 192.501(5).

(2) The Department may:

(a) Furnish any facility, or representative authorized to represent the facility, upon request of the facility or representative, with a copy of the facility's report filed with the Department for any quarter, or with a copy of

any report filed by the facility in connection with the report, or with a copy with any other information the Department considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return; and

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and such other employees of the State or Federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement or collection of these taxes.

Stat. Auth.: ORS 410, ORS 411

Stats. Implemented: ORS 410, 411

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0430

### Entities subject to the Long Term Care Facility Tax

Each Long Term Care Facility in the State of Oregon is subject to the Long Term Care Facility Tax except the Oregon Veterans' Home, and Long Term Care Facilities that have received written notice from the Department that they are exempt under the terms of a waiver. For these facilities, the exemption from the Long Term Care Facility Tax only applies for the specific period of time described in the notice from the Department.

Stat. Auth.: ORS 410, ORS 411

Stats. Implemented: ORS 736 § 18, § 33

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0440

### The Long Term Care Facility Report of Gross Revenues

(1) Each Long Term Care Facility subject to the Long Term Care Facility Tax must submit a statement of its Gross Revenue on a form approved by the Department.

(2) The report may be combined with the quarterly tax assessment report at the discretion of the Department.

(3) The Department may require the facility to provide additional reports in order to calculate the tax rate for the next fiscal year.

(4) The Department will require a report from the facilities of their adjusted net revenue on or before May 30, 2004 in order to determine the rate of tax for the fiscal year beginning July 1, 2004.

(5) For the purposes of this rule, adjusted net revenue includes the facilities' total routine and ancillary revenues, less contractual adjustments, bad debt, and charity care.

(a) Contractual adjustments are the difference between the amounts charged based on the facility's full established charges and the contractual amounts due from the payor;

(b) Charity care is the difference between the amounts charged based on the facility's full established charges and the contractual amount due from the patient based upon the patient's indigence or lack of insurance; and

(c) Bad debt is the total amount of accounts receivables that are analyzed and deemed uncollectible during the quarter. The amount of the deduction is reduced by any payments received on accounts receivables that were deemed uncollectible in a previous quarter.

Stat. Auth.: ORS 410, ORS 411

Stats. Implemented: ORS 736 § 17

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0450

### The Long Term Care Facility Tax: Calculation, Report, Due Date

(1) The tax is assessed upon each Patient Day at a Long Term Care Facility. The amount of the tax equals the assessment rate times the number of Patient Days at the long term care facility for the calendar quarter. The current rate of the assessment will be determined in accordance with these rules.

(2) The facility must pay the tax and file the report on a form approved by the Department on or before the 30th day of the month following the end of the calendar quarter for which the tax is being reported.

(3) Any report, statement or other document required to be filed under any provision of these rules shall be certified by the Chief Financial Officer of the facility or an individual with delegated authority to sign for the facility's Chief Financial Officer. The certification must attest, based on best knowledge, information and belief, to the accuracy, completeness and truthfulness of the document.

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(4) For calendar quarters beginning July 1, 2003, October 1, 2003, and January 1, 2004, the first payment of tax and reports will be due June 30, 2004. These quarters include Patient Days throughout the nine-month period from July 1st, 2003 through April 30, 2004.

(5) Payments may be made electronically and the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form

(6) The Department may charge the facility a fee of \$100 if, for any reason, the check, draft, order or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 16

Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0460

### Filing an Amended Report

(1) The claims for refunds or payments for additional tax must be submitted by the facility on a form approved by the Department. The facility must provide all information required on the report. The Department may audit the facility, request additional information or request an informal conference prior to granting a refund or as part of its review of a payment of a Deficiency.

(2) Claim for Refund:

(a) If the amount of the tax is less than the amount paid by the facility and the facility does not then owe a tax for any other calendar period, such overpayment may be refunded by the Department to the facility;

(b) The facility may file a claim for refund on a form approved by the Department within 180 days after the end of the calendar quarter to which the claim for refund applies; and

(c) If there is an amount due from the facility for any past due taxes or penalties, the refund otherwise allowable will be applied to the unpaid taxes and penalties and the facility so notified.

(3) Payment of Deficiency:

(a) If the amount of the tax is more than the amount paid by the facility, the facility may file a corrected report on a form approved by the Department and pay the Deficiency at any time. The penalty under OAR 410-050-0490 will stop accruing after the Department receives payment of the total Deficiency for the calendar quarter; and

(b) If there is an error in the determination of the tax due, the facility may describe the circumstances of the late additional payment with the late filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of error; facility explanation of the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the facility has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers/identifies information in the administration of these tax rules that it determines could give rise to the issuance of a Notice of Proposed Action, or the issuance of a refund, DHS will notify the facility. The facility will have 30 calendar days from the date of the Department's notice to respond. It is the facility's responsibility to determine what response, if any, it will make. The facility may request a refund pursuant to subsection (2) of this rule or file an amended report pursuant to subsection (3) of this rule. Nothing in this subsection (4) prevents or limits DHS from issuing a Notice of Proposed Action pursuant to OAR 410-050-0510.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 22  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0470

### Determining the Date Filed

For the purposes of these rules, any reports, requests, appeals, payments or other response by the facility must be either received by the Department before the close of business on the date due, or, if mailed, post-marked before midnight of the due date. When the due date falls on a Saturday, Sunday or a legal holiday, the return is due on the next business day following such Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0480

### Assessing Tax on Failure to File

In the case of a failure by the facility to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the facility according to the best of its information and belief. "Best of its information and belief" means that the Department will use evidence on which a reasonable person would rely in determining the tax, including, but not limited to, estimating the days of Patient Days based upon the number of licensed beds in the facility. The Department's determination of tax liability will be the basis for the assessment due in a Notice of Proposed Action.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0490

### Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due.

(1) A Long Term Care Facility that fails to file a report or pay a tax when due under OAR 410-050-0450 is subject to a penalty of \$500 per day of delinquency. The penalty accrues from the date of Deficiency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(3) Penalties imposed under this section will be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Long Term Care Facility tax.

(5) Any penalties arising from a failure to pay or file a timely report on Patient Days from July 1, 2003 through December 31, 2003, will be deposited into the long term care quality assurance suspense account.

(6) If the Department determines that a facility is subject to a penalty under this section, it will issue a Notice of Proposed Action as described in OAR 410-050-0510.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 19  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0500

### Departmental Authority to Audit Records

(1) The facility must maintain clinical and financial records sufficient to determine the actual number of Patient Days for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the facility's records at any time for a period of three years following the date the tax is due to verify or determine the number of Patient Days at the facility.

(3) The Department may issue a Notice of Proposed Action or issue a refund based upon its findings during the audit.

(4) Any audit, finding or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the facility or by the facility and a representative of the Department.

(5) The Department may issue a refund and otherwise take such actions as it deems appropriate based upon the findings of the audit.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 21  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0510

### Notice of Proposed Action

(1) Prior to issuing a Notice of Proposed Action, the Department will notify the facility of a potential deficiency or failure to report that could give rise to the imposition of a penalty and provide the facility with not less than 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any amended report under OAR 410-050-0460 in its Notice of Proposed Action.

(2) The Department will notify the facility if it determines that the facility is subject to the imposition of a penalty for a calendar quarter or if there is a Deficiency for a calendar quarter with a Notice of Proposed Action.

(3) Contents of the Notice of Proposed Action must include:

(a) The applicable calendar quarter;

(b) The basis for determining the corrected amount of tax for the quarter;

(c) The corrected tax due for the quarter as determined by the Department;

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- (d) The amount of tax paid for the quarter by the facility;
  - (e) The resulting Deficiency, which is the difference between the amount received by the Department for the calendar quarter and the corrected amount due as determined by the Department;
  - (f) Statutory basis for the penalty;
  - (g) Amount of penalty per day of Delinquency;
  - (h) Date upon which the penalty began to accrue;
  - (i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;
  - (j) The total penalty accrued up to the date of the notice; and
  - (k) Instructions for responding to the notice, and a statement of the facility's right to a hearing.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0520

### Required Notice

- (1) Any notice required to be sent to the facility will be sent to the current licensee and any former licensee who was occupying the property during time period to which the notice relates.
  - (2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the facility.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0530

### Hearing Process

- (1) Any facility that receives a Notice of Proposed Action may request a contested case hearing under ORS 183.310 to 183.550.
  - (2) The written request must be received by the Department within 20 days of the date of the notice.
  - (3) Prior to the hearing, the Department and the facility will meet for an informal conference.
  - (4) Nothing in this section shall preclude the Department and the facility from agreeing to an informal disposition of the contested case at any time, consistent with ORS 183.415(5).
  - (5) If the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the Notice of Proposed Action.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §20  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0540

### Final Order of Payment

The Department will issue a Final Order of Payment for deficiencies and/or penalties when (i) any part of the deficiency or penalty is upheld after a hearing; (ii) the facility did not make a timely request for a hearing; or (iii) upon the stipulation of the facility and the Department.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0550

### Remedies Available after Final Order of Payment

- (1) Any amounts due and owing under the Final Order of Payment and any interest thereon may be recovered by the State of Oregon as a debt to the State, using any available legal and equitable remedies. These remedies include, but are not limited to:
    - (a) Collection activities including but not limited to deducting the amount of the final Deficiency and/or Penalty from any sum then or later owed to the facility or its owners or operators by the Department, CMS or their designees to the extent allowed by law;
    - (b) Nursing facility license denial, suspension or revocation under OAR 411-89-040;
    - (c) Restrictions of admissions to the facility under OAR 411-89-050; and
    - (d) Terminating the provider contract with the owners or operators of the facility under OAR 411-70-0015.
  - (2) Every payment obligation shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the Final Order of Payment and continuing until the payment obligation, including interest has been discharged.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§ 15-36  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0560

### Calculation of the Long Term Care Facility Tax for periods beginning on and after July 1, 2004

- (1) The amount of the tax is based on the assessment rate determined by the Director multiplied by the number of Patient Days at the Long Term Care Facility for a calendar quarter.
  - (2) The Director must establish an annual assessment rate for Long Term Care Facilities that applies for each 12-month period beginning July 1. The Director must establish the assessment rate on or before June 15th preceding the 12-month period for which the rate applies.
  - (3) At the time the annual assessment rate is established, the Director may adjust the assessment rate to account for overages and underages in the aggregate amount actually collected during previous assessment periods.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 §§17, 27(c)  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0570

### Initial Tax for Calendar Quarters Beginning July 1, 2003 and October 1, 2003

The amount of tax on LTC Facilities for calendar quarters beginning July 1, 2003 and October 1, 2003 must be determined using an assessment rate of \$8.25 per Patient Day.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 28  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0580

### Tax for Calendar Quarters Beginning January 1, 2004 and April 1st, 2004

- (1) The amount of tax on LTC Facilities for calendar quarters beginning January 1, 2004 and ending before July 1st, 2004, must be determined using an assessment rate of \$8.25 per Patient Day.
  - (2) This rate may be adjusted by the Department to take into account overages or underages raised under the Initial Assessment Rate under OAR 410-050-0570, including, but not limited to, overages and underages caused by an approval or denial by the Centers for Medicare and Medicaid Services. An adjustment under this subsection may be made at any time.
- Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 27  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

## 410-050-0590

### Limitations On The Imposition of the Long Term Care Facility Tax

The long term care facility tax may be imposed only in a calendar quarter for which the long term care facility reimbursement rate that is part of the Oregon Medicaid reimbursement system was calculated according to the methodology described in Oregon Laws, ORS 736§ 24.

Stat. Auth.: ORS 410, ORS 411  
Stats. Implemented: ORS 736 § 29  
Hist.: OMAP 40-2004(Temp), f. & cert. ef. 6-15-04 thru 12-11-04

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## Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 19-2004

Filed with Sec. of State: 5-26-2004

Certified to be Effective: 5-26-04

Notice Publication Date: 4-1-04

Rules Adopted: 333-535-0041

Rules Repealed: 333-535-0040, 333-535-0041(T)

**Subject:** Retroactively repeals 333-535-0040 and adopts 333-535-0041. These rules changes were previously submitted to the Secretary of State's office and became effective on February 20, 2003. These rules are identical to the rules previously filed with the Secretary of State's office on February 20, 2003.

OAR 333-535-0041 contains major revisions to construction requirements for hospital critical care units. These include care units for intensive care, coronary care patients, pediatric patients, and newborns. The adopted rule combines most requirements for adult units, allowing for better multi-disciplinary use of the same patient rooms. More detailed requirements are proposed for separate pediatric critical care units and newborn intensive care units than in 333-535-

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0040, with requirements reflective of recent care trends and recommended industry standards.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

### 333-535-0041

#### Critical Care Units

(1) Critical Care Units, Generally: Critical Care Units require special space and equipment considerations for effective staff functions. In addition, space must be arranged to include provisions for immediate access for emergency medical equipment from other departments. Critical Care Units shall comply in size, number and type with the requirements of this rule and with the hospital's functional program. This rule is intended for the more common types of critical care services. Where specialized services are required, the Department may allow such additions and modifications as are necessary for efficient, safe and effective patient care. (See also OAR 333-535-0300 for mechanical requirements and OAR 333-535-0310 for electrical requirements.)

(2) Adult Critical Care Units: Each Adult Critical Care Unit shall comply with the following requirements:

(a) The location shall be convenient for access from emergency, respiratory, laboratory, radiology, surgery, and other essential departments and services, and be located so that medical emergency resuscitation teams may respond promptly to emergency calls;

(b) The location shall be arranged to eliminate the need for through traffic;

(c) For new construction, a private room shall be provided for each patient. A minimum of 200 square feet of clear floor area shall be provided exclusive of anterooms, vestibules, toilet rooms, closets, lockers, wardrobes, and alcoves. A combined total of at least seven feet of clear space shall be available at the head and foot of the bed. Minimum head wall width shall be 13 feet;

(d) Renovation projects shall comply with subsection (2)(c) of this rule except when existing structural conditions make full compliance impractical. In such cases, the Department may allow the following deviations: Private patient room size may be reduced to 160 square feet with a minimum headwall width of 11 feet 6 inches. The combined total of clear space available at the head and foot of the bed may be reduced to a minimum of six feet. Multiple bed rooms may be provided with cubicle curtains for patient privacy. The minimum patient cubicle size shall be 130 square feet with a minimum headwall width of 11 feet for each bed. Three of the seven feet of combined total clear space required at the head and foot of the bed may be outside the curtained cubicle area.

(e) In private rooms or curtained cubicles, visual access to the corridor shall be provided. In multiple bed rooms, cubicle curtains or other alternative methods approved by the Department shall be provided for visual privacy from casual observation by other patients and visitors;

(f) Where only one door is provided to a bed space, it shall be at least 44 inches in clear width and arranged to minimize interference with the movement of beds and large equipment. Sliding doors shall not have floor tracks and shall have hardware that minimizes jamming. When a secondary door is desired for staff use, it may be of a smaller width;

(g) For the purpose of allowing day from night orientation, newly constructed patient rooms shall include at least one window meeting the requirements of OAR 333-535-0025(1)(c), arranged to allow direct visual access by the patient to the outside. Patient rooms and cubicles in renovation projects shall also meet this requirement except when the Department determines that existing structural conditions make it impractical to do so. In these instances, patients must have direct visual access to an outside window, but it may be a clerestory type and the distance from the patient bed to the outside window may be up to 50 ft;

(h) A nurse call device shall be provided at each bed for patient use. A staff use emergency call station shall also be provided in each patient room to summon assistance. In multiple bedrooms, at least one such emergency call station shall be provided for each eight patient beds;

(i) Handwashing stations shall be convenient to nurses stations and patient bed areas. One handwashing station shall be provided in each patient room. The handwashing station shall be located near the entrance of the patient room, designed to minimize splashing water onto the floor, and shall be equipped with hands-free operable controls. In multiple bed rooms allowed under paragraph (2)(b)(D) of this rule, if the Department determines that existing structural conditions make it impractical to comply with this requirement, there shall be at least one handwashing station provided for every two beds in multiple bed rooms. The handwashing station shall be located near the entrances to patient cubicles;

(j) A toilet shall be provided within each patient room or in a separate private toilet room entered directly from the patient room. Space shall be provided adjacent to toilets to allow for staff assistance. An exception to this requirement may be granted by the Department when the project is within a Department of Human Services designated Level 1 Trauma Center Hospital and patients typically are unable to utilize toilets. In renovation projects if the Department determines that existing structural conditions make it impractical to comply with this paragraph, a minimum of one enclosed toilet room and handwashing station shall be provided for each eight patient beds. In these instances, portable toilets are permitted in place of fixed toilets within each patient room or cubicle. If portable toilets are used, facilities for cleaning and storing them shall be conveniently located within or adjacent to the Critical Care Unit;

(k) The nurses' station or a substitution with space for charting and monitoring shall be located so that nurses will have direct visual observation of each patient. In larger Critical Care Units, more than one nurses' station may be needed to provide for observation of all patients;

(l) Individual patient closets or lockers shall be provided for the secure storage of clothing and personal effects. This storage may be within patient rooms or in a central location convenient to the Critical Care Unit; and

(m) Each Critical Care Unit shall provide space for equipment used for continuous physiological monitoring, including a bedside and remote visual display for each patient.

(3) Airborne Infection Isolation Room: At least one Airborne Infection Isolation Room shall be provided for use by Critical Care Unit patients. The number and location of Airborne Infection Isolation Rooms shall be determined based upon an Infection Control Risk Assessment conducted in accordance with OAR 333-535-0035(1). Each Airborne Infection Isolation Room shall comply with the requirements of OAR 333-535-0035(2) with the following exceptions:

(a) The requirement for the bathtub or shower may be eliminated.

(b) Compact, modular toilet/sink combination units may replace the requirement for a toilet room.

(c) Toilets may be eliminated entirely from patient rooms of Department of Human Services designated Level 1 Trauma Center Hospitals when patients typically are unable to utilize a toilet.

(4) Service Areas: One service area may serve two or more adjacent Critical Care Units. The size and location of each service area will depend upon the number of beds to be served. The following service areas shall be located in, or readily available to, each Critical Care Unit:

(a) Charting facilities. Multi-disciplinary charting facilities provided in accordance with the architectural functional program;

(b) Staff lounges. Staff lounge(s) and toilets located as a part of or adjacent to the Critical Care Unit, so that staff may be recalled quickly to the patient area in case of emergency;

(c) Staff personal effects storage. Space located at or near the nurses' work area for the secure storage of the personal effects of nursing personnel. Larger items such as coats may be stored in staff locker rooms located outside the Critical Care Unit;

(d) Clean supply room. Space which meets the requirements of OAR 333-535-0260(4), for the storage and distribution of all clean medical and surgical supplies kept in the Critical Care Unit;

(e) Soiled utility room. Each patient Critical Care Unit shall include at least one soiled utility room which meets the requirements of OAR 333-535-0260(5);

(f) Medication station. A Medication Station which meets the requirements of OAR 333-535-0025(2)(h). The medication station shall be designed to allow for secure, convenient, and prompt 24-hour distribution of medicine to patients;

(g) Clean linen storage. A separate closet or a designated area for clean linen storage shall be provided. If a closed cart system is used, storage may be in an alcove outside the required corridor width;

(h) Nourishment station. A nourishment station with sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishments between scheduled meals shall be provided. The nourishment station shall include space for trays and dishes used for non-scheduled meal service. Provision and space shall be included for separate temporary storage of unused and soiled dietary trays not picked up at meal time. Nourishment stations shall not share storage, counters, sinks or refrigerator space with medical supplies or pharmaceuticals;

(i) Ice machine. Equipment to provide ice for treatments and nourishment shall be provided. Ice-making equipment may be in the clean work room or at the nourishment station. Ice intended for human consumption shall be from self-dispensing icemakers;

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(j) Equipment storage room or alcove. Appropriate room(s) or alcove(s) shall be provided for storage of large items of equipment necessary for patient care and as required by the functional program. Each Critical Care Unit shall provide sufficient storage area(s) located on the patient floor to keep its required corridor width free of all equipment and supplies, but not less than 20 square feet per patient bed shall be provided. Additional space shall be provided for stretcher or bed storage if stored on the floor;

(k) Emergency equipment storage. Each Critical Care Unit shall have space for emergency cardiopulmonary resuscitation carts located out of the traffic pattern but convenient for access;

(l) Visitors' waiting room. A visitors' waiting room shall be provided that is designed to accommodate the long stays and stressful conditions common to such spaces, including provisions for privacy, means to facilitate communications, and access to toilets. The locations and size shall be appropriate for the number of patients and units served, with a capacity of at least one seating space per Critical Care Unit patient bed;

(m) Consultation room. A consultation room or other typically available room shall be provided to allow for private discussions between family members and medical staff. This room may be omitted in renovation projects if all patient rooms are private occupancy; and

(n) Janitors' closet. Janitors' closet with floor receptor or service sink and storage space for cleaning equipment and supplies. It may be located outside the Critical Care Unit if it is conveniently accessible to the Critical Care Unit.

(5)(a) Pediatric Critical Care Unit: If a facility has a distinct Pediatric Critical Care Unit, the functional program must include consideration for staffing, control, and the safe transportation of critically ill pediatric patients with life support and environmental systems from other areas of the facility. The Pediatric Critical Care Unit may be an open ward plan or may have private or semi-private patient rooms. Private rooms at the rate of at least one per 10 beds shall be provided. In addition, at least one private room for each Pediatric Critical Care Unit shall be provided for seclusion and airborne infection isolation. The room(s) provided for seclusion and airborne infection isolation shall comply with the requirements for Airborne Infection Isolation Rooms set forth in OAR 333-535-0035(2). (See also OAR 333-535-0300 for mechanical requirements and OAR 333-535-0310 for electrical requirements.)

(b) In addition to complying with the requirements of sections (1), (2), (3) and (4) of this rule, each Pediatric Critical Care Unit shall also include the following features:

(A) Space in the patient room for family and visitors. Space and furnishings to allow parents to sleep shall also be provided. If the sleeping area is separate from the patient area, a system for communication with Pediatric Critical Care Staff must be provided. Storage for associated bedding shall be provided;

(B) If an examination and treatment room is required by the functional program, it shall be located in or directly accessible from the Pediatric Critical Care Unit. Examination and treatment rooms shall have a floor area of at least 80 square feet and shall include a handwashing station, storage facilities and a surface for charting;

(C) Consultation/demonstration room which is separate from treatment rooms and within or convenient to the Pediatric Critical Care Unit; and

(D) Separate storage cabinets or closets for toys and games.

(6) Newborn Intensive Care Units (ANICU@): Each Newborn Critical Care Unit shall include or comply with the following requirements:

(a) The NICU shall have a clearly identified entrance and reception area with a counter for charting and enclosed storage for supplies. The area shall permit visual observation of, and contact with, all traffic entering the NICU. A handwashing station shall be provided for visitors entering the NICU;

(b) The NICU shall be designed as part of an overall safety program to protect the physical security of infants, parents, and staff and to minimize the risk of infant abduction. There shall be controlled physical access to the NICU;

(c) In a multiple-bed room, every bed shall be within 20 feet of a handwashing station. Where an individual room concept is used, a handwashing station shall be provided within each infant care room. All sinks shall be hands-free operable and large enough to limit splashing;

(d) At least one door to each room in the NICU must be large enough to accommodate portable X-ray equipment;

(e) The NICU shall be located in close proximity to Labor and Delivery Departments when that service is also provided at the facility;

(f) Privacy screening shall be provided at all infant viewing windows;

(g) Sound attenuation features shall be provided to limit background noise levels to a maximum 40-45 decibels and transient sounds to a maximum of 70 decibels;

(h) Indirect lighting and high-intensity lighting shall be provided in all nurseries.

Controls shall be provided to enable lighting to be adjusted over individual patient care spaces from one to 60 footcandles at 3 feet above the floor level;

(i) Each infant care space shall contain a minimum of 150 square feet per bassinets, excluding sinks and aisles. Each bassinets shall have a minimum clearance of 4 feet to walls or any permanent obstruction. When single infant rooms or fixed cubicle partitions are used, there shall be an adjacent aisle of not less than 8 feet in clear unobstructed width to permit passage of equipment and personnel. In multiple bed rooms, there shall be a minimum of 8 feet between infant care beds. Each infant care space shall be designed to allow privacy for the baby and family;

(j) A medication station meeting subsection (4)(f) of this rule;

(k) Ceilings shall be easily cleanable and non-friable and shall have a noise reduction coefficient (ANRC@) of at least 0.55. Ceiling construction must limit the passage of particles from above the ceiling plane into the clinical environment. If a T-bar acoustic tile ceiling system is used, the tiles shall be clipped down, weighted or gasketed to limit passage of particles;

(l) At least one Airborne Infection Isolation Room is required within the NICU. The room shall be enclosed and separated from other areas of the nursery with provisions for direct visual observation of the infant. All Airborne Infection Isolation Rooms shall comply with the requirements of OAR 333-535-0035(2), except that a separate toilet, bathtub, or shower are not required;

(m) Rooms at the rate of at least one per 15 infant isolettes shall be provided within the NICU to allow parents and infants to spend extended private time together. These room(s) shall have direct, private access to sink and toilet facilities, communication linkage with the NICU staff, sleeping facilities for at least one parent, and sufficient space for the infant's bed and equipment;

(n) Dedicated space shall be provided for lactation support and consultation in or immediately adjacent to the NICU. Provision shall be made, either within the room or conveniently located nearby, for sink, counter, refrigeration and freezing of breast milk, storage for pump and attachments, and educational materials;

(o) Charting facilities shall have adequate linear surface space to ensure that staff and physicians may chart and have simultaneous access to information and communication systems;

(p) A clean workroom or clean supply room meeting the requirements of subsection (4)(d) of this rule;

(q) A soiled workroom or soiled holding room meeting the requirements of subsection (4)(e) of this rule;

(r) A lounge, locker room, and staff toilet within or adjacent to the NICU suite for staff use which meets the requirements of subsection (4)(b) of this rule;

(s) Emergency medical equipment storage which meets the requirements of subsection (4)(k) of this rule;

(t) A janitors' closet which meets the requirements of subsection (4)(n) of this rule;

(u) A visitors' waiting room which meets the requirements of subsection (4)(l) of this rule;

(v) A nurses/supervisors office or station meeting the requirements of subsection (2)(k) of this rule;

(w) Multipurpose room(s) for staff, patients, and patients' families for patient conferences, reports, education, training sessions, and consultation. These rooms must be accessible to each NICU. They may be located on other floors if convenient for regular use. One such room may serve several nursing units and/or departments;

(x) Equipment storage or alcove meeting subsection (4)(j) of this rule; and

(y) A nourishments station for refrigerated storage and distribution of breast milk, with sink, refrigerator, work counter and storage for clean containers.

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441 & ORS 442

Hist.: PH 1-2003, f. & cert. ef. 2-20-03; PH 8-2004(Temp), f. & cert. ef. 3-17-04 thru 7-30-04; PH 19-2004, f. & cert. ef. 5-26-04

# ADMINISTRATIVE RULES

## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Adm. Order No.:** SSP 15-2004(Temp)

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04 thru 9-30-04

**Notice Publication Date:**

**Rules Amended:** 461-125-0510

**Subject:** Rule 461-125-0510 is being amended so clients with severe mental impairments are evaluated in the same manner as those with severe physical limitations with respect to the vocational rules used to determine eligibility for the General Assistance (GA) program.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-125-0510

#### Impairment Criteria; GA, GAM

(1) To be eligible for GA and GAM, an individual must meet one of the following criteria:

(a) Have a physical or mental impairment that meets or equals the listing of impairments found in 20 CFR 404, Subpart P, Appendix 1, in effect November 1, 2003, and can be expected to:

(A) Last for a continuous period of not less than 12 months from the date of request; or

(B) Result in death within 12 months from the date of request.

(b) Be 55 years of age or older and meet the following requirements:

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Prevent the individual from returning to any past relevant work for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(c) Be 55 years of age or older and have all of the following:

(A) A severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Less than a 12th grade education, as evidenced by the lack of a high school diploma or GED.

(C) A history of no past relevant work as defined in section (2) of this rule in the last 15 years.

(d) Be age 50 or older but not yet age 55 and:

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to light residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(e) Be age 50 or older but not yet age 55 and:

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Have less than a High School education.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(f) Be age 45 or older but not yet age 50 and:

(A) Have a severe physical or mental impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of unskilled or none.

(2) As used in this rule:

(a) "Basic work activity" means any kind of work activity that averages at least eight hours a day for which income is received, regardless of the adequacy to meet the client's needs. Work performed against medical advice or at an activity center or sheltered workshop is not basic work activity.

(b) "Equaling" means the medical findings are at least equal in severity and duration to the listed findings. If the client's impairment is not listed, the Department considers the listed impairment most like the client's impairment to decide whether the client's impairment is medically equal to the listed impairment. If the client has more than one impairment, and none of them meets or equals a listed impairment, the Department reviews the symptoms, signs, and laboratory findings about the client's impairments to determine whether the combination of those impairments is medically equal to a listed impairment.

(c) "Light work" means work that requires lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds and requires occasional stooping. It also requires standing or walking for a total of approximately six hours of an eight-hour workday.

(d) "Past relevant work" means work that the individual has performed in the last 15 years and that constitutes *substantial gainful activity* as defined in 20 CFR 404.1574 and 404.1575, in effect November 1, 2003. Also, the past relevant work must have lasted long enough for the individual to learn the techniques, acquire the necessary information, and develop the facilities needed for average performance of the job situation.

(e) "Sedentary work" means work that requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles such as docket files, ledgers, and small tools. Although sitting is involved, a certain amount of walking and standing is often necessary in carrying out job duties. Periods of walking and standing should total no more than two hours of an eight-hour workday and sitting should total approximately six hours of an eight-hour workday. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand finger actions.

(f) "Severe mental impairment" means a mental impairment that significantly limits the individual's ability to do basic work activity.

(g) "Severe physical impairment" means a physical impairment that significantly limits the individual's physical ability to do basic work activity.

(h) "Unskilled work" is work that requires little or no judgment to do simple duties that can be learned on the job within 30 days.

(3) An applicant is not eligible for GA or GAM if drug addiction or alcoholism is material to his or her disability.

(4) If the client is unable to do so, the Department will obtain medical evidence that documents a claim of physical or mental impairment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 21-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 24-1996(Temp), f. & cert. ef. 6-11-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 35-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 4-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 15-2004(Temp), f. & cert. ef. 6-1-04 thru 9-30-04

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

**Adm. Order No.:** SPD 11-2004(Temp)

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 5-28-04 thru 11-24-04

**Notice Publication Date:**

**Rules Adopted:** 411-070-0441

**Rules Amended:** 411-070-0359, 411-070-0428, 411-070-0465

**Rules Suspended:** 411-070-0440, 411-070-0446

**Subject:** Chapter 411, Division 070, Medicaid Nursing Facilities is being temporarily revised per 2003 Legislative House Bill 2747, which changed the methodology for calculating the rate of Medicaid reimbursement paid to Nursing Facilities for basic and complex

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medical days provided to Medicaid clients. It also passed a tax on Nursing Facilities. These rules will change the reimbursement methodology and will allow Nursing Facilities to account for the tax collection and payments on the Medicaid Cost Reports.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

### 411-070-0359

#### Allowable Costs

(1) Allowable costs are the necessary costs incurred for the customary and normal operation of a facility, to the extent that they are reasonable and related to resident care.

(a) Interest — Interest on debt related to the provision of resident care services is an allowable expense, except on or after July 1, 1984, interest expense related to that portion of the acquisition price of a long-term care facility that exceeds the depreciable basis (Rule 411-070-0375) will not be reimbursable. That portion of interest expense related to property or equipment must be reported in accordance with Rule 411-070-0359(1)(B).

(b) Rent or Lease Payments — Payments for the lease or rental of land, buildings, and equipment are to be reported. Payments for lease agreements entered into with a related party are limited to the lower of actual costs or the lease payments. These costs must be reported in accordance with Rule 411-070-0359(1)(B).

(c) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Leasehold improvements may be amortized. Depreciation and amortization must be calculated on a straight-line basis and prorated over the estimated useful life of the asset. These costs must be reported in accordance with Rules 411-070-0359(1)(B), 411-070-0365, 411-070-0375 and 411-070-0385.

(d) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident care activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, will be allowable.

(e) Compensation of Owners — Owner's compensation in accordance with Rule 411-070-0330 is allowable.

(f) Payroll Taxes — The employer's portion of payroll taxes is reimbursable.

(g) Employee Benefits — Employee benefits that are made available to all employees, are for the primary use of the employees, are generally considered by the industry as reasonable and important benefits to provide employees, are not taxable as wages, and are allowable to the extent of employer participation.

(h) Supplies — Cost of supplies used in resident care or providing services related to resident care are allowable.

(i) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident care are reimbursable. The allowance for mileage reimbursement will not exceed the amount determined reasonably by the Internal Revenue Service for the period reported. Allowable out-of-state travel is restricted to Washington, Idaho and Northern California no farther south than San Francisco. One out of the state/contiguous area trip per year for two employees will be allowed, as long as it relates to resident care.

(j) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(k) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(l) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident care and the sound conduct and operation of the facility.

(m) Taxes — Property taxes on assets used in rendering resident care are allowable. Long Term Care Facility taxes paid on patient days are allowable.

(n) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident care. Self-insurance costs are allowable only when expense is actually incurred.

(o) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident care.

(p) Education & Training — Registration, tuition and book expense associated with education and training of personnel is allowed provided it is related to resident care. The costs associated with training and certifying nurse aides are not allowable for inclusion in the annual Nursing Facility Financial Statement. These costs are reimbursed separately by the Department, per OAR 411-070-0470.

(q) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(r) Accounting, Auditing, and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(s) Licenses, Dues, and Subscriptions — Fees for facility licenses, dues in professional associations, and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff professional use are allowable.

(t) Legal Fees — Legal fees directly related to resident care are allowable. Legal fees related to non-allowable costs are not allowable. (For example, legal fees to collect non-Medicaid bad debts would not be allowable.) Legal fees claimed as related to resident care must be explained and listed on Schedule A. Fees related to legal and administrative actions to resolve a disagreement with the state will be allowable if the action is resolved in the provider's favor, and the judge/hearings officer does not order the State to pay the provider's legal fees.

(u) Management Fees — Management fees are allowable provided they meet the criteria for Rule 411-070-0350, Management Fees.

(v) Postage and Freight — Postage expense is considered an office supply cost. Freight will be posted to the same account as the item purchased.

(w) Food — Food products and supplements used in food preparation are allowable.

(x) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provision are allowable.

(y) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(z) Consultant Fees — Consultant fees are allowable provided they meet the criteria for Rule 411-070-0320, Consultants.

(A) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

(B) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(C) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(D) Home Offices Costs — Home office costs are allowable in accordance with Rule 411-070-0345.

(E) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(F) Criminal Records Checks — Costs of criminal record checks of facility employees if mandated by federal or state law.

(2) Exceptions to the items listed in Section (1) of this rule must be approved in writing to be allowable. Exceptions will not be granted for the following items:

(a) Amortization of non-competitive agreement;

(b) Good will;

(c) Federal and other governmental income taxes;

(d) Penalties and fines;

(e) Costs of services and items otherwise reimbursable through the Office of Medical Assistance Programs, other third party payors (see Rule 411-070-0359(3)), or the resident's personal funds.

(f) The cost related to the functioning of Corporate Boards of Directors.

(g) Advertising for purposes of soliciting potential residents, except for listings in the yellow pages (see Rule 411-070-0359(1)(q)).

(h) The cost of salaries and supplies devoted to religious activities.

(i) Gifts and contributions.

(3) Third Party Payors. The purpose of this section is to assure that facilities are not paid twice, once through the Medicaid all-inclusive rate and again through a third party payor, for providing a service. This section includes both allowed and non-allowed costs.

(a) Facilities must bill third party payors for nursing facility services whenever payment from a third party payor is or may be available. Examples of such payors are Medicare, Veterans Administration, insurance companies or a private resident when the items are not included in the basic rate.

(b) The Department will provide and update a summary listing of those items that may be billed to Medicare Part B for eligible residents. The costs for these items are not allowable for inclusion in the Nursing Facility Financial Statement for the purpose of establishing total facility per day costs.

(c) For Medicaid residents who are not Medicare Part B eligible, the costs of the items on the list provided by the Department per Section (3)(b) of this rule will be used to establish an add-on to the costs per resident day

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not to exceed the maximum direct care ceiling. These costs will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be added to the facility's per resident day direct care cost.

(d) Revenues received from third party payors, on behalf of Medicaid residents, for items other than those on the Medicare Part B list must be reported on the Nursing Facility Financial Statement. These revenues will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be used to reduce the facility's per resident day direct care costs.

(e) Facilities must submit as an attachment to their Nursing Facility Financial Statement a list showing name, case number, and total dollars expended or other allocation methodology approved in advance by the Department for the listed Medicare Part B eligible items per client for Medicaid residents not eligible for Medicare or other third party payments. Facilities may elect to use an allocation method to determine the dollars expended as long as the Department approves of the method thirty days in advance of the facility's fiscal year end. The Department will approve or reject the allocation method in writing within 30 days from the receipt of the facility's request for approval. The Department's approval of the allocation method continues from year to year unless notified in writing by the Department. Once an allocation method is approved, other facilities may use this method by notifying the Department of their intent to adopt this method thirty days in advance of the facility's fiscal year end. This attachment will be required for all reporting periods with an ending date after December 31, 1992.

(f) Failure to bill or collect from third party payors whenever appropriate will not cause these expenses to be considered allowable.

(g) Therapies provided by facility employees are allowable or not allowable as indicated below:

(A) Therapy expenses for non-Medicare eligible Medicaid residents may be included in the calculation in Subsection (3)(c) of this rule.

(B) The facility must establish a methodology that clearly indicates the approach taken to identify these allowable costs. This allocation method must be approved by the Department as described in Subsection (3)(e) of this rule.

(C) The portion of the therapist(s) costs that will be allowed in computing the base direct care rate includes:

(i) Therapies provided to Medicare Part B eligible residents that are not reimbursed by Medicare because the person's condition is no longer improving; and

(ii) Other services performed but not required by physician orders.

(D) The following categories of therapy services are not allowable except as otherwise allowed under Section (3) of this rule:

(i) Medicare Part A or Part B reimbursed services for Medicaid and other clients;

(ii) Privately reimbursed services, including insurance;

(iii) Services reimbursed by the Veterans Administration;

(iv) Services to non-Medicare eligible Medicaid residents except to the extent otherwise allowed under Section (3) of this rule; and

(v) Services reimbursed by any third party.

(h) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355) and are non-allowable on the Nursing Facility Financial Statement.

(i) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355), are non-allowable on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070, 736, 21, OL 2003

Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 4-1992, f. & cert. ef. 6-24-92; SSD 13-1992, f. 12-31-92, cert. ef. 1-1-93; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

## 411-070-0428

### Cost Center Expenses

(1) For purposes of establishment of payment rates under the system in effect on June 30, 1997, allowable expenses are divided into two categories for rate setting purposes. The categories are composed of the following accounts:

(a) Indirect Costs:

(A) Property Costs:

(i) 452 — Interest;

(ii) 453 — Rent — Building;

(iii) 454 — Lease — Equipment;

(iv) 455 — Depreciation — Building;

(v) 456 — Amortization — Land Improvement;

(vi) 457 — Depreciation — Building Improvement;

(vii) 458 — Depreciation — Equipment;

(viii) 459 — Amortization — Leasehold Improvement;

(ix) 461 — Miscellaneous Property.

(B) Administrative and General:

(i) 411 — Administrator;

(ii) 412 — Assistant Administrator;

(iii) 415 — Other Administrative Salaries;

(iv) 443B — Employee Benefits and Taxes;

(v) 425 — Office Supplies;

(vi) 426 — Communications;

(vii) 427 — Travel;

(viii) 429 — Advertising — Help Wanted;

(ix) 431 — Public Relations;

(x) 432 — Licenses — Dues — Subscriptions;

(xi) 433 — Accounting and Related Data Proc.;

(xii) 435 — Legal Fees;

(xiii) 450 — Long Term Care Facility Tax.

(xiii) 436 — Management Fees;

(xiv) 441 — Bad Debts;

(xv) 439 — Other Interest Expense;

(xvi) 445B — Education and Training;

(xvii) 446 — Contributions;

(xviii) 447 — Donated Services;

(xix) 448 — Freight;

(xx) 449 — Miscellaneous.

(C) Other Operating Support:

(i) 443D, E, F, G — Employees Benefits and Taxes;

(ii) 451 — Real and Personal Property Taxes;

(iii) 460 — Insurance;

(iv) 511 — Compensation — Repair and Maintenance;

(v) 512 — Heat and Electricity;

(vi) 515 — Water — Sewer — Garbage;

(vii) 516 — Maintenance Supplies and Service;

(viii) 521 — Compensation — Dietary;

(ix) 527, 537, 547 — Purchased Services;

(x) 528 — Dietary Supplies;

(xi) 531 — Compensation — Laundry;

(xii) 532 — Linen and Bedding;

(xiii) 538 — Laundry Supplies;

(xiv) 541 — Compensation — Housekeeping;

(xv) 548 — Housekeeping Supplies;

(xvi) 519, 529, 539, 549 — Miscellaneous.

(b) Direct Costs:

(A) Food — 522 — Food;

(B) Direct Care Compensation:

(i) 443H — Employee Benefits and Taxes;

(ii) 601 — Compensation — Director of Nursing Services;

(iii) 611 — Compensation — Registered Nurses;

(iv) 621 — Compensation — LPNs;

(v) 631 — Compensation — Other Nursing;

(vi) 701 — Compensation — Physician;

(vii) 711 — Compensation — Pharmacy;

(viii) 721 — Compensation — Laboratory;

(ix) 731 — Compensation — X-Ray;

(x) 741 — Compensation — Activities and Recreation;

(xi) 751 — Compensation — Rehabilitation;

(xii) 761 — Compensation — Religious;

(xiii) 771 — Compensation — Other Services;

(xiv) 781 — Compensation — Other;

(xv) 787 — Purchased Services.

(c) Direct Care Supplies:

(i) 445I — Education and Training;

(ii) 625 — Medical Record Supplies;

(iii) 629 — Nursing Supplies;

(iv) 639 — Oxygen Supplies;

(v) 719 — Physician Fees;

(vi) 723 — Drugs and Pharmaceuticals — NH;

(vii) 728 — Drugs and Pharmaceuticals — Presc.;

(viii) 729 — Pharmacy Supplies;

(ix) 739 — Laboratory Supplies and Fees;

(x) 749 — X-Ray Supplies and Fees;

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- (xi) 759 — Activity and Recreational Supplies;
- (xii) 769 — Rehabilitation Supplies and Fees;
- (xiii) 782 — Utilization Review;
- (xiv) 789 — Consultant Fees;
- (xv) 799 — Miscellaneous.

(2) The allocation methods, identified in Rule 411-070-0430, will be used where allocation among separate levels of payment or activities is appropriate.

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070

Hist.: SSD 10-1986, f. & ef. 7-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

## 411-070-0440

### Per Diem Rate Setting

(1) For the State fiscal year commencing July 1, 1997, the prospective base rate will be established as follows:

(a) Rates will be based on the latest Nursing Facility Financial Statement received by the Division by December 31, 1996, for the fiscal reporting period ended September 30, 1996, or earlier.

(b) The Division will first compute the expected rates that would have been computed under OAR 411-070-0440(2)(d) as it existed on June 30, 1997. The Division will desk review or field audit the financial statements and then rank the total allowable per diem direct care costs from highest to lowest for each facility.

(c) Direct care costs for each facility will be calculated by combining the allowable costs for Direct Care Compensation, Direct Care Supplies and Food.

(d) Allowable costs will be determined using the administrative rules in effect on June 30, 1997. Before ranking the allowable direct care costs, these costs will be inflated. The allowable costs of each facility will be inflated by the DRI Index. The most recent version of the DRI Index will be used. Costs will be inflated to reflect projected changes in the DRI Index from the mid-point of each facility's cost reporting period to the mid-point of the base year.

(e) Per resident day costs will be ranked, and the maximum payment levels for NF Payment Categories 2 and 4, as defined in OAR 411-070-0025 and 411-070-0027, in effect June 30, 1997, will be set at the 70th percentile.

(f) The Indirect Cost Center will be computed as a flat rate for all nursing facilities under the rules in effect as of June 30, 1997. The statewide indirect flat rate determined as of July 1, 1997, will be inflated by the change in the USCPI between December, 1995 and December, 1996. After inflating the indirect rate, two cents per resident day will be added to comply with OAR 411-070-0459 as it existed on June 30, 1997.

(g) Projected expenditures for each facility for the rate years July 1, 1997-98 and July 1, 1998-99, respectively, will be computed as follows:

(A) Compute the statewide weighted average direct care cost for NF Payment Categories 2 and 4 from the Nursing Facility Financial Statement used in subsection (1)(a) of this rule;

(B) Compute the statewide weighted average direct care costs for NF Payment Categories 2 and 4 from the Nursing Facility Financial Statements for the period preceding the period used in subsection (1)(a) of this rule;

(C) Compute the percentage increase in direct care costs for each payment category by comparing the two periods.

(h) Using the growth rate computed in subsection (1)(g)(C) of this rule, inflate the direct care costs for NF Payment Categories 2 and 4, for each cost report used in subsection (1)(a) of this rule, to fiscal years ending in 1997, 1998 and in the first six months of 1999.

(i) Inflate the direct care ceilings computed in subsection (1)(e) of this rule to the mid-point of the facility fiscal year, using the projected change in the DRI Index for the calendar year 1997.

(j) Inflate the indirect care rate to July 1, 1998, using the projected change in the USCPI between December, 1996 and December, 1997.

(k) Compute projected rates for each facility, for each rate level, using projected costs from subsection (1)(g)(C) of this rule, direct care ceilings from subsection (1)(e) of this rule, and indirect care rates from subsection (1)(f) of this rule. NF Payment Categories 3 and 5 will be projected using NF Payment Categories 2 and 4, respectively, as computed in this rule, plus the NF Payment Categories 3 and 5 add-ons from July 1, 1996, inflated forward using the projected changes to the DRI Index. The computation of rates will be in accordance with OAR 411-070-0460, as it existed on June 30, 1997, except that no OBRA or minimum wage add-ons will be used.

(l) Compute the base pool for allocation for the 1997-99 biennium using the weighted average rates computed in subsection (1)(k) of this rule multiplied by the projected caseload for the 1997-99 biennium.

(m) The base will be allocated as follows:

(A) The pediatric nursing facility rate will be established in accordance with OAR 411-070-0452.

(i) Payments being made to facilities on behalf of pediatric clients will be based on the rates the Division is paying on behalf of clients in a pediatric nursing facility, or in a self-contained pediatric nursing unit, as of December 31, 1996. These rates will be inflated from December 31, 1996 to the midpoint of the base year using the DRI Index. The most recent DRI will be used.

(ii) The pediatric rate will be multiplied by the number of clients for whom this rate was being paid by the Division based on the latest Nursing Facility Financial Statement received by the Division as of December 31, 1996. The resulting product will be removed from the allocation base and set aside to pay the pediatric rate.

(B) The basic rate will be established as follows:

(i) After the amount necessary to fund the pediatric rate is removed from the base, as described in this rule, the remaining base shall constitute the funds available for the basic rate and for the medical add-on.

(ii) The medical add-on shall be 40% of the basic rate.

(iii) After setting aside the amount of funds necessary to pay the medical add-on, the remaining base shall be used to fund the basic rate.

(iv) Funds to be set aside for the medical add-on will be calculated based on an estimate of the number of Medicaid residents of nursing facilities who meet the medical add-on criteria in June 1997.

(v) The basic rate shall be determined by dividing the remaining base by the projected cases for the 1997-99 biennium not eligible to receive the pediatric rate.

(2) In future rebasing years, rates for the first year of the biennium will be set as follows:

(a) Rates will be based on financial statements received by the Division by September 30 (or postmarked by October 31, if an extension of filing has been approved by the Division) which cover fiscal periods ending in the last fiscal reporting period (July 1 to June 30) of the year preceding the effective date of the new rate.

(b) To establish rates, the Division will desk review or field audit the financial statements and determine the statewide average allowable cost per Medicaid resident day. However, the costs of pediatric nursing facilities and self-contained pediatric units will be excluded from this ranking.

(c) Before determining the statewide average allowable costs per Medicaid day, these costs will be inflated by the DRI Index as measured in the previous fourth quarter. Costs will be inflated to reflect projected changes in the DRI Index from the mid-point of each facility's cost reporting period July 1 of the base year.

(d) The relationship the basic rate from the July 1, 1997 per diem rate setting bears to the statewide average cost per Medicaid day as of July 1, 1997 shall be referred to as the relationship percentage. The relationship percentage is determined to be 90.18%.

(A) The basic rate from the July 1, 1997 rate setting is \$86.75 per day.

(B) The statewide average cost per Medicaid day as of July 1, 1997 is determined to be \$96.20. The cost was determined as:

(i) The statewide average cost per Medicaid day calculated in subsections (1)(e) and (1)(f) of this rule is inflated to December 31, 1996 using the facility specific growth rate computed in subsection (1)(g)(C) of this rule.

(ii) The statewide average cost per Medicaid day as of December 31, 1996 is inflated to July 1, 1997 using the growth computed in subsection (1)(g)(C) of this rule.

(e) The relationship percentage determined in subsection (3)(d) of this rule shall be applied to the statewide weighted average cost per Medicaid day determined in subsection (3)(c) of this rule to determine the new basic rate as of subsequent rebasing years.

(3) On July 1 of each non-base year, the Basic Flat Rate Payment rate will be inflated by the annual change in the DRI Index, as measured in the previous 4th quarter. For example, in July 1998, maximum direct care rates will be inflated by the change in the DRI Index between the 4th quarter 1996 and the 4th quarter 1997.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: AFS 19-1978, f. & ef. 5-1-78; AFS 29-1979, f. 8-30-79, ef. 9-1-79; AFS 90-1980, f. 12-29-80, ef. 1-1-81; Renumbered from 461-017-0435 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 12-1983(Temp), f. 12-30-83, ef. 1-1-84; SSD 2-1984(Temp), f. & ef. 4-12-84; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 7-1987, f. & ef. 7-1-87; SSD 8-1987, f. 8-14-87, ef. 8-15-87; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-

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1993, f. 6-30-93, cert. ef. 7-1-93; SSD 2-1994(Temp), f. & cert. ef. 3-17-94; SSD 4-1994, f. & cert. ef. 9-1-94; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SSD 12-1999, f. 12-30-99, cert. ef. 1-1-00; Suspended by SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

## 411-070-0441

### Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Needs Add-on Rate.

(1) The rates are determined for the first year of each biennium, the Rebasing Year, and the second year of each biennium, the Non-Rebasing Year.

(a) The Rebasing Year.

(A) Determination of allowable costs. The Basic Rate is based on the Statements received by the Department by September (or postmarked by October 31, if an extension of filing has been approved by the Department) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. The Department desk reviews or field audits these Statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation.

(B) Adjustment of allowable costs to mid-point of first year of biennium. For each facility, its allowable costs, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the Base Year (e.g., for the biennium beginning July 1, 2003, the Base Year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(C) Calculation of Allowable Costs Per Medicaid Day. For each facility, its Allowable Costs Per Medicaid Day is determined using the allowable costs as inflated and resident days excluding pediatric days as reported in the Statement.

(D) Ranking by Allowable Costs Per Medicaid Day. The facilities are ranked from highest to lowest by the facility's Allowable Costs Per Medicaid Day.

(E) Determination of Basic Rate. The Basic Rate will be determined by ranking the Allowable Costs Per Medicaid Day by facility and identifying the Allowable Cost Per Day at the applicable percentage. If there is no Allowable Cost Per Day at the applicable percentage, the Basic Rate is determined by interpolating the difference between the Allowable Costs Per Day that are just above and just below the applicable percentage to arrive at a Basic Rate at the applicable percentage.

(i) The Applicable Percentage for the period beginning July 1, 2003 through June 30th, 2005 is at the 63rd percentile.

(ii) The Applicable Percentage for the period beginning July 1st, 2005 is at the 70th percentile.

(b) The Non-Rebasing Year. On July 1 of each Non-Rebasing year, the Basic Flat Rate will be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) Complex Medical Needs Add-On Rate. The Complex Medical Needs Add-On Rate is 40 percent of the Basic Rate for the Rebasing Year and the Non-Rebasing Year.

Stat. Auth.: ORS 410, 411

Stats. Implemented: OL 2003, ORS 736 § 24

Hist.: SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

## 411-070-0446

### Incentive to Contain Costs

(1) In any rebasing year in which the rebased basic rate is less than the immediately preceding rebasing year basic rate after increase by the change in the DRI Index, the new basic rate shall be:

(a) The rebased basic rate; plus

(b) One-half the difference between

(A) The rebased basic rate; and

(B) The immediately preceding rebasing year basic rate, increased by the change in the DRI Index.

(2) Examples.

(a) For the 1999 rebasing year, the basic rate is \$87 per day. The DRI Index increases by 3 percent per year in both 1999 and 2000. The 1999 basic rate, increased by the change in the DRI Index, is \$92.30 as of July 1, 2001.

(b) The rebased basic rate computed per OAR 411-070-0440 is \$92.00 as of July 1, 2001 which is less than \$92.30. The weighted average rate is increased by one-half the difference between the 2001 basic rate

increased by the change in the DRI Index (\$92.30) and the 2001 rebased basic rate (\$92.00). The 2001 basic rate equals \$92.00 plus (one-half times (\$92.30 minus \$92.00)) equals \$92.15 per day.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; Suspended by SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

## 411-070-0465

### Uniform Chart of Accounts

The following account definitions will be used to classify the dollar amounts on the Nursing Facility Financial Statement (NFFS). The account balance is to be reported in whole dollars under the facility gross column on the NFFS and referenced by the providers' chart of accounts number. It is the provider's responsibility to ensure that the balances reported reconcile to their fiscal year statements and general ledger balances with any differences explained on Schedule A to Form SDS 35 or SDS 35A. The provider is responsible for making adjustments to these accounts for non-allowable items and amounts using the adjustment column to arrive at the net allowable balance. Each adjustment is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(1) Current Assets — The following accounts include cash and other assets reasonably expected to be realized in cash or sold, or consumed during the normal nursing facility operating cycle, or within one year when the operating cycle is less than one year.

(a) 101 — Cash on Hand — This account balance represents the amount of cash on hand for petty cash funds.

(b) 102 — Cash in Bank — This account balance represents the amount in a bank checking account.

(c) 103 — Cash in Savings — This account balance represents the amount accumulated in a savings account.

(d) 104 — Resident Cash — This account balance represents the amount of resident funds entrusted to the provider and held as cash on hand in the bank.

(e) 109 — Accounts Receivable — This account balance represents the amounts due from or due on behalf of all residents at the end of the fiscal period being reported.

(f) 110 — Notes Receivable — This account balance represents the current balance of amounts owed to the facility (payee) that are covered by a written promise to pay at a specified time, and is signed and dated by the maker.

(g) 111 — Allowance for Doubtful Accounts — This account balance represents amounts owed to the facility and estimated to be uncollectible.

(h) 115 — Employee Advances — This account balance represents amounts paid in advance to employees for salaries or wages that will be liquidated in the next payroll cycle following the closing date of the financial statement.

(i) 120 — Inventory Nursing Supplies — This account balance represents the cost value of supplies on hand at the end of the reporting period, to be used in providing nursing care.

(j) 122 — Inventory Food — This account represents the cost value of food that is on hand at the end of the reporting period.

(k) 124 — Inventory — Other Supplies — This account balance represents the cost value of general operating supplies, such as laundry, house-keeping and maintenance supplies that are on hand at the end of the reporting period.

(l) 125 — Prepaid Expenses — This account balance represents the cost value of paid expenses not yet incurred covering regularly recurring costs of operation like rent, interest, and insurance.

(m) 149 — Other Current Assets — This account balance comprises all current assets not identified above. Each item in this account, including short-term savings certificates, must be explained on Schedule A to Form SDS 35 or SDS 35A.

(2) Non-Current Assets — The balances of the following accounts represent Assets not recognized as current.

(a) 151 — Land — This account balance represents the acquisition cost and other costs, like legal fees and excavation costs that are incurred to put the land in condition for its intended use.

(b) 153 — Building(s) — This account balance represents the acquisition cost of permanent structures and property owned by the provider used to house residents. It includes the purchase or contract price of all permanent buildings and fixed equipment attached to and forming a permanent part of the building(s).

(c) 154 — Allowance for Depreciation — This account balance represents the accumulation of provisions made to record the expiration in the building(s) life attributable to wear and tear through use, lapse of time,

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obsolescence, inadequacy or other physical or functional cause. The straight line method is the only recognized depreciation method for cost reimbursement.

(d) 155 — Land Improvements — This account balance represents the acquisition cost of permanent improvements, other than buildings that add value to the land. It includes the purchase or contract price.

(e) 156 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(f) 157 — Building Improvements — This account balance represents the acquisition cost of additions or improvements that either add value to or increase the usefulness of the building(s). It includes the purchase or contract price.

(g) 158 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(h) 161 — Equipment — This account balance represents the acquisition cost of tangible property of a permanent nature, other than land, building(s) or improvements, used to carry on the nursing facility operations. It includes the purchase or contract price.

(i) 162 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(j) 165 — Leasehold Improvements — This account balance represents the acquisition cost of any long-lived improvements or additions to the property being leased that will belong to the owner (lessor) at the expiration of the lease.

(k) 166 — Allowance for Amortization — This account is of the same nature and is used in the same manner as Account 154 except the cost of improvements or additions will be amortized over the lesser of the expected benefit life or the remaining life of the lease.

(l) 181 — Investments — This account balance represents the value of assets unrelated to the nursing facility operation. The detail of this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(m) 187 — Goodwill — This account balance represents the value of goodwill identified with the purchase of assets.

(n) 199 — Other — Non-Current Assets — This account balance comprises all non-current assets not identified above. Each item in this account, including long-term savings certificates, must be explained on Schedule A to Form SDS 35 or SDS 35A.

(3) Current Liabilities — The balances of the following accounts are considered current liabilities.

(a) 201 — Accounts Payable — This account balance represents the liabilities for goods and services received but unpaid at the end of the reporting period.

(b) 202 — Accounts Payable — Resident Account — This account balance represents the amount owed to residents for the cash entrusted to the facility in Account 104.

(c) 203 — Notes Payable — Other — This account balance represents the current portion of the amount owed by the facility that is covered by a written promise to pay at a specified time and is signed and dated by the facility (maker).

(d) 204 — Notes Payable to Owner — This account balance represents notes payable to the owner(s) and is of the same nature and is used in the same manner as Account 203.

(e) 205 — Accrued Interest Payable — This account balance represents the liabilities for interest accrued at the end of the reporting period but not payable until a later date.

(f) 207 — Other Accrued Payable — This account is of the same accrual nature and is used in the same manner as Account 205 and is to be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(g) 208 — Payroll Payable — This account balance is the accrued payroll, less withheld payroll taxes and other deductions, payable to employees at the end of the reporting period.

(h) 217 — Payroll Tax Payable — This account balance is the employer's share of accrued payroll taxes payable at the end of the reporting period.

(i) 218 — Payroll Deductions Payable — This account balance is the employee's share of accrued payroll taxes withheld from the employer's gross pay payable at the end of the reporting period.

(j) 219 — Deferred Income — This account balance represents the liability for revenue collected in advance.

(k) 229 — Other Current Liabilities — This account balance comprises all current liabilities not identified above. The nature and purpose of amounts included in this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(4) Long-Term Liabilities — The balances of the following accounts are considered long-term liabilities.

(a) 231 — Long-Term Mortgage Payable — This account balance represents the amount owed by the facility that is secured by a mortgage or other contractual agreement providing for conveyance of property at a future date.

(b) 233 — Long-Term Notes Payable — This account is of the same nature and is used in the same manner as Account 203 except the liability extends beyond one year.

(c) 234 — Long-Term Notes Payable Owner — This account is of the same nature and is used in the same manner as Account 204 except the liability extends beyond one year.

(d) 249 — Other Long-Term Liabilities — This account comprises all long-term liabilities not identified above. The amount and nature of items in this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(5) Net Worth — The balances of the following accounts represent the amount by which the facility's assets exceed its liabilities.

(a) 251 — Capital Stock — This account balance represents the amount of cash or property received in exchange for the corporation's capital stock.

(b) 255 — Retained Earnings — This account balance represents the amount of capital resulting from retention of corporate earnings.

(c) 261 — Capital Account — This account balance represents the book value of the proprietor or partner(s) equity in the facility.

(d) 265 — Drawing Account — This account balance represents the owner's withdrawals of funds during the reporting period that were not paid as part of the payroll.

(e) 290 — Net Profit (Loss) — This account balance is the facility's revenue minus expenses for the reporting period.

(6) Resident Revenue — These accounts include revenue for routine service charges exclusive of ancillary charges. The intent is for revenue to be reported in gross, exclusive of any cost offsets. Routine service charges are to be reported in the following accounts:

(a) For cost reports filed for periods that end prior to July 1, 1997:

(A) 301A — Private Resident — NF Payment Category 4 — This account includes revenue for NF Payment Category 4 routine private resident care.

(B) 301B — Private Resident — NF Payment Category 2 — This account includes revenue for NF Payment Category 2 routine private resident care.

(C) 301C — Private Resident — Other — This account includes revenue for other than private NF Payment Category 4 or 2 residents and is to be explained on Schedule A to Form SDS 35 or SDS 35A. Private heavy cost resident revenue would be included in this account.

(D) 302A — Medicaid Resident — NF Payment Category 4 — This account includes revenue from all sources for NF Payment Category 4 Medicaid residents.

(E) 302B — Medicaid Resident — NF Payment Category 5 — This account includes revenue from all sources for NF Payment Category 5 Medicaid residents.

(F) 302C — Medicaid Resident — NF Payment Category 2 — This account includes revenue from all sources for NF Payment Category 2 Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 3 — This account includes revenue from all sources for NF Payment Category 3 Medicaid residents.

(H) 302E — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(I) 302F — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1 through 5 and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(J) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(K) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(b) For cost reports filed for periods that end on and after July 1, 1997:

(A) 301A — Private Resident — Complex Medical Needs — This account includes revenue for Complex Medical Needs routine private resident care. These are private pay residents whose medical needs correspond to the Medicaid complex medical needs criteria.

(B) 301B — Private Resident — Basic Rate — This account includes revenue for basic rate routine private resident care. These are private pay

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residents whose medical needs correspond to the Medicaid basic rate needs criteria.

(C) 301C — Private Resident — Other — This account includes revenue for other than private Complex Medical Needs and Basic Rate residents and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(D) 302A — Medicaid Resident — Complex Medical Needs — This account includes revenue from all sources for Complex Medical Needs Medicaid residents.

(E) 302B — Medicaid Resident — Pediatric — This account includes revenue from all sources for Pediatric Medicaid Residents.

(F) 302C — Medicaid Resident — Basic Rate — This account includes revenue from all sources for Basic Rate Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(H) 302E — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1, Basic Rate, Complex Medical Needs and Pediatric and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(I) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(J) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(7) Ancillary Revenue — These accounts include revenue for professional and non-professional services and supplies not included in Section (6) of this rule. Revenue other than that described above must be reported as gross revenue and related expenses to be reported in the appropriate expense accounts. Ancillary service charges are to be reported in the following accounts:

(a) 323 — Nursing Supplies — This account includes revenue from the sale of nursing supplies or services.

(b) 328 — Prescription Drugs — This account includes revenue from the sale of prescription drugs.

(c) 329 — Laboratory — This account includes revenue from laboratory services provided.

(d) 330 — Physical Therapy — This account includes revenue from physical therapy services provided.

(e) 331 — Speech Therapy — This account includes revenue from speech therapy services.

(f) 332 — Occupational Therapy — This account includes revenue from occupational therapy services.

(g) 341 — X-Ray — This account includes revenue from X-Ray services.

(h) 351 — Personal Purchases — This account includes revenue from residents for personal purchases.

(i) 361 — Barber and Beauty — This account includes revenue from residents for barber and beautician services.

(j) 399 — Other Ancillary — Items and amounts included in this account must be described on Schedule A to Form SDS 35 or SDS 35A.

(8) Other Revenue — These accounts include other revenue, exclusive of resident and ancillary revenue. The intent is for revenue to be reported in gross and the related expenses reported in the appropriate expense accounts. Other revenues are classified as follows:

(a) 803 — Grants — This account includes revenue amounts received in the reporting period from public and privately funded grants and awards.

(b) 805 — Donations — This account includes donations in the form of cash or goods and services received during the reporting period.

(c) 811 — Interest — This account includes revenue from any interest bearing note, bank account, or certificate.

(d) 813 — Staff & Guest Food Sales — This account includes revenue from facility food sales to individuals other than residents of the facility.

(e) 814 — Concession Sales — This account includes revenue from vending machines or for resale items not reported in Accounts 813 and 351.

(f) 815 — Equipment Rental Income — This account includes revenue from equipment rentals.

(g) 819 — Miscellaneous Other Revenue — Items and amounts, including revenues for Nurse Aide Training and Competency Evaluation, Mental Health revenues received from local governments, and Workers Compensation refunds, included in this account are to be described on Schedule A to Form SDS 35 or SDS 35A.

(9) Property Expenses — These accounts are for reporting property expenses.

(a) 452 — Interest — This account is for reporting all interest expense except other interest expense in Account 439.

(b) 453 — Rent Building — This account is for reporting all building rent or lease expenses.

(c) 454 — Leased Equipment — This account is for reporting all equipment rental and lease expense, except for other operating support and oxygen concentrators.

(d) 455 — Depreciation — Building — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 153.

(e) 456 — Depreciation — Land Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 155.

(f) 457 — Depreciation — Building Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 157.

(g) 458 — Depreciation — Equipment — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 161.

(h) 459 — Amortization — Leasehold Improvement — This account is for reporting amortization, for the reporting period, associated with assets capitalized in Account 165 and Account 166.

(i) 461 — Miscellaneous — Property — This account is for reporting other property costs, such as amortization of organizational costs, and items of equipment less than \$1,000 that are for general use.

(10) Administrative and General Expenses — These accounts report expenses for administration of the facility and the business office, and items not readily associated with other departments.

(a) 411 — Compensation — Administrator — This account is for reporting all the compensation received by the licensed administrator of the facility. Compensation includes salary, bonuses, auto, moving, travel and all other allowances paid directly or indirectly by the facility.

(b) 412 — Compensation — Assistant Administrator — This account is to be used for reporting all compensation of the individual who is identified as, and has the specific duties of, Assistant Administrator.

(c) 415 — Compensation — Other Administrative — This account is for reporting all of the compensation received by administrative, clerical, secretarial, accounting, supply and personnel.

(d) 443B — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 attributable to administrative compensation expenses.

(e) 420 — Concession Expense — This account is for reporting expenses of non-medical, non-resident care items sold to the residents and non-residents including items sold through vending machines.

(f) 422 — Funeral & Cemetery Supplies & Services — This account is for reporting all expenditures associated with funeral and cemetery supplies and services.

(g) 423 — Personal Purchase — This account is for reporting all expenditures for personal items purchased for individual residents.

(h) 425 — Office Supplies — This account is for reporting expenses of all office supplies except those chargeable to Account 625. Materials include stationery, postage, printing, bookkeeping supplies, and office supplies.

(i) 426 — Communications — This account is for reporting all telephone, telegraph service, communication, cable television fees and paging system charges.

(j) 427 — Travel — This account is for reporting all transportation costs associated with vehicles used for resident care or resident recreation, exclusive of insurance and depreciation and for reporting all other travel expenses such as lodging and meals for conferences, conventions, workshops, or training sessions.

(k) 429 — Advertising — Help Wanted — This account is for reporting all help wanted advertising expense.

(l) 430 — Advertising — Promotional — This account is for reporting all expenditures of the facility related to promotional advertising including yellow page advertising.

(m) 431 — Public Relations — This account is for reporting all expenditures related to public relations.

(n) 432 — Licenses, Dues & Subscriptions — This account is for reporting all fees for facility licenses; dues in professional associations; and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff use.

(o) 433 — Accounting & Related Data Processing — This account is for reporting all accounting, payroll, and other data and report processing expenses.

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(p) 435 — Legal Fees — This account is for reporting all legal fees and expenses. Legal fees must be reported in conformance with OAR 411-70-359(1)(t).

(q) 436 — Management Fees — This account is for reporting all management fees charged to the facility, including management salaries and benefits at the home office.

(r) 439 — Other Interest Expense — This account is for reporting interest expense not attributable to the purchase of the facility and equipment.

(s) 441 — Bad Debts — This account is for reporting the expense recorded from recognizing a certain portion of accounts receivable as uncollectible.

(t) 445C — Education & Training — This account is for reporting registration, tuition, materials, and manual costs for training the staff included in Accounts 411, 412, 415, and 433.

(u) 446 — Contributions — This account is for reporting the expense of any gift or donation.

(v) 449 — Miscellaneous — This account is for reporting general administrative operating expenses not specifically included in other general administrative operating expense accounts. Entries must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(w) 450 Long Term Care Facility Tax

(11) Other Operating Support Expenses — The following accounts are included in this category.

(a) 443D, 443E, 443F, 443G — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 identified with Repair and Maintenance Salaries in Account 511, dietary salaries in Account 521, laundry salaries in Account 531, and housekeeping salaries in Account 541.

(b) 451 — Real Estate & Personal Property Taxes — This account is for reporting real estate and personal property tax expenses for the facility.

(c) 460 — Insurance — This account is for reporting all insurance expenses other than employee insurance expenses reportable in Account 440, Payroll Taxes, and Account 442, Employee Benefits.

(d) 511 — Compensation — Maintenance & Repair Employees — This account is for reporting all compensation received by employee(s) responsible for providing facility repair and maintenance.

(e) 512 — Heat & Electricity — This account is for reporting all facility heating and lighting expenses.

(f) 515 — Water, Sewer and Garbage — This account is for reporting all water, sewer and garbage expenses.

(g) 516 — Maintenance Supplies & Services — This account is for reporting all expenses required for building and equipment maintenance and repairs including preventative maintenance and not capitalized. All balances in Accounts 516E, 516F, 516G, and 516I will be consolidated in Account 516D prior to submission to the Department.

(h) 521 — Compensation — Dietary Employees — This account is for reporting all compensation received by employee(s) providing dietary services.

(i) 527 — Purchased Services — This account is for reporting all non-employee services required in the dietary, laundry and housekeeping department operations including dietary consulting expenses.

(j) 528 — Dietary Supplies — This account is for reporting the expense of all supplies, dishes and utensils, and non-capitalized equipment utilized within this department, exclusive of food.

(k) 531 — Compensation — Laundry Employees — This account is for reporting all compensation received by employees responsible for providing laundry services.

(l) 532 — Linen and Bedding — This account is for reporting the expense of all linen and bedding utilized within the facility.

(m) 538 — Laundry Supplies — This account is for reporting the expense of all supplies utilized by the laundry.

(n) 541 — Housekeeping Salaries — This account is for reporting all compensation received by employees responsible for providing housekeeping services.

(o) 548 — Housekeeping Supplies — This account is for reporting the expense of all supplies utilized to provide housekeeping services.

(p) 549 — Miscellaneous — This account is for reporting other operating support expenses not specifically included in an identified account, including lease and rent expenses attributable to other operating support services. Entries must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(12) Food — 522 Food — This account is for reporting all food products and supplements used in food preparations.

(13) Direct Care Operating Expenses — These accounts include compensation, supplies and services used in providing direct resident care.

(a) Compensation:

(A) 443H Employee Benefits & Taxes — This account is for reporting the allocated portion of Account 443 attributable to this area.

(B) 601 Compensation — Director of Nursing Services — This account is for reporting all compensation received by employee(s) responsible for directing the nursing services of the facility.

(C) 611 Compensation — Registered Nurses — This account is for reporting all compensation received by registered nurse employees of the facility who provide nursing care, other than the Director of Nursing Services. If a Registered Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(D) 621 Compensation — Licensed Practical Nurses — This account is for reporting all compensation received by Licensed Practical or Licensed Vocational Nurse employees of the facility who provide nursing care. If a Licensed Practical Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(E) 631 Compensation — Other Nursing Employees — This account is for reporting all compensation received by aides, attendants, orderlies and other non-licensed, non-professional employees who provide nursing care. If such employees provide nursing care part of the time and carry out other duties the rest of the time, these employees' compensation will be allocated to the appropriate account based on time spent on each activity.

(F) 701 Compensation — Physicians — This account is for reporting all compensation received by physicians providing resident medical care.

(G) 711 Compensation — Pharmacy Employees — This account is for reporting all compensation of licensed pharmacists and technicians employed by the facility.

(H) 721 Compensation — Laboratory Employees — This account is for reporting all compensation of pathologists and technicians employed by the facility to provide laboratory services.

(I) 731 Compensation — X-Ray Employees — This account is for reporting all compensation of radiologists and technicians employed by the facility to provide X-Ray services.

(J) 741 Compensation — Activities & Recreational Employees — This account is for reporting all compensation of employees engaged in the planning and carrying out of resident recreational activities.

(K) 742 Compensation — Social Workers — This account is for reporting all compensation of social workers and assistants employed to provide social service activities.

(L) 751 Compensation — Rehabilitation Employees — This account is for reporting all compensation of occupational and physical therapists, and technicians, and aides employed to provide resident rehabilitation activities or services. This account will be subdivided in accordance with OAR 411-070-0359(3)(g) on Schedule A to Form SDS 35 or SDS 35A.

(M) 761 Compensation — Religious Employees — This account is for reporting all compensation for individuals employed who provide religious services.

(N) 771 Compensation — Other Service Employees — This account is for reporting all compensation for ward clerks and medical records clerks employed by the facility.

(O) 781 Compensation — Other Employees — This account is for reporting all compensation for dentists, barbers, beauticians, research, and other non-identified personnel employed by the facility and must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(P) 787 Purchased Services — This account is for reporting the expense attributable to employment agencies that provide part-time employees on a fee and salary basis for direct care. The expenses will be allocated to the appropriate payroll account in the adjustment column.

(b) Direct Care Supplies and Services

(A) 625 — Medical Records Supplies — This account is restricted to materials used in resident charting.

(B) 445I — Education & Training — This account is for reporting registration, tuition, and book expense associated with education and training of direct care personnel.

(C) 629 — Nursing Supplies — This account is for reporting all medical supplies consumed by this department, exclusive of oxygen, used in providing direct care.

(D) 639 — Oxygen Supplies — This account is for reporting the expense of all oxygen (gas) and concentrator rentals.

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(E) 646 — Nursing Assistant (Aide) Training and Competency Evaluation — This account is for reporting all expenses associated with OAR 411-070-0470 (which excludes salaries of nurse aide trainees).

(F) 719 — Physician Fees — This account is for reporting all expenditures for physician treatment, care and evaluation of the resident.

(G) 723 — Drugs and Pharmaceuticals — Nursing Home — This account is for reporting all expenditures meeting the criteria of 411-070-0085(2)(j).

(H) 728 — Drugs & Pharmaceuticals — Prescriptions — This account is for reporting all expenditures for legend drugs and biologicals prescribed by a licensed physician and not meeting the criteria of 411-070-0090.

(I) 729 — Pharmacy Supplies — This account is for reporting the expense of all materials utilized in the facility pharmacy operation.

(J) 739 — Laboratory Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility laboratory operation and fees paid for non—employee pathologist and laboratory technician services.

(K) 749 — X-Ray Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility X-Ray department and fees for non—employee radiologists and X-Ray technician services.

(L) 759 — Activities & Recreational Supplies — This account is for reporting the expense of all materials, except transportation, used in providing resident recreational activities.

(M) 769 — Rehabilitation Supplies & Fees — This account is for reporting the expense of all materials used in providing occupational and physical therapy including fees for non—employee related services. This account must be subdivided in accordance with OAR 411-070-0359(3)(I) on Schedule A to Form SDS 35 or SDS 35A.

(N) 782 — Utilization Review — This account is for reporting the expenses of all non—employee fees associated with utilization review.

(O) 789 — Consultants — This account is for reporting all expenditures for consultant fees, including travel and lodging, exclusive of dietary and management consultants and must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(P) 799 — Miscellaneous — Expenses reported in this account, including supplies for barber and beauty, must be explained in detail on Schedule A to Form SDS 35 or SDS 35A. The cost of non—employee Barber and Beautician services will be reported in this account.

(14) Payroll Taxes & Employee Benefits — These accounts are for reporting payroll taxes and employee benefits.

(a) 440 — Payroll Taxes — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment, Workers Compensation and other payroll taxes not withheld from the employee's pay.

(b) 442 — Employee Benefits — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners and gifts. Established vacation, holiday and sick pay programs and child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account.

(c) 443 — Employee Benefits and Taxes — This account is for reporting the sum of Accounts 440 and 442 and is allocated to the specific sub-accounts by actual cost of the payroll category, or by percentage of the payroll category amount to the total facility payroll.

(d) These costs may be allocated on a percentage basis equivalent to the payroll distribution or on an actual basis by cost center. All facility payroll taxes and employee benefits will be allocated by the same method, if actual is not used.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0460 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04

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**Adm. Order No.:** SPD 12-2004  
**Filed with Sec. of State:** 6-1-2004  
**Certified to be Effective:** 6-1-04  
**Notice Publication Date:** 5-1-04  
**Rules Amended:** 411-040-0000

**Subject:** 411-040-0000, Home Delivered Meals rule is permanently amended effective 5/25/2004. This rule strengthens the language indicating that it must be part of a waived service plan and that the cost of these meals must be calculated into the total cost of the service plan, not to exceed the maximum in-home services monthly rate as established by DHS Fiscal Policy Analysis. Clients who receive these meal services are under no obligation to make any "voluntary" or "suggested" donations and should be informed of this. The amended rule also provides clear direction to the field on treatment of clients who are liable for a monthly pay-in amount (per OAR 461-185-0050) in order to remain eligible for services and receive home delivered meals.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-040-0000 Home Delivered Meals

(1) Home delivered meals, exclusive of those funded through the Older Americans Act or Oregon Project Independence, constitute a service that can be provided as part of a waived services care plan to assist a client to remain in his/her own home.

(2) Payment for meals delivered to the client at his/her home may be provided when other plans do not appear feasible and home delivered meals are determined by the Department's local unit to be more appropriate for the client's needs than nursing facility care. The cost for these meals shall be calculated into the service plan in conjunction with in-home services provided by a client-employed provider or a home care agency.

(3) All requests for home delivered meals will be referred to the Department's local unit.

(4) The Department's unit staff are responsible for establishing, authorizing, purchasing and monitoring a plan for home-delivered meals.

(5) Clients who are required to make a monthly payment under OAR 461-185-0050 in order to remain eligible for Medicaid waiver services must have their home-delivered meal costs calculated in conjunction with their in-home service provider costs.

(a) To remain eligible for waiver services, pay-in clients are responsible for payment of authorized home-delivered meals received up to their specified monthly pay-in amount. Client payments due for meal services are to be included as part of the monthly sum sent to the Department's pay-in unit rather than making any direct payments to the meal provider.

(b) The Department is responsible for direct payments made to providers for all authorized home-delivered meals to waiver service eligible clients. Direct payment from the Department includes meals paid through the client's monthly pay-in and for meals that exceed the client's total monthly liability.

(6) For clients whose meals are delivered through an Older Americans Act meal service program, which also contracts as a Medicaid home delivered meals provider:

(a) Clients receiving home-delivered meals authorized and paid for by the Department shall be officially informed by the case manager that there is no obligation to make any voluntary or suggested donation for this service. However, if the client chooses to make a voluntary donation, there is no restriction from doing so.

(b) If the client has a monthly payment to the Department under OAR 461-185-0050 in order to remain eligible for services, the criteria in both subsections (5) and (6)(a) of this rule applies to them.

(c) A client who meets the criteria in subsections (2) or (5) of this rule and is age 65 or older, may choose to receive meals through the Older Americans Act (OAA) meal service program and can make voluntary donations. For clients required to make a monthly payment under OAR 461-185-0050, these donations may not be credited toward the pay-in liability. In turn, OAA meal programs are not mandated to provide home-delivered meals to Medicaid waiver service clients, age 65 and older, unless the agency is a Medicaid-contracted meal provider and the meals are authorized and paid for by the Department.

Stat. Auth.: ORS 410 & ORS 411  
Stats. Implemented: ORS 410.070  
Hist.: SSD 11-1982, f. & ef. 10-1-82; SPD 12-2004, f. & cert. ef. 6-1-04

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**Rules Amended:** 411-300-0100, 411-300-0110, 411-300-0170, 411-300-0210, 411-300-0220

# ADMINISTRATIVE RULES

**Subject:** The rules in OAR Chapter 411, Division 300, Children's Intensive In Home Services, are permanently amended effective 06/01/2004. The following changes are incorporated in this rule change: a) Amends Rule 411-300-0100 to remove the Department's mission statement and statutory authority citation; b) Repeals the temporary Rule 411-300-0110, due to expire on June 7, 2004; c) Amends 411-300-0110 for clarification and includes scoring directions for the assessment tool, which should assure consistent application of the program; d) Changes references in 411-300-0170 to expired criminal history rules to bring them into the current DHS criminal history rule; and, e) Amends 411-300-0210 and 411-300-0220 to comply with DHS standards, increasing the number of days to request a hearing or appeal a denial from 30 to 45 days.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-300-0100

### Purpose

These rules establish the policy of and prescribe the standards and procedures for the provision of Children's Intensive In-Home Services (CIIS) for children in the Model Waiver for Children with Intense Behavior Needs. These Administrative Rules are established to ensure that CIIS augment and support independence, empowerment, dignity, and development of the child through the provision of flexible and efficient services to eligible families. CIIS are exclusively intended to allow a child who has a developmental disability and intense behaviors to have a permanent and stable familial relationship. The services provide the support necessary to enable the family to meet the needs of caring for a child who meets the eligibility criteria for CIIS. These services are intended to support, not supplant, families' natural supports and services.

Stat. Auth.: ORS 409.050, 417.340-417.350

Stats. Implemented: ORS 430.215, 427.007 & 417.340-417.350

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04

## 411-300-0110

### Definitions

(1) "Activities of Daily Living (ADL)" means tasks usually performed in the course of a normal day in a child's life; such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, usual developmental tasks, such as play and social development.

(2) "Aide" means a caregiver who is hired by the family or a billing provider to provide In-Home Daily Care (IHDC).

(3) "Behavior Criteria" means the assessment tool, Form DHS-0521 (REVISED 10/03), used by the CIIS to evaluate the intensity of the challenges presented by children.

(4) "Behavior Consultant" means a contractor with specialized skills who assesses the child, the needs of the family, and the environment in terms of the behavioral support and related issues, develops a Behavior Support Plan, trains parents and providers, and monitors and revises the Behavior Support Plan as needed.

(5) "Billing Provider" means an organization that enrolls with the Department and contracts with the Department to provide services through its employees and bills the Department for the performing provider's services.

(6) "Child" means a person who is under the age of 18, eligible for developmental disability services and accepted for services under the Model Waiver for Children with Intense Behavior Needs.

(7) "Complete Plan of Care (CPC)" means a written document developed by the service coordinator with the family that describes the needs of the child and the needs of the family that impact the child and how those needs will be met. It includes the Nursing Care Plan when one exists.

(8) "Cost Effective" means that in the opinion of the service coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(9) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation occurs only after assessment of the specific situation, the abilities of the unlicensed person, teaching the task and ensuring supervision. Delegation by a registered nurse shall only occur to the extent allowed by Oregon Board of Nursing's administrative rules. Delegation by physicians is also allowed.

(10) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for person that have developmental disabilities, or are elderly or have physical disabilities.

(11) "Developmental Disability (DD)" for children five years and younger is always provisional and means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-300-0110(11)(a)

(12) "Developmental Disability (DD)" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation or developmental disability; and,

(b) There is a significant adaptive behavior impairment (more than two standard deviations below the norm) in at least two of the following areas: self care, receptive and expressive language, learning, mobility, self direction, that requires training or supports similar to that required by individuals with mental retardation, and;

(c) Must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment, and

(d) The individual is expected to need multiple, specialized supports indefinitely.

(13) "Eligible Range" means that the score on the Behavior Criteria is at or above 200.

(14) "Family Home" means the residence of the child, that is not a foster home, group home, or other residential service funded with public funds.

(15) "ICF/MR Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children in their family home who otherwise would have to be served in an ICF/MR if the waiver program was not available.

(16) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider who enables a child to remain and/or return to his/her family's home.

(17) "Parent" means biological parent, adoptive parent or legal guardian.

(18) "Primary Care giver" means the parent or relative or other non-paid parental figure that provides the direct care of the child at the times that a provider is not present.

(19) "Provider or Performing Provider for In-Home Daily Care" means the individual who is qualified to receive payment from the Department for In-Home Daily Care and meets the requirements of OAR 411-300-0170. Performing Providers work directly with children. Providers may be employees of Billing Providers, employees of the family or independent contractors.

(20) "Respite" means short-term care provided for the relief of the primary caregiver.

(21) "Service Coordinator" means an employee of the Department/Children's Intensive In-home Services who ensures a child's eligibility for CIIS services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

Stat. Auth.: ORS 409.050, 417.340-417.350

Stats. Implemented: ORS 430.215, 427.007, 417.340-417.350

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04

## 411-300-0170

### Provider Qualifications

(1) A performing provider for In-Home Daily Care is an individual, 18 years or older, who provides evidence satisfactory to the Department or its designee that demonstrates, by background, education, references, skills, and abilities, that he/she is capable of safely and adequately providing the services authorized.

(2) A performing provider for Behavior Consultation shall have the following:

(a) Education, skills, and abilities necessary to provide the services in OAR 411-300-0150(11); and

(b) Current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

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(c) Submit a resume or the equivalent to the Department with evidence of at least:

(A) Bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavior science or related field and one year experience with people with disabilities who present difficult or dangerous behaviors; or

(B) Three years of experience with people with disabilities who present difficult or dangerous behaviors and at least 1 year of that experience must include providing the services in OAR 411-300-0150(11).

(C) Additional education and/or experience may be required to safely and adequately provide the services described in OAR 411-300-1500(11).

(3) A provider shall maintain a drug-free work place, pass a criminal history check as defined by OAR 410-07-0200 through 410-007-0380, not be on the current federal Centers for Medicare and Medicaid Services list of excluded or debarred providers, and be free of convictions or founded allegations of abuse and/or neglect by the appropriate agency, including but not limited to the Department of Human Services.

(4) A prospective performing provider that will work with a child shall consent to a criminal record check by CIIS or the Department prior to enrolling as a provider. CIIS or the Department may require a criminal record check for any provider having regular unsupervised contact with children in the home. CIIS or the Department may require that the provider provide fingerprints and processing fees for the purpose of a criminal record check.

(5) A provider shall not be a parent, step-parent, spouse, or legal guardian of the child.

(6) A performing provider must sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any In-Home Daily Care.

(7) A provider is not an employee of the Department or the State of Oregon and is not eligible for state benefits and immunities, including but not limited to, PERS or other state benefit programs.

(8) If the performing or billing provider is an independent contractor, during the terms of the contract, the performing or billing provider shall maintain in force at his/her own expense Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. The provider shall furnish evidence of insurance coverage to CIIS prior to beginning work. This insurance is to cover damages caused by error, omission, or negligent acts related to the professional services. There shall be no cancellation of insurance coverage(s) without 30 days written notice to CIIS.

(9) If the performing provider is an employee of the family, the provider shall submit to the Department documentation of immigration status required by Federal Statute. The Department will maintain documentation of immigration status required by Federal Statute, as a service to the family/employer.

(10) A Billing Provider that wishes to enroll with the Department shall maintain and submit evidence upon initial application and upon request by the Department of the following:

(a) Current criminal history checks on each employee who will be providing services in a home showing that the employee has no disqualifying criminal convictions;

(b) Professional Liability Insurance that meets the requirements of OAR 411-300-0170(8); and

(c) Any licensure required of the agency by the State of Oregon or federal law or regulation.

(11) A provider shall immediately notify the family and CIIS, if appropriate, of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being or level of service required by the child for whom services are being provided.

(12) Providers described in ORS Chapter 419 are required to report suspected child abuse to their local office of the Department of Human Services or police in the manner described in ORS Chapter 419.

Stat. Auth.: ORS 409.050, ORS 417.340-417.350  
Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340-417.350  
Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04

## 411-300-0210

### Denial of Services, Amount of Services, or Eligibility

(1) The Department shall notify every applicant or recipient of services, unless the action is part of the CPC or the parent has agreed, in writing at the time of denial of a request for eligibility, or at the time of any action to terminate, suspend, or reduce CIIS eligibility or covered services, of the right to a hearing. A notice concerning termination, suspension, or reduction of existing services shall be mailed to or served personally upon

the child's parent or legal guardian not later than ten days before the effective date of action.

(2) The parent or legal guardian may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to Department of Human Services, Seniors and People with Disabilities, CIIS, Salem, Oregon. If the Department denies a written request for additional or different services, it must notify the parent or guardian in writing at the time of the denial of the information specified in paragraph (3) of this rule.

(3) A notice required by paragraphs (1) or (2) of this rule shall be served upon the parent or legal guardian personally or by certified mail. The notice shall state:

(a) A statement of what action the Department intends to take;

(b) The reasons for the intended action;

(c) A statement of the child's right to a contested case hearing;

(d) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(e) A statement that the notice becomes a final order upon default if the parent or legal guardian fails to request a hearing within a specified time;

(f) In cases of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(g) An explanation of the circumstances under which CIIS services will be continued if a hearing is requested.

(4) If the parent or legal guardian disagrees with the decision of the Department, they may request a contested case hearing as provided in ORS 183. The request for a hearing must be in writing on Form AFS 443 and signed by the parent or legal guardian. To be considered timely, the request must be received by the Department within 45 days from the date of the Department's notice of denial.

(5) The family shall be offered an opportunity for informal review by the Department or the designee.

(6) The performing or billing provider shall submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

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

Stat. Auth.: ORS 409.050, ORS 417.340-417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340-417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04

## 411-300-0220

### Sanctions for CIIS Providers

(1) Sanction(s) may be imposed on a provider when a following condition is determined by the Department to have occurred:

(a) Convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or issuance of a provider number;

(b) Convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his/her license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Has failed to safely and adequately provide the services authorized;

(e) Has had an allegation of abuse or neglect substantiated against them;

(f) Failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or convicted of fraud;

(h) Has made a false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation;

(j) Has not adhered to the provisions of OAR 411-300-0100 through 411-300-0220, or

(k) Been suspended or terminated as a provider by another agency within the Department.

(2) The following sanctions may be imposed on a provider by the Department:

(a) The provider may be terminated from participation in CIIS or in the MFC Program;

(b) The provider may be suspended from participation for a specified length of time or until specified conditions for reinstatement are met and approved by the state; and

(c) The Department may withhold payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider will be notified by mail of the intent to sanction. The provider may appeal this action within 45 days of the date of the notice. The provider

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must appeal this action separately from any appeal of audit findings and overpayments.

(4) The provider may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(5) For an appeal to be valid, written notice of the appeal must be received by the Department within 45 days of the date the sanction notice was mailed to the provider.

(6) At the discretion of the Department, providers who have previously been terminated or suspended by any agency within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050, ORS 417.340-417.350

Stats. Implemented: ORS 430.215, ORS 427.007, ORS 417.340 - ORS 417.350

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04

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**Adm. Order No.:** SPD 14-2004

**Filed with Sec. of State:** 6-1-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 5-1-04

**Rules Ren. & Amended:** 309-044-0100 to 411-350-0010, 309-044-0110 to 411-350-0020, 309-044-0120 to 411-350-0030, 309-044-0130 to 411-350-0040, 309-044-0140 to 411-350-0050, 309-044-0150 to 411-350-0060, 309-044-0160 to 411-350-0070, 309-044-0170 to 411-350-0080, 309-044-0180 to 411-350-0090, 309-044-0190 to 411-350-0100, 309-044-0200 to 411-350-0110, 309-044-0210 to 411-350-0120

**Subject:** The rules in Chapter 309, Division 044, Medically Fragile Children Services, are permanently amended effective 06/01/2004. These rules have been renumbered to reflect the current organizational structure of DHS and will repeal the temporary rule due to expire on June 7, 2004. Additionally, the following changes to these rules have been made: a) Removes the Department's Mission Statement and Statutory Authority verbiage from 309-044-0100; b) Permanently changes Form MHDDSD-DD-0519 in rule 309-044-0110 to Form DHS 0519; c) Removes Caregiver Training and Education from the list of goods, services and supplies MFC services can provide; d) Replaces references to the Criminal History rule that was repealed on 03/01/2004 and refers to the new Criminal records rule, OAR 410-007; e) Increases the time a provider may appeal a decision to sanction and request a hearing from 30 days to 45 days.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-350-0010

### Purpose

These rules establish the policy of and prescribe the standards and procedures for the provision of Medically Fragile Children (MFC) Services. These Administrative Rules are established to ensure that MFC Services augment and support independence, empowerment, dignity, and development of the child through the provision of flexible and efficient services to eligible families. MFC Services are exclusively intended to allow a child who is medically fragile to have a permanent and stable familial relationship. The services provide the support necessary to enable the family to meet the needs of caring for a medically fragile child. MFC Services are intended to supplement families' natural supports and services.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0100, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0020

### Definitions

(1) "Activities of Daily Living (ADL)" means tasks usually performed in the course of a normal day in a child's life; such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, usual developmental tasks, such as play and social development.

(2) "Aide" means a nonlicensed caregiver who may or may not be certified as a Certified Nursing Assistant.

(3) "Billing Provider" means an organization that enrolls with the Department and contracts with the Department to provide MFC In-Home Daily Care (IHDC) through its employees and bills the Department for the performing provider's services.

(4) "Child" means a person who is under the age of 18 and accepted for services by the MFCU.

(5) "Clinical Criteria" means the assessment tool, Form DHS 0519 (Revised 9/03), used by the MFCU to evaluate the intensity of the care and IHDC needs of children.

(6) "Comprehensive Plan of Care (CPC)" means a written document developed by the service coordinator with the family or foster family that describes the needs of the child and the needs of the family that impact the child and how those needs will be met. It includes the Nursing Care Plan when one exists.

(7) "Cost Effective" means that in the opinion of the MFCU service coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(8) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation occurs only after assessment of the specific situation, the abilities of the unlicensed person, teaching the task and ensuring supervision. Delegation shall only occur to the extent allowed by Oregon Board of Nursing's administrative rules. Delegation by physicians is also allowed.

(9) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities, or are elderly or have physical disabilities.

(10) "Eligible Range" means that the score on the Clinical Criteria is at or above 50.

(11) "Hospital Model Waiver" means the waiver program granted by the federal Health Care Financing Administration that allows Title XIX funds to be spent on children in their family home who otherwise would have to be served in a hospital if the waiver program was not available.

(12) "In-Home Daily Care (IHDC)" means essential supportive shift care delivered by a qualified provider that enables a child to remain or return to his or her family's home.

(13) "Medically Fragile Children (MFC)" means children who have a health impairment that requires long term, intensive, specialized services on a daily basis and have been accepted for services by the MFCU.

(14) "Medically Fragile Children's Unit (MFCU)" means the program administered by the Department of Human Services for MFC.

(15) "Nurse" means a person who holds a valid, current license as an Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(16) "Nursing Care Plan" means a plan of care developed by the RN that describes the medical, nursing, psychosocial, and other needs of the child and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family. When one exists, it becomes a part of the Comprehensive Plan of Care.

(17) "Nursing Tasks or Services" means the care or services that require the education and training of a licensed professional nurse to perform. They may be delegated.

(18) "Primary Caregiver" means the parent or foster parent who provides the direct care of the child at the times that a provider is not available.

(19) "Provider or Performing Provider" means the individual who is qualified to receive payment from the Department for In-Home Daily Care and meets the requirements of OAR 411-350-0080. Performing Providers work directly with MFC children. Providers may be employees of Billing Providers, employees of the family or independent contractors.

(20) "Service Coordinator" means a person who ensures a child's eligibility for MFCU services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0030

### Eligibility

(1) In order to be eligible for MFC Services, the child must meet the following criteria:

(a) Be eligible for Title XIX (Medicaid) or Title XXI (CHIPS); and

(b) Be under the age of 18; and

(c) Be accepted by the MFCU as eligible for MFC services by having a condition:

(A) That is likely to last for more than 2 months; and

(B) That makes MFC services medically necessary as defined by scoring 50 or greater on the Clinical Criteria; and

(d) Residing in the family or foster home; and

(e) Be capable of being safely served in the family or foster home, including, but not limited to, parents or foster parents demonstrating the

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willingness, skills, and ability to provide the direct care not paid for in the Comprehensive Plan of Care as determined by the service coordinator within the limitations of 411-350-0070.

(2) Children who reside in a hospital, school, sub-acute facility, nursing facility, ICF/MR, residential facility, or other institution are not eligible for MFC Services.

(3) Children who have sufficient family, government or community resources available to provide for their care are not eligible for MFC Services; also children not safely served in their homes as per OAR 411-350-0030(e) are not eligible for MFC services. The services are not available to replace care provided by a parent or foster parent or to replace other governmental or community services.

(4) Children who meet the following criteria will be transitioned out of MFC services within three months and will no longer be eligible for MFC services:

- (a) Have been previously eligible for MFC services; and
- (b) The needs of the child have decreased; and
- (c) The score on the clinical criteria remains at 30 or less.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0120, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0040

### Comprehensive Plan of Care

(1) The MFC service coordinator shall perform the following duties:

(a) Assessment: The service coordinator will assess the service needs of the client by identifying the services for which the child is currently eligible, services currently being provided, and available family, community, private health insurance and government resources meeting any, some, or all of the child's needs. The service coordinator shall interview the parents or other caregivers and, when appropriate, other interested persons to assess the child's support needs.

(b) Care Planning: The service coordinator will prepare, with the input of the family and any person at family's request, a written Comprehensive Plan of Care that:

- (A) Defines the needs of the child and the family;
- (B) Identifies the methods, resources and strategies that address some or all of those needs;
- (C) Identifies the number of hours of MFC Services authorized for the child; and
- (D) Identifies other services authorized by the Department for the child.

(2) The Comprehensive Plan of Care will:

- (a) Note the maximum hours to be reimbursed for those services; and
- (b) Estimate the cost of the care.

(3) The plan will describe the estimated number of hours that a MFC aide will be authorized and the number of hours that a licensed nurse will be authorized.

(4) The Nursing Care Plan, when one exists, will be included in the Comprehensive Plan of Care.

(5) The plan will be reviewed with the family prior to implementation and a copy provided to the family.

(6) The plan will include the date of the next planned review that, at a minimum, will be every 6 months.

(7) Significant changes in the needs of the child shall be reflected in the revised Nursing Care Plan, if one exists, and the Comprehensive Plan of Care and a copy provided to the family.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0130, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0050

### Scope and Limitations of MFC Services

(1) Parents and foster parents are the primary caregiver(s) and the services are intended to support, not supplant the natural supports supplied by the family.

(2) MFC Services may include, for a child on the Hospital Model Waiver, a combination of the following based upon the needs of the child as determined by the service coordinator consistent with the child's Comprehensive Plan of Care:

- (a) In-Home Daily Care;
- (b) Minor Home Adaptations; or
- (c) Goods, services, and supplies.

(3) MFC Services for a child not on the Hospital Model Waiver are limited to In-Home Daily Care only.

(4) All services authorized by the Department must be included in a written Comprehensive Plan of Care in order to be eligible for payment.

(5) The Comprehensive Plan of Care will use the most cost-effective services for safely meeting that child's needs as determined by the MFC service coordinator.

(6) The average monthly payment for the MFC services authorized in the Comprehensive Plan of Care will not exceed the limits established for the child's service level as follows:

(a) Level I:

(A) Children that are eligible for Level I services:

- (i) Must be ventilator-dependent for 24 hours per day;
- (ii) Have a score on the Clinical Criteria of 70 or greater; and
- (iii) Require awake staff or family for the full 24 hours.

(B) The average monthly cost for Level I shall be based on the Comprehensive Plan of Care and will not exceed \$18,000.

(b) Level II:

(A) Children that are eligible for Level II services:

- (i) Must be ventilator-dependent for at least 6 hours per day; and
- (ii) Have a score on the Clinical Criteria between 60 and 69; and
- (iii) Require awake staff or family for the full 24 hours.

(B) The average monthly cost for Level II will be based on the Comprehensive Plan of Care and shall not exceed \$12,500.

(c) Level III:

(A) Children that are eligible for Level III services:

- (i) Have a score on the Clinical Criteria between 50 and 59; and
- (ii) Require awake staff or family for the full 24 hours.

(B) The average monthly cost of Level III will be based on the Comprehensive Plan of Care and shall not exceed \$9,500.

(d) Level IV:

(A) Children that are eligible for Level IV services:

- (i) Have a score on the Clinical Criteria of less than 50; and
- (ii) Must meet the other eligibility criteria of OAR 411-350-0030; and
- (iii) Have not been transitioned out of services.

(B) The average monthly cost of Level IV will be based on the Comprehensive Plan of Care and shall not exceed \$4,500.

(e) Exceptions by the Department to the above cost limitations in service may only be made in the following circumstances:

(A) In order to prevent a hospitalization, the service coordinator can authorize increased costs for a short, time-limited period.

(B) In order to provide initial teaching of new care needs, the service coordinator can authorize additional costs for a time-limited period, not to exceed 60 days.

(C) The service coordinator can authorize additional costs when the service coordinator determines that documentation of a significant medical condition in the primary caregiver indicates that the condition prevents or seriously impedes the primary caregiver from rendering services.

(7) MFC Services will only be authorized to enable the family to meet the needs of caring for the medically fragile child.

(8) Minor home adaptations will only be authorized that are necessary to ensure the health, welfare and safety of the child or that enable the child to function with greater independence in the home. Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the child are excluded. Adaptations that add to the total square footage of the home are excluded.

(9) All minor home adaptations must be provided in accordance with applicable state or local building codes by licensed contractors.

(10) For minor home adaptations that exceed \$5000, the Department may protect its interest through liens or other legally available means.

(11) Minor home adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work.

(12) Goods, services, and supplies may include any combination of the following:

(a) Homemaker. Homemaker Services consist of general household activities.

(b) Respite. Respite Services are furnished on a short-term basis because of the absence or need for relief for the primary caregiver.

(c) Transportation. Transportation is to gain access to community services, activities and resources as specified in the CPC. Family members cannot be paid to provide this transportation. This shall not replace medical transportation furnished by OHP in which family members can be paid.

(d) Specialized medical equipment and supplies. Items could include, among others, communication devices, adaptive clothing, adaptive eating

# ADMINISTRATIVE RULES

equipment, or adaptive sensory or habilitation devices or supplies. Items furnished by the Oregon Health Plan are excluded.

(e) Chore. Chore services are those needed to maintain the home in a clean, sanitary, and safe manner. These services include heavy household chores such as window washing or carpet cleaning. These services shall be provided only in situations where no one else in the household or other persons capable of performing or providing these.

(f) Family training. Training and counseling services for the families of MFC children, that increase the family's capability to care for their child.

(g) Consultation by a physical therapist, occupational therapist, speech and language therapist, dietitian or other professional. Services covered by the Oregon Health Plan are excluded.

(h) Special diets. Special diets shall be ordered by a physician and periodically monitored as necessary by a dietitian. Special diets shall not constitute a full nutritional regime.

(i) Other goods, services, and supplies that are directly related to the child's disability included in an approved comprehensive Plan of Care, and required to help the family to continue to meet the needs of caring for the child.

(13) Goods, services and supplies paid for by the Department shall be documented by receipts and the receipts maintained by the Department for 5 years. If no receipt is available, the family shall submit to the Department in writing a statement that they obtained goods, service or supplies, the date that it was obtained, and the cost that was incurred.

(14) The Department may expend its funds for minor home adaptations or goods, services, and supplies through contract, purchase order, use of credit card, payment directly to the family or vendor, or any other legal payment mechanism.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041  
Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355  
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0060

### Denial of Services, Amount of Services, or Eligibility

(1) The Department must notify every applicant or recipient of services, unless the action is part of the CPC and the parent has agreed, in writing at the time of denial of a request for eligibility, or at the time of any action to terminate, suspend, or reduce MFCU eligibility or covered services, of the right to a hearing, of the method to obtain a hearing, and that the applicant may represent himself or herself, or use legal counsel, a relative, a friend, or other spokesperson. A notice concerning termination, suspension, or reduction of existing services shall be mailed to or served personally upon the child's parent or legal guardian not later than ten days before the effective date of action.

(2) The parent or legal guardian and foster parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to MFCU, SPD, 500 Summer Street NE, First Floor, Salem, OR 97301. If the Department denies a written request for additional or different services, it must notify the parent or guardian in writing at the time of the denial of the information specified in paragraph (3) of this section.

(3) A notice required by paragraphs (1)(b) or (2) of this section shall be served upon the parent or legal guardian and foster parent personally or by certified mail. The notice shall state:

- (a) A statement of what action the Department intends to take;
- (b) The reasons for the intended action;
- (c) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (d) A statement of the child's right to a contested case hearing;
- (e) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;
- (f) A statement that the notice becomes a final order upon default if the child fails to request a hearing within a specified time;
- (g) In cases of an action based upon a change in law, the circumstances under which a hearing will be granted; and
- (h) An explanation of the circumstances under which MFCU services will be continued if a hearing is requested.

(4) If the child or representative disagrees with the decision of the Department, the child or representative may request a contested case hearing as provided in ORS 183. The request for a hearing must be in writing on Form AFS 443 and signed by the parent or the child's representative. To be considered timely, the request must be received by the Department within 45 days from the date of the Department's notice of denial.

(5) The family will be offered an opportunity for informal review by the Department or the designee.

(6) If the family requests an expedited hearing to occur within 45 days of the request for a hearing, the Department will waive its right, once per family, to recovery of benefits expended if the Department's reduction or termination of services is sustained by the hearing decision.

(7) Expedited hearings are requested using AFS Form 443.

(8) The performing or billing provider shall submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041  
Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355  
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0150, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0070

### Scope and Limitations of In-Home Daily Care Services

(1) MFC In-Home Daily Care services may include a combination of assistance with ADLs, nursing services, or other supportive services as determined by the MFCU service coordinator consistent with the child's Comprehensive Plan of Care. The extent of the services may vary, but the extent of service is limited as described in OAR 411-350-0050. The services include:

(a) Basic personal hygiene — including assisting with bathing and grooming;

(b) Toileting/bowel and bladder care — including assisting in the bathroom, diapering, external cleansing of perineal area, and care of catheters, ostomies and bags;

(c) Mobility — including transfers, comfort, positioning, and assistance with range of motion exercises;

(d) Nutrition — including preparing meals, special diets, gastrostomy feedings, monitoring intake and output, feeding;

(e) Skin care — including dressing changes and ostomy care;

(f) Respiratory — including monitoring and administering of oxygen, applying and adjusting ventilators and other respiratory equipment, providing inhalation therapies, monitoring and responding to apnea monitors and oximeters;

(g) Cardiovascular — including monitoring of vital signs and monitoring, and replacement and flushing of vascular access sites;

(h) Neurological — Monitoring of seizures, administering medication, observing status; and

(i) Other Nursing or Personal Care Tasks or Services.

(2) When any of the services listed in Subsection (1)(a) through (I) of this section are essential to the health and welfare of the child, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the child in a healthy and safe environment;

(b) Arranging for necessary medical equipment, supplies, and medications;

(c) Arranging for necessary medical appointments;

(d) Accompanying the child to appointments, outings, and community-based activities; and

(e) Activities to enhance development or learning.

(3) The number of service hours will be based upon the projected amount of time to perform the specified assistance for the child. The hours may be spread throughout the time authorized in the voucher or used in large blocks as the family determines.

(4) Hours will be authorized only to support a family or foster family in their primary caregiving role.

(5) Hours will not be authorized that will supplant the services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives. Hours will not be authorized solely to allow a parent to work, attend school, or attend any other activity.

(6) When two or more children in the same home or setting qualify for MFCU Services, the same provider will provide services to all qualified children if services can be safely delivered by a single provider, as determined by the MFCU service coordinator.

(7) The Comprehensive Plan of Care will not authorize RN hours when an LPN can safely perform the duties and RN or LPN hours when an aide can safely perform the duties.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041  
Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355  
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0160, SPD 14-2004, f. & cert. ef. 6-1-04

# ADMINISTRATIVE RULES

## 411-350-0080

### Provider Qualifications for In-Home Daily Care

(1) A performing provider is an individual, 18 years or older, who provides evidence satisfactory to the Department or its designee that demonstrates, by background, education, references, skills, and abilities, that he/she is capable of safely and adequately providing the services authorized.

(2) A provider shall maintain a drug-free work place, pass a criminal history check as defined by OAR 410-007-0200 through 411-007-0380, and be free of convictions or founded allegations of abuse or neglect by the appropriate agency, including but not limited to, Children and Families, Child Welfare Services and Seniors and People with Disabilities.

(3) A prospective performing provider shall consent to a criminal record check by MFCU or the Department prior to enrolling as a provider. MFCU or the Department may require a criminal record check for any provider having regular unsupervised contact with children in the home. MFCU or the Department may require that the provider provide fingerprints and processing fees for the purpose of a criminal record check.

(4) A provider shall not be a parent, stepparent or foster parent of the child.

(5) A performing provider must sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any In-Home Daily Care Services.

(6) A provider who is providing services as a nurse must have:

(a) A current Oregon Nursing license; and

(b) Be in good standing with appropriate professional associations and boards.

(7) A provider is not an employee of the Department or the State of Oregon and is not eligible for state benefits and immunities, including but not limited to, PERS or other state benefit programs.

(8) If the performing or billing provider is an independent contractor, during the terms of the contract, the performing or billing provider shall maintain in force at his/her own expense Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. The provider shall furnish evidence of insurance coverage to MFCU prior to beginning work. This insurance is to cover damages caused by error, omission, or negligent acts related to the professional services. There shall be no cancellation of insurance coverage(s) without 30 days written notice to MFCU.

(9) If the performing provider is an employee of the family, the provider shall submit to the Department documentation of immigration status required by Federal Statute. The Department will maintain documentation of immigration status required by Federal Statute, as a service to the family/employer.

(10) A Billing Provider that wishes to enroll with the Department must maintain and submit evidence upon initial application and upon request by the Department of the following:

(a) A current, valid, non-restricted Oregon Nurses' licenses for each employee who is providing services as a nurse;

(b) Current criminal history checks on each employee who will be providing services in a home or foster home showing that the employee has no disqualifying criminal convictions;

(c) Professional Liability Insurance that meets the requirements of OAR 411-350-0080(8) and

(d) Any licensure required of the agency by the State of Oregon or federal law or regulation.

(11) A provider shall immediately notify the family and MFCU of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being or level of service required by the child for whom services are being provided.

(12) Providers described in ORS Chapter 419 (Licensed Practical Nurses and Registered Nurses) are required to report suspected child abuse to their local office of the State Office of Children and Family Services or police in the manner described in ORS 419.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0090

### Prior Authorization for In-Home Daily Care

(1) Except in cases of unforeseeable medical emergency, payment for services must be authorized by the Department before services begin. Payment will be based on these rules, the service needs of the child as documented in the Comprehensive Plan of Care and the cost effectiveness of the proposed services.

(2) Prior to authorization of services that are to be provided by a nurse, there shall be a physician's order for the nursing services. However, MFCU shall determine whether payment of nursing services or the hours of service as ordered by the physician will be authorized for payment according to these rules.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0180, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0100

### Documentation Needs for In-Home Daily Care

(1) Accurate timesheets signed by the individual provider of services shall be maintained and submitted to the MFCU with any request for payment for services.

(2) Requests for payment for services must:

(a) Include a copy of the voucher that prior authorized the services;

(b) Be signed by the parent or foster parent of the MFCU child, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the voucher.

(3) Documentation of provided services must be provided to the service coordinator upon request and maintained in the child's place of residence or the place of business of the provider of services. Payment will not be made for services where the documentation of the duties provided does not support the level of service that was provided.

(4) If In-Home Daily Care is provided by a nurse, a Nursing Care Plan must be developed within seven days of the initiation of services and submitted to the MFCU for approval.

(5) The Nursing Care Plan must be reviewed, updated and resubmitted to the MFCU in the following instances:

(a) Every three months;

(b) Within seven working days of a change of the nurse who writes the Nursing Care Plan;

(c) With any request for authorization of an increase in hours of service; or

(d) After any significant change of condition. Examples of significant changes of condition include, but are not limited to, hospital admission or change in health status.

(6) The Nursing Care Plan must be shared with the family by the provider.

(7) If In-Home Daily Care is provided by a nurse, documentation of the child's status and services provided must be maintained in a format acceptable to the MFCU, contain information required by the MFCU, and submitted to MFCU upon request.

(8) Delegation, teaching and assignment of nursing tasks and performance of nursing care must be in accordance with the Oregon Board of Nursing regulations.

(9) MFCU must be notified by the provider within one working day of the death of any MFCU child.

(10) Vouchers and timesheets will be retained by the Department for at least five years from the date of service.

(11) Documentation of provided services will be maintained by the billing provider for at least seven years from the date of service. If a performing provider is a nurse and does not use a billing provider, that performing provider will either maintain for at least five years documentation of provided services or will send the documentation to the Department.

(12) Upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Health Care Financing Administration or their authorized representatives, providers or billing providers will furnish requested documentation immediately or within the timeframe specified in the written request. Failure to comply with the request may be deemed by the Department as reason to deny or recover payments.

(13) Access to records by the Department inclusive of medical/nursing records and financial records, does not require authorization or release by the MFC child or family.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0190, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0110

### Payment for In-Home Daily Care

(1) Payment will be made after services are delivered as authorized by the service coordinator.

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(2) Rates will be individually negotiated by the Department, based on the individual needs of the child.

(3) Authorization must be obtained prior to the delivery of any services for those services to be eligible for reimbursement.

(4) Providers must request payment authorization for services provided for an unforeseeable medical emergency on the first business day following the emergency service. The service coordinator will determine if the service is eligible for payment.

(5) The Department will make payment to the employee of the family on behalf of the parent. The following will be ancillary contributions:

(a) The Department will pay the employer's share of FICA and withhold the employee's share of FICA as a service to the family/employer.

(b) The Department will cover real and actual costs to the Employment Department, in lieu of the family/employer paying unemployment tax.

(6) The delivery of authorized services must occur so that any individual employee of the parent shall not exceed forty hours per workweek. Services will not be authorized that require the payment of overtime, without written prior authorization by the supervisor of the Medically Fragile Children's Unit.

(7) Holidays are paid at the same rate as non-holidays.

(8) Travel time to reach the job site is not reimbursable.

(9) Requests for payments must be submitted to the Department within 6 months of the delivery of services in order to be eligible for payment.

(10) Payment by the Department for In-Home Daily Care will be considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances shall the performing provider or billing providers demand or receive additional payment for these services from the family or any other source unless the payment is the financial responsibility (spend-down) of the child under the Medically Needy Program.

(11) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources before Medicaid unless another arrangement is agreed upon by the Department in the Comprehensive Plan of Care.

(12) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of service.

(13) Prior authorizations that have been issued may be voided in the event of any of the following:

(a) Change in the status of the child. Examples include, but are not limited to, death, hospitalization, and improvement in health status;

(b) Decision of the family to change providers;

(c) Inadequate services, inadequate documentation, or other failure to perform expected duties;

(d) Any situation, as determined by the MFC service coordinator that puts the child's health or safety at risk.

(14) Upon submission of the voucher for payment, the provider agrees that it has complied with:

(a) All rules of the Department; and

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973; and

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(15) All billings must be for services provided within the provider's licensure.

(16) It is the responsibility of the provider to submit true and accurate information on the voucher. Use of a billing provider does not abrogate the performing provider's responsibility for the truth and accuracy of submitted information.

(17) No person will submit to the Department:

(a) A false voucher for payment;

(b) A voucher for payment that has been or is expected to be paid by another source; or

(c) Any voucher for services that have not been provided.

(18) The Department will make payment only to the enrolled provider who actually performs the service or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(19) Payments may be denied if any provisions of 411-350-0010 through 411-350-0120 are not complied with.

(20) Overpayments shall be recouped. The amount to be recovered:

(a) Will be the entire amount determined or agreed to by the Department; and

(b) Is not limited to amount(s) determined by criminal or civil proceedings.

(c) Will include interest to be charged at allowable State rates.

(21) The Department will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment or notification of recoupment of future payments.

(22) Payment schedules with the interest may be negotiated at the discretion of the Department.

(23) If recoupment is sought from a family who received services, contested hearing rights in OAR 411-350-0060 shall apply.

(24) Payment for services provided to more than one child in the same setting at the same time will not exceed the maximum hourly rate for one child.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0200, SPD 14-2004, f. & cert. ef. 6-1-04

## 411-350-0120

### Provider Sanctions for MFC Services

(1) Sanction(s) may be imposed on a provider when a following condition is determined by the Department to have occurred:

(a) Convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or issuance of a provider number;

(b) Convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his/her health care license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Has failed to safely and adequately provide the services authorized;

(e) Has had an allegation of abuse or neglect substantiated against them;

(f) Failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or convicted of fraud;

(h) Has made a false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation; or

(j) Been suspended or terminated as a provider by another agency within the Department of Human Services (DHS).

(2) The following sanctions may be imposed on a provider by the Department:

(a) The provider may be terminated from participation in the MFC program;

(b) The provider may be suspended from participation for a specified length of time or until specified conditions for reinstatement are met and approved by the state; and

(c) The Department may withhold payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider will be notified by mail of the intent to sanction. The provider may appeal this action within 45 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(4) For an appeal to be valid, written notice of the appeal must be received by the Department within 45 days of the date the sanction notice was mailed to the provider.

(5) At the discretion of the Department, providers who have previously been terminated or suspended by any agency within DHR may not be re-enrolled as providers of Medicaid services.

(6) The provider may appeal a sanction by requesting an administrative review by the Administrator of the Department or a contested case hearing.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0210, SPD 14-2004, f. & cert. ef. 6-1-04

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**Rules Amended:** 411-030-0002, 411-030-0020, 411-030-0033, 411-030-0040, 411-030-0050, 411-030-0070, 411-030-0080

# ADMINISTRATIVE RULES

**Subject:** OAR Chapter 411, Division 030 has been permanently amended effective June 7, 2004 to incorporate the following changes:

In OAR 411-030-0002, 411-030-0020, 411-030-0033 the phrase “in-home services” was changed to “in-home support services.” Many definitions in 411-030-0020 were deleted and placed into a new division (411, Division 031). The definitions for “cost-effective,” “exception,” “Independent,” “Minimal Assistance,” “Substantial Assistance,” “Full assistance,” “Business Days,” and “contracted in-home care” were updated. Language referencing overtime laws were stricken from definitions 12, 25 and 30.

OAR 411-030-0033 and OAR 411-030-0040 were amended to describe the different programs available under the ‘umbrella’ category of “in-home support services.” In OAR 411-030-0033, section (3) (b), the words “relative care” were removed. Language was added in OAR 411-030-0040 to explain that in order to remain eligible for the waived In-Home Services Program, a client must employ a homecare worker and must not go without a homecare worker for more than thirty days. OAR 411-030-0040 (2) (a) the General Assistance program (GA) was added back to the eligibility criteria. Section 3 was revised to clarify residents of all long-term care facilities are ineligible for in-home support services.

In OAR 411-030-0050, a paragraph regarding service payment being considered payment in full was added. OAR 411-030-0060 and OAR 411-030-0065 were repealed and placed in another Division. In OAR 411-030-0070 the word “live-in” was added to a section about 24-hour availability. In OAR 411-030-0070 the word “In-Home Service Authorization” was changed to read “Service Plan.” Under the definition for live-in services “should” was changed to “must.”

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-030-0002

### Purpose

These Administrative Rules are established to ensure that in-home support services will maximize independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to each eligible client. Such services fill the role of complementing and supplementing the client’s own personal abilities to continue to live in his/her own home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0020

### Definitions

As used in these rules:

(1) “Activities of Daily Living” (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) “Architectural Resources” means any service leading to the modification of the structure of a dwelling to meet a specific service need of the client.

(3) “Area Agency on Aging” (AAA) means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) “Assistive Devices” means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual’s independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual in performing an ADL.

(5) “Case Management” means the service provided by a Department or Area Agency on Aging employee that ensures the effective provision of services to the client.

(6) “Case Manager” means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(7) “Client” means the individual eligible for in-home support services.

(8) “Client-Employed Provider Program” (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) “Cognition” means functions of the brain that assist in orientation to person, place and time, decision-making, learning, and memory.

(10) “Contracted In-Home Care” means a service provided through a contractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks.

(11) “Contracted In-Home Care Agency” means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(12) “Contracted In-Home Care Specialist” means an employee of a Contracted In-Home Care Agency who has recognized capability to provide the in-home care service tasks authorized for the clients they serve.

(13) “Cost Effective” means being mindful of resources when providing choices to adequately meet a client’s service needs. Those choices consist of the available services published on the Fiscal and Policy Analysis (FPA) rate schedule for SPD programs and the utilization of assistive devices.

(14) “Department” means the Department of Human Services, Seniors and People with Disabilities.

(15) “Exception” means an unusual monthly payment or rate granted to a specific client that would otherwise exceed the Fiscal and Policy Analysis published rate schedule.

(16) “Full Assistance” as used in OAR 411-030-0070 means the client is unable to do any part of an activity of daily living or task and that task must be done entirely by someone else.

(17) “Health and Safety Emergencies” means the occurrence of a sudden change in a medical condition or an event of an accidental nature that requires evacuation from the premises, administration of prescription medication or first aid, or immediate treatment by medical personnel.

(18) “Homecare Worker” means a provider, as described in OAR 411, division 031, who is directly employed by the client and provides either hourly or live-in services to eligible clients. Homecare Workers also include providers in the Spousal Pay Program.

(19) “Hourly Services” means the in-home support services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(20) “In-home support services” means those services that assist a client to stay in his/her own home.

(21) “Live-In Services” means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five (5) days in a calendar week.

(22) “Minimal Assistance” as used in OAR 411-030-0070 means the client is able to perform the majority of a task, but requires some assistance.

(23) “Oregon Project Independence” (OPI) means the program of in-home support services defined in OAR chapter 411, division 032.

(24) “Provider” means the individual who actually renders the service.

(25) “Registered Nurse Plan of Care” means a document completed by an RN identifying the tasks which must be provided to meet the client’s assessed needs.

(26) “Respite”, as used in OAR 411-030-0080, means securing a paid temporary replacement worker to perform the authorized duties normally performed by the Spousal Pay Program provider, in order to allow the Spousal Pay Program provider interim relief from providing care to the client.

(27) “Self-Management” means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(28) “Seniors and People With Disabilities (SPD)” means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

# ADMINISTRATIVE RULES

(29) "Service Need" means those functions or activities that the client requires from the Department or Area Agency on Aging support.

(30) "Service Priority" means the order in which Department clients are found eligible for nursing home care, Home and Community-Based Services waiver programs, the Spousal Pay Program, and Oregon Project Independence.

(31) "Substantial Assistance" as used in OAR 411-030-0070 means a client can perform only a small portion of a task and requires assistance with the majority of a task.

(32) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0033

### Program Scope

(1) In-Home Support Services are designed to provide essential supportive services that enable an individual to remain in his/her own home. Services may be provided through the Home and Community-Based Services waiver, the Independent Choices Program or through the State-funded Spousal Pay Program. The services range from assistance with household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time.

(2) In-home support services may be provided either through the Home and Community-Based Services waived In-Home Services Program, Spousal Pay Program, Independent Choices Program, or Oregon Project Independence Program.

(3) A client residing in any of the following living arrangements may be considered for the Home and Community-Based Services waived In-Home Services Program:

(a) A home, apartment, duplex, condominium, or other dwelling the client owns, leases, or rents; or

(b) Both the client and the provider have their names on the lease, mortgage, deed or property manager's rental agreement; or

(c) The client lives with relatives or others, but receives paid hourly in-home services from someone who resides outside the home; or

(d) The client moved in with a relative who:

(A) Owns, leases, or rents the home in which the client lives, and

(B) Is providing paid in-home care services; and

(C) Is sharing a portion of shelter costs according to a written rental or lease agreement with the client, and

(D) The intent of the client moving in was for reasons other than receiving paid care services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0040

### Eligibility Criteria

(1) In-home support services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home support services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the client. Service plans will be based upon the least costly means of providing adequate care.

(2) Clients served under the Home and Community Based Services waived In-Home Services Program must meet the established priorities for service as described in OAR chapter 411, division 015 and be included in one of the following groups:

(a) Current recipients of OSIP or General Assistance who reside in one of the living arrangements described in OAR 411-030-0033(3) and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement.

(3) To be eligible for the Home and Community-Based Services waived In-Home Services Program, a client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department.

(a) If, for any reason, the employment relationship between the client and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within thirty calendar days for the client to remain eligible for the program.

(b) Following discharge from any facility or medical institution, the client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within thirty calendar days.

(4) Separate eligibility for in-home support services exists for persons eligible for:

(A) Oregon Project Independence as defined in OAR chapter 411, division 032;

(B) Independent Choices as defined in OAR chapter 411, division 036; or

(C) Spousal Pay Program as defined in OAR 411-030-0080.

(5) Residents of licensed community-based care and nursing facilities are not eligible for in-home support services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93; Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0050

### Case Management

(1) Assessment

(a) The assessment process will identify the client's ability to perform activities of daily living, self-management tasks, and determine the client's ability to address health and safety concerns. The case manager will conduct this assessment in accordance with standards of practices established by the Department.

(b) The assessment will be conducted by a case manager or other qualified Department or Area Agency on Aging representative in the client's home, no less than annually, with a standardized assessment tool approved by Seniors and People With Disabilities.

(2) Contract RN Assessment

(a) Contract RN services are prior authorized by a Department or Area Agency on Aging case manager to provide:

(A) Nursing assessment and reassessment as appropriate;

(B) Medication review;

(C) Assignment of basic care tasks to a Homecare Worker; and

(D) Delegation of special tasks of nursing care to a Homecare Worker.

(b) Indicators of the need for RN assessment and monitoring include:

(A) Full assistance in cognition;

(B) Medical instability;

(C) Potential for skin breakdown or decubitus ulcer;

(D) Multiple health problems or frailty with a strong probability of deterioration; and

(E) Potential for increased self-care, but instruction and support for the client are needed to reach goals.

(c) Maximum hours for each contracted RN service will be established by the Department.

(3) Service Plan

(a) The client and case manager, with the assistance of other involved individuals, will consider in-home service options as well as assistive devices, architectural modifications, and other community-based care resources to meet the service needs identified in the assessment process.

(b) The case manager has responsibility for determining client eligibility for specific services, presenting alternatives to the client, and assuring the cost effectiveness of the plan. The case manager will monitor the plan and make adjustments as needed.

(c) The client has the primary responsibility for choosing and, whenever possible, developing the most cost-effective service options, including the Client-Employed Provider Program and Contracted In-Home Care Agency services.

(d) The Service Plan payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services Waiver or Spousal Pay Programs is prohibited.

# ADMINISTRATIVE RULES

(e) The Department will not pay the client for food and shelter expenses associated with employing a live-in provider.

(f) The Department may authorize a hardship shelter allowance for a Home and Community Based Services waiver client having a live-in provider on or after September 1, 1995, if one of the following conditions is met:

(A) The client will be forced to move from their current dwelling and his/her current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(B) Service costs would significantly increase as a result of the client being unable to provide living quarters for a necessary live-in provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 1-1988, f. & cert. ef. 3-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 11-1989(Temp), f. & cert. ef. 9-1-89; SSD 18-1989, f. 12-29-89, cert. ef. 1-1-90; SSD 7-1990(Temp), f. & cert. ef. 3-1-90; SSD 16-1990, f. & cert. ef. 8-20-90; SSD 1-1992, f. & cert. ef. 2-21-92; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; Renumbered from 411-030-0022; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0070

### Maximum Hours of Service

(1) Maximum Monthly Hours for Activities of Daily Living:

(a) The planning process will use the following limitations for time allotments for ADL tasks:

Eating: Minimal assistance — 5 hours; substantial assistance — 20 hours; full assistance — 30 hours;

(B) Dressing: Minimal assistance — 5 hours; substantial assistance — 15 hours; full assistance — 20 hours;

(C) Bathing and Personal Hygiene: Minimal assistance — 10 hours; substantial assistance — 15 hours; full assistance — 25 hours;

(D) Mobility: Minimal assistance — 10 hours; substantial assistance — 15 hours; full assistance — 25 hours;

(E) Bowel and Bladder: Minimal assistance — 10 hours; substantial assistance — 20 hours; full assistance — 25 hours;

(F) Cognition: Minimal assistance — 5 hours; substantial assistance — 10 hours; full assistance — 20 hours.

(b) If an individual requires full assistance in mobility and does not need the maximum hours for cognition, the unused cognition hours may be used to supplement the ADL total, if such hours are needed to meet detailed ADL service needs.

(c) For two-client households, each person's service needs are considered separately.

(d) Hours authorized for activities of daily living are paid at a rate established and published by the Department. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(2) Maximum Hours for Self-Management Tasks:

(a) The planning process will use the following limitations for time allotments for all services:

(A) Medication Management: Minimal assistance — 2 hours; substantial assistance — 4 hours; full assistance — 6 hours;

(B) Transportation or Escort Services: Minimal assistance — 2 hours; substantial assistance — 3 hours; full assistance — 5 hours;

(C) Meal Preparation: Minimal assistance — Breakfast — 4 hours, lunch — 4 hours, supper — 8 hours; substantial assistance — breakfast — 8 hours, lunch — 8 hours, supper — 16 hours; full assistance — breakfast — 12 hours, lunch — 12 hours, supper — 24 hours;

(D) Shopping: Minimal assistance — 2 hours; substantial assistance — 4 hours; full assistance — 6 hours;

(E) Housecleaning: Minimal assistance — 5 hours; substantial assistance — 10 hours; full assistance — 20 hours.

(b) Rates paid will be established and published by the Department. When a live-in employee is present, these hours may be paid at less than minimum wage according to the Fair Labor Standards Act. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(c) When two clients eligible for self-management task hours live in the same household, the assessed self-management need of each client will be calculated. Payment will be made for the higher of the two allotments and a total of four additional hours per month to allow for the second client's specific needs.

(3) Twenty-Four Hour Availability:

(a) Payment for twenty-four hour availability will be considered only when the client uses a live-in Homecare Worker and requires this availability due to both of the following:

(A) The client requires minimal, substantial, or full assistance with meeting health or safety emergencies; and

(B) The client requires assistance with activities of daily living and/or self-management tasks at unpredictable times throughout most twenty-four hour periods.

(b) The number of hours allowed per month will be negotiable, but have the following maximums:

(A) Minimal assistance — 50 hours;

(B) Substantial assistance — 110 hours;

(C) Full assistance — 159 hours.

(c) Rates for this availability will be established and published by the Department and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020(2). Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(4) Under no circumstances will any provider receive payment from the Department for more than the total amount authorized by the Department on the Service Plan Authorization Form.

(5) Authorized hours are subject to the extent of client need and the availability of funds. Case managers must assess and utilize as appropriate, available friends and family members, cost-effective assistive devices, durable medical equipment and/or housing accommodations, which could reduce the client's reliance on paid in-home service hours.

(6) It is the intent of the Department to authorize paid in-home support services only to the extent necessary to supplement potential or existing resources within the client's personal support system.

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

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDDS 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDDS 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

## 411-030-0080

### Spousal Pay Program

(1) Spousal Pay Program Eligibility: In-home care provided by the spouse of an OSIPM client is compensable by the Department under ORS 411.803 only when the following conditions are met:

(a) The client requires full assistance in at least four of the six activities of daily living, as determined by the assessment, and would require nursing facility placement without in-home support services;

(b) The client has a medically diagnosed progressive debilitating condition which will limit additional activities of daily living, or has experienced a spinal cord injury or similar disability with permanent impairment of the ability to perform activities of daily living;

(c) The spouse demonstrates the capability and health to provide the services and actually provides the principal care for which payment has been authorized; and

(d) The client's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another.

(2) Establishment and maintenance of a centralized waiting list for eligible clients requesting services compensated through the Spousal Pay Program.

(a) The Department's Central Office staff will establish and maintain a list of eligible clients based on referrals from local offices.

(b) The Department has established funding to serve a biennial limit on the number of Spousal Pay clients in the program each month.

(c) When the biennial limit is reached, clients requesting services through the Spousal Pay Program, whose eligibility determination process has been finalized, will be placed on a waiting list. Names on the waiting list will be entered according to the date submitted by the local office.

(d) Prior to submission of name, applicants must have completed:

(A) The financial application process; and

(B) Had an assessment of service needs completed by the appropriate local office staff.

(e) As vacancies occur, eligible waiting list clients will be selected in order of submission, as defined in section (2)(c) of this rule.

(f) Clients on the waiting list may receive services through other appropriate Department programs for which they are eligible.

(3) Payments.

(a) All payments will be prior authorized by the Department or its designee.

# ADMINISTRATIVE RULES

(b) Payments will be based on the equivalent of one-half of the 24-hour availability and self-management task hours, plus the time required for specific documented activities of daily living.

(c) Payment of any respite care will be the responsibility of the spouse and not be paid by the Department.

(d) Payment to a spouse is not considered as a need item to establish initial eligibility or continuing eligibility for OSIPM.

(e) Under ORS 411.802, Homecare Workers who become the spouse of their employer will retain the same level of pay as described in OAR 411-030-0070 if their employer meets the spousal pay eligibility criteria as described in subsection (1)(a) of this rule.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1984, f. 4-27-84, ef. 5-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; Renumbered from 411-030-0027; SDSD 2-2000, f. 3-27-00, cert. ef. 4-1-00; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04

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**Adm. Order No.:** SPD 16-2004

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 6-7-04

**Notice Publication Date:** 5-1-04

**Rules Repealed:** 411-030-0060, 411-030-0065

**Subject:** OAR 411-030-0060 and OAR 411-030-0065 is proposed for repeal and will be placed in Division 31, a Division for Client Employed Provider Program.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

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**Adm. Order No.:** SPD 17-2004

**Filed with Sec. of State:** 5-28-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 5-1-04

**Rules Adopted:** 411-031-0020, 411-031-0030, 411-031-0040, 411-031-0050

**Subject:** Chapter 411, Division 031, The Client Employed Provider Program Rules will be permanently adopted effective June 1, 2004. Rules from Division 030 that pertained to Homecare Workers enrolled in the Client Employed Provider Program are repealed effective 06/01/04 and have been placed in this new Division. Language was added to this new set of rules pertaining to providers of in-home care services.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-031-0020

### Definitions

(1) "Activities of Daily Living" (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in 411-020-0000 through 411-020-0050.

(3) "Area Agency on Aging" (AAA) means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) "Burden of proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(7) "Client" means the individual eligible for in-home services.

(8) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee rela-

tionship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(10) "Contracted In-Home Care" means a service provided through a contractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks.

(11) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(12) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(13) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(14) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(15) "General Household Work" means, according to federal law, housecleaning, chore services, and other household tasks.

(16) "Homecare Worker" (HCW) means a provider, as described in OAR 411-031-0020 and 411-031-0040, who is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes providers in the Spousal Pay Program. Independent Choices Program providers and Personal Care Attendants enrolled through Developmental Disability Services or Mental Health Services are excluded from the term Homecare Worker.

(17) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(18) "Imminent Danger" means there is reasonable cause to believe a person's life or physical well-being is in danger if no intervention is initiated immediately.

(19) "In-Home Services" means those services that assist a client to stay in his/her own home.

(20) "Lack of skills, knowledge and ability to adequately or safely perform the required work" means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(21) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans should include at least one HCW providing 24-hour care for a minimum of five (5) days in a workweek.

(22) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(23) "Office of Administrative Hearings" means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(24) "Oregon Project Independence" (OPI) means the program of in-home services defined in OAR chapter 411, division 032.

(25) "Preponderance of the evidence" means that one party's evidence is more convincing than the other party's.

(26) "Provider" means the individual who actually renders the service.

(27) "Provider enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(28) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

# ADMINISTRATIVE RULES

(29) "Provider Payments Unit" means the Seniors and People With Disabilities unit responsible for processing provider number requests.

(30) "Respite" means securing a paid temporary replacement worker to perform the authorized duties normally performed by the primary provider, in order to allow the primary provider interim relief from providing care to the client.

(31) "Self-Management" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(32) "Seniors and People With Disabilities (SPD)" means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

(33) "Services are not provided as required," means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(34) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(35) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(36) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted pursuant to Administrative Rules 410, Division 007, finding the Homecare Worker unfit.

(37) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client.

(38) "Violations of Protective Service and abuse rules" means the Homecare Worker violated protective service and abuse rules as described in 411-020-0002, Section 1. Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04

## 411-031-0030

### Scope

These Administrative Rules establish the standards and procedures governing Homecare Workers and the fiscal services provided on behalf of Department clients to Homecare Workers enrolled in the Client-Employed Provider Program. Homecare Workers provide home and community-based waiver, state plan and Oregon Project Independence in-home support services to clients of the Department of Human Services and Area Agencies on Aging. In-home support services supplement the ability of Department/AAA clients to continue to live in their own homes.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04

## 411-031-0040

### Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each client/employer, in cooperation with the case manager, or if present, contracted Registered Nurse, may create a job description for the potential employee. Such descriptions will make it clear

that general household work will comprise less than 20% of the live-in employee's time.

(3) Homecare Worker Liabilities: Homecare Workers bear sole responsibility for state and federal income taxes due on earnings as an employee of the client/employer. The Department will not deduct personal income tax withholdings from the Homecare Worker's check. Homecare Workers are not state employees. The only benefits available to Homecare Workers are those negotiated in the collective bargaining agreement between the Home Care Commission and the Service Employee's International Union, Local 503, OPEU. This agreement does not include participation in the Public Employees Retirement System.

#### (4) Interruption of Services

(a) When a client is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider, who is the only live-in provider for a client, may be retained to ensure his/her presence upon the client's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(b) The required meals and lodging expenses of the provider, while providing these services fifty miles or more from the client's residence, will be covered. Such expenses, including mileage allowed under Section (11) of this rule, will be covered by the Office of Medical Assistance Programs, whenever possible.

(5) Selection of Homecare Worker: The client carries primary responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Bureau of Citizenship and Immigration Services Rules.

(6) Employment Agreement: The client/employer retains the full right to establish the employer/employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Department will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by the Department is authorized.

(7) Termination of Employment: Terms of dismissal or resignation notice are the sole responsibility of the employer to establish at the time of employment.

#### (8) Provider Enrollment

(a) Enrollment Standards: A Homecare Worker must meet all of the following standards to be enrolled with the Department's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must have an acceptable criminal history as defined in OAR chapter 410, division 007.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. DHS Central Office may approve limited enrollment, as described in (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in Section (8)(e) of this rule.

(b) The Department may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal history;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal health care programs; or

(G) The Department has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Clearance rechecks: Criminal History clearance re-checks will be conducted at least every other year from the date the Homecare Worker is enrolled. Re-checks may be conducted at the discretion of the Department/AAA.

(d) Limited enrollment: SPD/AAA may approve a limited enrollment for a Homecare Worker to provide services exclusively to a client or to spe-

## ADMINISTRATIVE RULES

cific clients. Generally, limited enrollment would be approved for Homecare Workers providing services exclusively to clients who are family members, friends or neighbors. To be authorized to work for clients in general, a Homecare Worker must complete a Criminal History clearance re-check.

(e) Homecare Worker Orientation: Homecare Workers must participate in an orientation arranged through an SPD/AAA office. The orientation should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

(B) The Homecare Worker fails to complete a criminal history clearance authorization requested by the Department;

(C) The Homecare Worker informs the Department they will no longer be providing Homecare Worker services in Oregon; or

(D) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) Paid Leave:

(a) Live-in Home Care Workers: The Department will authorize one twenty-four hour period of leave each month when a live-in Homecare Worker or Spousal Pay Provider is the only provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one live-in provider for a client.

(A) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and case manager will coordinate the timely use of these hours. Usage may be in one-hour increments.

(B) Transferability of Paid Leave: The Homecare Worker retains the right to earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination.

(b) Hourly Homecare Workers: On July 1st of each year, active Homecare Workers who worked eighty (80) authorized and paid hours in any one (1) of the three (3) previous months of active employment will be credited with one eight (8) hour block of paid leave to use during the current fiscal year (July 1 through June 30). One eight (8) hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from year to year. Such time off must be utilized in one (1) eight (8)-hour block subject to authorization. If the Homecare Worker's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block. If the leave hours are not used within the fiscal year, the balance will be reduced to zero (0). Homecare Workers will not be compensated for paid leave unless the time off work is actually taken.

(10) Department Fiscal and Accounting Responsibility.

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services waiver is prohibited.

(b) Timely Submission of Claims: In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions:

(A) FICA: Acting on behalf of the Client/Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the provider/employee contribution from payments;

(ii) Refund previously withheld amounts when it is determined the provider/employee is not subject to withholdings; and

(iii) Submit the Client/Employer contribution and the amounts withheld from the provider/employee to the Social Security Administration.

(B) FICA is not deducted for Spousal Pay Program providers.

(C) Benefit Fund Assessment: The Workers' Benefit Fund assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. DHS calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client/Employer, the Department will:

(i) Deduct the employee/providers' share of the Benefit Fund Assessment rate for each hour or partial hour worked by each paid Homecare Worker.

(ii) Collect the client/employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received.

(iii) Submit the client and provider's contributions to the Workers' Benefit Fund.

(D) The Department will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of Section (10)(c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department will deduct from the provider's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department will pay the deducted amount monthly to the designated labor organization.

(11) Homecare Worker Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Office of Medical Assistance Programs (OMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for OMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the Home Care Commission's bargaining agreement with the Service Employee's International Union.

(13) Overpayments

(a) An overpayment is any payment made to a Homecare Worker by the Department that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment: Occurs when the Department failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment: Occurs when the Department overpays the Homecare Worker due to a misunderstanding, unintentional or intentional error.

(C) Fraud Overpayment: The Department of Justice, Medicaid Fraud Unit will determine when fraud has occurred and it has resulted in an overpayment.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, IRS back taxes, and educational loans.

(B) Administrative or Provider Error Overpayments will be collected at no more than five percent (5%) of the Homecare Worker's gross wages.

(C) Fraud Overpayments: The Department of Justice, Medicaid Fraud Unit will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04

# ADMINISTRATIVE RULES

## 411-031-0050

### Administrative Review and Hearing Rights

This rule establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

(1) Exclusions to Appeal and Hearings Rights:

(a) The following are excluded from this administrative review and hearing rights process:

(A) Terminations based on criminal history. The Homecare Worker has the right to a hearing within OAR 410-007-0200 through 410-007-0380.

(B) Homecare Workers that have not worked in the last twelve months. The provider enrollment may become inactivated but will not be suspended or terminated. To activate the provider enrollment number, the HCW must complete an application and criminal history clearance.

(C) Homecare Workers that fail to complete a criminal history recheck.

(D) Homecare Workers that are denied a provider enrollment number at the time of initial application.

(E) Homecare Workers not currently providing services to any clients whose provider enrollment is inactivated while an investigation is being completed.

(F) Homecare Workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal programs.

(b) These rules only apply to Homecare Workers as defined in OAR 411, division 031. These rules do not include any other providers enrolled, licensed or otherwise registered by the Department of Human Services.

(2) Violations Suspending or Terminating Provider Enrollment

(a) The Department may suspend or terminate the Homecare Worker's provider enrollment number when a Homecare Worker:

(A) Violates the requirement to maintain a drug-free work place;

(B) Has an unacceptable criminal history as defined in OAR chapter 410, division 007,

(C) Lacks the skills, knowledge, and ability to adequately or safely perform the required work,

(D) Violates protective service and abuse rules, as defined in OAR chapter 411, division 020;

(E) Commits fiscal improprieties;

(F) Fails to provide services as required;

(G) Engages in unacceptable conduct at work; or

(H) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal health care programs.

(3) Suspension: The Department may suspend a provider enrollment immediately, prior to the outcome of the administrative review when an alleged violation presents imminent danger to current or future clients. The Homecare Worker may file an appeal of this decision directly to DHS Central Office.

(4) Burden of Proof: The Department of Human Services has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0050.

(5) Administrative Review Process: The Administrative Review process allows an opportunity for the program manager or DHS Central Office to review and reconsider the decision to terminate or suspend the Homecare Worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department changing its decision.

(a) At the time a suspension or proposed termination of the Homecare Worker's provider enrollment is made, the Department will issue a written notice that will include:

(A) An explanation of the reasons for suspension or proposed termination of the provider enrollment;

(B) The alleged violation as listed in OAR 411-031-0050; and

(C) The Homecare Worker's appeal rights, including the right to union representation, and where to file the appeal.

(b) For suspensions or terminations based on substantiated protective services complaint, the letter may only contain the limited information allowed by law.

(c) Informal Conference: At the first level of appeal, an informal conference, (described in OAR 461-025-0325), if requested by the Homecare Worker, will be scheduled with the Homecare Worker and any union representative. The Program Manager, or designee, will meet with the Homecare

Worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(d) The Homecare Worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within ten (10) business days of the decision affecting the worker. The Homecare Worker may file an appeal in the following order:

(A) The Program Manager (or designee) at the local office;

(B) DHS Central Office;

(C) Office of Administrative Hearings:

(i) A Homecare Worker can file a request for a hearing with the Office of Administrative Hearings if all levels of review have been exhausted, and the Homecare Worker continues to dispute the Department's decision. The request can be filed through the local office with the Office of Administrative Hearings, as described in OAR 137, division 003. The request for the hearing must be filed within 30 calendar days of the written notice from DHS Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings will determine whether the Departments' decision to terminate the provider enrollment number is affirmed or reversed. The ALJ will issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to Homecare Workers by this rule, other than the right to a hearing on the Department's decision to terminate the Homecare Worker's provider enrollment number.

(e) In the first two steps of the administrative review process, a written response of the outcome of the review will be sent to the Homecare Worker within ten business days of the review date.

(f) If the Administrative Review determines that the decision to immediately suspend the provider enrollment was unjustified, the reviewer or designee will contact Provider Payments Unit to restore the provider number. The written response will notify the Homecare Worker that the provider enrollment will be restored from suspended status.

(6) Termination if No Appeal Filed: The decision of the reviewer will become final if the Homecare Worker does not appeal within ten business days of the notice of the decision affecting the Homecare Worker. Once the time period for appeal has expired, the reviewer or designee will contact the Provider Payments Unit to terminate the provider number.

(7) Request for Extension to Deadline: The Department or the Homecare Worker may request an extension of the 10-day deadline for circumstances beyond their control, if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04

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**Rules Amended:** 411-032-0000, 411-032-0001, 411-032-0005, 411-032-0010, 411-032-0015, 411-032-0020, 411-032-0044

**Subject:** Oregon Project Independence rules are permanently amended due to the implementation of the collective bargaining agreement between DHS and the Service Employees International Union which represents homecare workers. Data collection requirements were clarified in OAR 411-032-0015. Clarification statements were added to 411-032-0000 and 411-032-0020. Rule references were added throughout and stylistic changes, such as replacing "shall" with "will" or "must," were made where appropriate.

**Rules Coordinator:** Lynda Dyer—(503) 945-6954

## 411-032-0000

### Definitions

For purposes of these rules:

(1) "Activities of Daily Living" (ADL) means those personal functional activities required by an individual for continued well-being, health and safety. This includes eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Administrative Costs" means those expenses associated with the overall operation of the Oregon Project Independence (OPI) Program that are not directly attributed to a service. These costs can include, but are not limited to, costs associated with accounting services, indirect program costs, facility expenses, etc.

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(3) "Adult Day Care" means a structured comprehensive program designed to meet the needs of functionally and/or cognitively impaired adults. Adult day care provides individually planned care, supervision, social and related support services, and health monitoring in a protective setting during any part of a day, but less than 24-hour care.

(4) "Advisory Council" means an advisory council of the authorized agencies.

(5) "Alzheimer's Disease and Other Related Disorders" means a progressive and degenerative neurological disease that is characterized by dementia including the insidious onset of symptoms of short-term memory loss, confusion, behavior changes and personality changes. It includes dementia caused from any one of the following disorders:

(a) Multi-Infarct Dementia (MID);

(b) Normal Pressure Hydrocephalus (NPH);

(c) Inoperable Tumors of the Brain;

(d) Parkinson's Disease;

(e) Creutzfeldt-Jakob Disease;

(f) Huntington's Disease;

(g) Multiple Sclerosis;

(h) Uncommon Dementia such as Pick's Disease, Wilson's Disease, and Progressive Supranuclear Palsy; or

(i) All other related disorders recognized by the National Alzheimer's Association.

(6) "Area Agency" means the agency designated by the Department as an Area Agency on Aging that is charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term "Area Agency" (AAA) is inclusive of both Type A and B Area Agencies on Aging as defined in ORS 410.040 to 410.350.

(7) "Area Plan" means the approved plan for providing authorized services under Oregon Project Independence.

(8) "Assisted Transportation" means escort services that provide assistance to a person who has difficulties (physical or cognitive) using regular vehicular transportation.

(9) "Authorized Service" means any service designated by the Department and these rules to be eligible for Oregon Project Independence funding.

(10) "Case Management" means a service designed to individualize and integrate social and health care options for or with a person being served. Its goal is to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: entry, assessment, service implementation, and evaluation. Case management services will be provided in accordance with OAR 411-030-0050.

(11) "Case Management Costs" means those expenses associated with individualizing and integrating social and health care options for or with a person receiving a service. Cost elements should include time spent with the client, travel to and from a client's home, mandated training time, case recording, reporting, time spent arranging for and coordinating services for the client, supervision and staffing time related to a client, and time spent in the initial assessment of a person who does not become an OPI client.

(12) "Case Manager" means a person who ensures client entry, assessment, authorization of service, service planning, service implementation, and evaluation of the effectiveness of the services.

(13) "Chore Service" means assistance with heavy housework, yard work or sidewalk maintenance for persons who need assistance with these activities to assure safety.

(14) "Client" means the individual eligible for Oregon Project Independence services.

(15) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides hourly services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR chapter 411, division 031.

(16) "Client's Adjusted Income" means the income for all household members after deductions for household medical expenses as defined in OAR 411-032-0020(5).

(17) "Contracted In-Home Care" means a service provided through a contractor, that consists of minimal or substantial assistance with activities of daily living and self-management tasks. Clients that require full assistance with eating may also utilize contracted in-home care.

(18) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(19) "Contracted In-Home Care Specialist" means an employee of the contract agency who has recognized capability to provide the in-home care service tasks authorized for clients they serve.

(20) "Department of Administrative Services" means the Department of Administrative Services for the State of Oregon.

(21) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, unless otherwise specifically defined.

(22) "Department of Revenue" means the Oregon Department of Revenue.

(23) "Diagnosed" means, for purposes of these rules, that the client's physician has reason to believe and indicates that the client has Alzheimer's Disease or a Related Disorder.

(24) "Direct Service Costs" means those expenses for direct labor that are attributable to a client-related service. For example, the direct service cost of home care is the cost of time actually spent providing home care services in the home. Other direct service costs are those that are directly attributable to a client-related function.

(25) "Eligibility Determination" means the process of deciding if a prospective client meets the requirements necessary to receive authorized services under Oregon Project Independence.

(26) "Exception or Variances" means that an agency or individual contractor or subcontractor is not required to meet one or more specific requirements of these rules.

(27) "Fiscal Records and Data" means all information pertaining to the financial operation of an agency or program.

(28) "Gross Income" means household income from salaries, interest and dividends, pensions, Social Security, railroad retirement benefits, and any other income prior to any deductions.

(29) "Health Services" means the Department of Human Services, Health Services.

(30) "Home Care or Homemaker Services" means all those ADL or IADL in-home services, requiring minimal to substantial assistance, necessary to help clients achieve the greatest degree of independent functioning.

(31) "Homecare Worker" means a provider, as described in OAR 411-030-0020 and OAR 411-031-0040, who is directly employed by the client via the Client Employed Provider Program, and who provides hourly services to eligible clients.

(32) "Home Delivered Meal" means a meal paid from OPI funds and delivered to a client who is receiving at least one additional OPI service, excluding Case Management.

(33) "Home Health Agency" means a licensed (in accordance with OAR 333-027-0000 through 0170), public or private agency providing coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services in at least one of the following therapeutic services: Physical therapy; Occupational therapy; Speech Therapy; or Home health aide services.

(34) "Home Health Service" means items and services furnished to an individual by a home health agency, or by others under arrangement with such agency, on a visiting basis in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(35) "Household" means the client, spouse and any dependents as defined by the Internal Revenue Service.

(36) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times. None of these hours are exempt from federal or state minimum wage or overtime laws.

(37) "In-Direct Cost" means

(a) Incurred for a common or joint purpose benefiting more than one cost objective, and

(b) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect cost," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses, to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

(38) "In-Home Services" means those services that assist a client to stay in his/her own home.

(39) "Institutions" means any state, community or private hospital and any nursing facility.

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(40) "Instrumental Activities of Daily Living (IADL)" means those self-management activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen assistance (except for administering medications, making judgments regarding dosage of prescription medications, and adjusting oxygen levels), providing transportation, preparing meals, shopping, housekeeping, paying bills and performing banking functions.

(41) "Personal Care Service" means in-home services provided to maintain, strengthen, or restore an elderly individual's functioning in their own home when an individual is dependent in one or more ADLs, or when an individual requires substantial assistance, and one or more of the following conditions exist:

- (a) Medical instability;
- (b) Potential for skin breakdown or pressure ulcers;
- (c) Multiple health problems or frailty with a strong possibility of deterioration; or
- (d) Potential for increased self-care, but client instruction and support are needed to reach goals.

(42) "Program Records and Data" means any information of a non-fiscal nature.

(43) "Program Support Costs" means those expenses associated with managing the services provided either through contract or directly by the Area Agency on Aging, that are attributable to a specific service.

(44) "Provider" means the individual who actually renders the service.

(45) "Provider Enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purposes of receiving payment for authorized services provided to the Department clients. Provider enrollment includes issuance of a provider number.

(46) "Provider Number" means an identifying number, issued to each Homecare Worker or Contract In-Home Service Agency, who is enrolled as a provider through the Department.

(47) "Provider Payments Unit" means the Seniors and People with Disabilities unit responsible for processing provider number requests.

(48) "Registered Nurse Services" mean services provided by a registered nurse on a short-term or intermittent basis that include but are not limited to: interviewing the client and, when appropriate, other relevant parties; assessing the client's ability to perform tasks; preparing a care plan that includes treatment needed by the client; monitoring medication; training and educating care providers; and setting realistic goals and outcomes for the client.

(49) "Respite" means paid temporary services to provide relief for families or other caregivers. In-home and out-of-home respite care may be provided on an hourly or daily basis, including 24-hour care for several consecutive days. Range of tasks to be provided may include: supervision, companionship and personal care services usually provided by the primary caregiver of the disabled adult. Services appropriate to the needs of individuals with dementing illnesses are also provided.

(50) "Self Management" means those activities, other than activities of daily living, as described under Instrumental Activities of Daily Living in 411-032-0000(40).

(51) "Seniors and People with Disabilities" means Seniors and People with Disabilities of the Department of Human Services.

(52) "Service Provider" means any agency or program that provides one or more authorized services under Oregon Project Independence.

(53) "Service Determination" means the process of determining the proper authorized service for each client.

(54) "Service Need" means those functions or activities with which the client requires the Department or Area Agency on Aging support.

(55) "Service Priority" means the order in which the Department clients are found eligible for the Oregon Project Independence program.

(56) "Substitute Care" means services provided by adult foster homes, residential care facilities and specialized living facilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.410

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

## 411-032-0001

### Goals

The goals of Oregon Project Independence are to:

- (1) Promote quality of life and independent living among older persons;

- (2) Provide preventive and long-term care services to eligible individuals to reduce the risk for institutionalization and promote self-determination;

- (3) Provide services to frail and vulnerable older adults who are lacking or have limited access to other long-term care services; and

- (4) Optimize older individuals' personal and community support resources.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.420

Hist.: SSD 12-1988, f. & cert. ef. 12-2-89; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

## 411-032-0005

### Administration

- (1) Advisory Council: Each area agency will show evidence that the advisory council of the area agency, and the community were involved in the identification of need, selection of services to be offered, and the development of the Area Plan.

- (2) Area Plan:

- (a) Each area agency will submit an Area Plan by a date specified and on forms provided by the Department.

- (b) The Area Plan must, at a minimum, contain:

- (A) The types and amounts of authorized services to be offered;

- (B) The costs of these services;

- (C) How the agency will ensure timely response to inquiries for service;

- (D) How clients will receive initial and ongoing periodic screening for other community services, including Medicaid;

- (E) How eligibility will be determined;

- (F) How the services will be provided;

- (G) The agency policy for prioritizing OPI service delivery;

- (H) The agency policy for denial, reduction or termination of services;

- (I) The agency policy for informing clients of their right to grieve adverse eligibility, service determination decisions, and consumer complaints;

- (J) How fees for services will be developed, billed, collected and utilized;

- (K) The agency policy for addressing client non-payment of fees, including when exceptions will be made for repayment and when fees will be waived; and

- (L) How service providers will be monitored and evaluated.

- (3) Contracts:

- (a) Contracts between the Department and Area Agencies on Aging for Oregon Project Independence will be effective each year on July 1, unless otherwise agreed to by the Department. These contracts will be based on the Area Plan and must, at a minimum, contain:

- (A) A budget showing the amounts of Oregon Project Independence funds;

- (B) The types of authorized services to be offered;

- (C) The stipulation that contracted authorized services will be in accordance with the standards and requirements provided in these rules, and in accordance with the In-Home Services Rules (OAR chapter 411, divisions 030 and 031 and OAR 411 division 015), and, if applicable, in accordance with the In-Home Care Agencies Rules (OAR chapter 333, division 027);

- (D) The stipulation that required data will be gathered, reported and monitored in accordance with these rules and the Department;

- (E) A section pertaining to general provisions as required by the Department of Administrative Services;

- (F) A provision that area agencies will submit service provider contracts and amendments to the department upon request from the Department; and

- (G) Fee for service schedules developed in accordance with these rules.

- (b) Contracts between Area Agencies on Aging and service providers will be signed and kept on file by the area agencies for not less than three years for all services funded through Oregon Project Independence. The contracts must, at a minimum, contain:

- (A) A budget or a maximum amount of Oregon Project Independence funds, as well as all other resources devoted to Oregon Project Independence under the contract;

- (B) The types and amounts of authorized services to be offered and the rate per unit for each authorized service;

- (C) The stipulation that authorized services will be offered in accordance with the standards and requirements provided in these rules, and in

# ADMINISTRATIVE RULES

accordance with the In-Home Services Rules, OAR chapter 411, divisions 030 and 31 and OAR chapter 411 division 015, and, if applicable, in accordance with the In-Home Care Agencies Rules, OAR chapter 333, division 027;

(D) The stipulation that required data will be gathered and reported in accordance with these rules and the Department; and

(E) A section pertaining to general provisions as required by the Department of Administrative Services.

(c) All contracts as described in this rule can be amended with the consent of both parties.

(d) All contracts as described in this rule will contain provisions for cancellation of the contract for non-performance and violation of the terms of the contract.

(4) Personnel Practices and Procedures:

(a) Each area agency and service provider will maintain written personnel policies.

(b) The personnel policies will contain all items required by state and federal laws and regulations, including such items as:

(A) An affirmative action plan; and

(B) Evidence that the area agency and service provider are equal opportunity employers.

(C) Each area agency and service provider will maintain a personnel record on each employee.

(5) Non-Compliance:

(a) Non-compliance to these rules, except in those cases where an exception or variance has been granted by the Department may result in a reduction or termination of Oregon Project Independence funding;

(b) The determination of the amount of reduced funding will be made by the administrator of the Department;

(c) Any funds that are either reduced or terminated from a funding grant will be reserved by the Department for redistribution at its discretion. At the end of the biennium, unexpended funds will be returned to the State General Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420, ORS 410.450 & ORS 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

## 411-032-0010

### Authorized Services and Allowable Costs

(1) Authorized Services:

(a) Oregon Project Independence funds will only be expended for administration and direct service for the following authorized services:

(A) Homemaker (Home Care);

(B) Chore;

(C) Assisted Transportation (Escort);

(D) Home Health;

(E) Personal Care;

(F) Adult Day Care;

(G) Respite;

(H) Case Management;

(I) Registered Nurses;

(J) Home Delivered Meals, only when an individual also receives other OPI funded services, excluding case management; and

(K) Other services authorized by the administrator of the Department or his/her designee.

(b) Home health services will meet the standards and requirements of the Home Health Agencies Rules (OAR chapter 333, division 027) and can only be offered through a home health agency licensed by the Department of Human Services, Health Services.

(c) Services provided by an In-Home care agency will meet the standards and requirements of In-Home Care Agencies under ORS 443.305 to 443.350 and OAR chapter 333 division 536, and can only be offered through a home care agency licensed by the Department of Human Services, Health Services.

(d) Services provided by a Homecare Worker will meet the standards and requirements of the Home Care Commission under ORS 410.600 to 410.614 and OAR chapter 411, division 031.

(e) Services provided using the Client Employed Provider Program should meet the standards and requirements of chapter 411, division 030.

(f) Area Agencies on Aging will not directly provide authorized services to clients, unless they are providing such services on the effective date of these rules, or unless direct provision is required to assure an adequate supply of service. Those area agencies already providing direct services

will not be required to seek a variance or exception as defined in these rules. Those providers who are direct providers of services are required to meet any regulatory and licensing requirements in accordance with applicable law and rules. The provision of authorized services will be contracted to service providers by area agencies.

(2) Computation of Allowable Costs — Allowable costs by area agencies are those associated with the direct provision of services to clients and such administrative costs as may be required to assure adequate services and to provide information to the Department.

(3) Administrative Costs — Administrative costs will not exceed ten percent of Oregon Project Independence funds.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420 & 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 9-2002(Temp), f. & cert. ef. SPD 11-2003, f. & cert. ef. 5-2-0311-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

## 411-032-0015

### Data Collection, Records, and Reporting

(1) Data Collection:

(a) The collection of required program and fiscal data associated with Oregon Project Independence will be on forms and data systems as approved by the Department.

(b) Each area agency and service provider will collect data as required by the Department on eligible clients receiving authorized service.

(c) All authorized service data collected on individual clients, supported by Oregon Project Independence, will contain the client's Social Security Number and date of birth.

(d) For clients under the age of 60, documentation will be placed in the client's file that the client has been diagnosed as having Alzheimer's Disease or other related disorder. Documentation must come verbally or in writing from the client's physician. The type of "other related disorder" will also be specified in this documentation.

(2) Records:

(a) Each area agency and service provider will maintain all books, records, documents and accounting procedures that reflect all administrative costs, program support costs, direct service costs, and case management costs expended on Oregon Project Independence. These records will be retained for not less than three years.

(b) These records will be made available upon request to representatives from the Department, or to those duly authorized by them.

(3) Fiscal and Program Reporting:

(a) Fiscal and program reports will be completed on forms provided by the Department.

(b) Fiscal and program reports will be submitted to the Department by the specified due dates.

(c) Fiscal/Program reports must, at a minimum, include:

(A) Current cumulative expenditures;

(B) Cost per unit of authorized service;

(C) Administrative costs;

(D) Program support costs;

(E) Case management costs;

(F) Direct service costs;

(G) The amount of fee for service assessed, billed, expended and collected and other funds received;

(H) Number of unduplicated clients year to date served for each authorized service year to date, and unduplicated case count year to date;

(I) Number of units of service for each authorized service; and

(J) Demographic, social, medical, physical, functional, and financial data, including a breakdown of the income levels of OPI clients, on individual clients as required by the Department on the SPD Client Assessment/Planning System (CA/PS) and in Oregon ACCESS database.

(4) Confidentiality The use or disclosure by any party of any information concerning a recipient or client of authorized services described in these rules, for any purpose not directly connected with the administration of the responsibilities of the Department, area agency or service provider is prohibited except with written consent of the recipient, or their legal representative. Disclosure of client or recipient information will meet Department requirements.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.470 & ORS 410.480

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

# ADMINISTRATIVE RULES

## 411-032-0020

### Eligibility and Determination of Services

#### (1) Eligibility:

(a) In order to qualify for services from an area agency or service provider, each client or recipient must:

(A) Be 60 years old or older; or be under 60 years of age and be diagnosed as having Alzheimer's Disease or a related disorder;

(B) Not be receiving financial assistance or Medicaid, except Food Stamps, Qualified Medicare Beneficiary or Supplemental Low Income Medicare Beneficiary Programs; and

(C) Meet the requirements of the Long-Term Care Services Priority Rule, OAR 411, division 015.

(b) Eligibility determination will be required before any client may receive services from an area agency or service provider. The documentation required by OAR 411-032-0015(1)(d) must be obtained before a client under the age of 60 may be determined to be eligible.

(c) Eligibility determination will be the responsibility of the area agency. In those instances when eligibility determination is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the eligibility determination process, including an independent review by the area agency of a representative sample of cases.

(d) Any person residing in a nursing facility, assisted living facility, residential care facility, or adult foster care setting will not be eligible for authorized services. This will not restrict the ability to move a client from such institutions to their home to receive care, when judged more appropriate, based on medical, financial, physical, functional, and social considerations.

(e) The Department will determine the factors that constitute a client being at risk of institutionalization. These factors are currently defined in the Long-Term Care Services Priority Rules, OAR Chapter 411, division 015. These factors will be utilized by each area agency and service provider.

(f) Applicants will receive written notification of eligibility determination.

#### (2) Determination of Services:

(a) Determination of services will rest with the area agency. In those instances when determination of services is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the determination of service process, including an independent review by the area agency of a representative sample of cases.

(b) The determination of services will be based on each client's financial, physical, functional, medical, and social need for such services and in accordance with OAR chapter 411 division 015.

(c) Determination of services provided under Oregon Project Independence will be limited to the authorized services allowed by these rules.

(d) The determination of services will be made:

(A) After eligibility determination; and

(B) At regular intervals but not less than once every twelve months.

(e) Clients will receive written notification of determination of services:

(A) Notice will include the maximum monthly hours of service authorized, the hourly and maximum monthly client fee, the service rate, and provider contact information.

(B) Written service notification will be provided to the client upon initial determination of services, at annual reassessment and when there are changes to the determination of services.

#### (3) Priority of Services:

(a) Eligible clients will receive authorized services on a priority basis, with highest priorities receiving services first.

(b) Area Agencies on Aging may establish local priorities for service authorization. This rule will take precedence over local priorities. Local priorities will not conflict with this rule.

(c) Priority for authorized services will be:

(A) Maintaining clients already receiving authorized service as long as their condition indicates the service is needed.

(B) Clients who will immediately be placed in an institution if needed authorized services are not provided and meet the Long-Term Care Services Priority Rules, OAR chapter 411, division 015.

(C) Clients who are probably to be placed in an institution if needed authorized services are not provided.

(4) Appeals: Persons for whom services are denied, disallowed, or reduced through eligibility determination or service determination will be entitled to request review of the decision through the Area Agency on Aging grievance review procedure, set forth in agency policy.

(a) Clients will continue to receive services until the disposition of the local agency grievance review.

(b) The Area Agency will provide the applicant with written notification of the grievance review determination decision.

(c) Applicants that disagree with the results of the Area Agency grievance review have a right to an Administrative Review with the Department of Human Services, Seniors and People with Disabilities, pursuant to ORS Chapter 183. This information will be provided to the applicant in a written notification at the time of the grievance review decision.

(d) Applicants requesting an Administrative Review from the Department will not be eligible for continued services through Oregon Project Independence.

(e) All persons, including those who may have previously been terminated from Oregon Project Independence, have the right to apply for OPI services at any time.

#### (5) Fee for Services:

(a) The Department will establish a fee for service schedule. The schedule will be applied to each client for all OPI services except Home Delivered Meals and Case Management.

(b) A recommended donation will be established for OPI-funded Home Delivered Meals and implemented in the same manner as for the Older Americans Act meal programs.

(c) A minimum income level and fee for service schedule will be established and reviewed annually by the Department after consulting with the Governor's Commission on Senior Services.

(d) Fees for service will be charged based on a sliding fee schedule to all clients whose annual income exceeds the minimum, as established by the Department.

(e) Area agencies will develop procedures for assessing, billing, collecting, and expending fees.

(f) The fee for service schedule will be applied to the local rate specific to the service and the type of provider for the client.

(g) For purposes of these rules, a client's gross annual income will include:

(A) Salaries from the household;

(B) Interest and dividends from the household;

(C) Pensions, annuities, Social Security, and railroad retirement benefits from the household; and

(D) Any other income from the household.

(h) All medical costs including prescription drugs that are the responsibility of the household, may be deducted from the client's gross annual income.

(I) Fees for service will be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(j) A record of all fees for service will be kept by each area agency and reported monthly to the Department.

(A) Fee for service determination forms will be a part of each client case record.

(B) Fee for service determination forms will meet minimum requirements for documentation, as defined by the Department.

(C) The maximum monthly authorized fee will be recorded on each client's Oregon ACCESS record upon initial service determination and at least annually thereafter, at time of reassessment.

(D) Clients will receive written notification of the hourly and maximum monthly authorized fee upon initial service determination and whenever there is a change.

(k) Nothing in these rules will prevent any client of Oregon Project Independence, or client's family, from making a donation or contribution. Such donations will also be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(1) The decision to terminate Oregon Project Independence services for non-payment of assessed fees for service will be the responsibility of the local area agency.

(A) The Area Agency will establish a written policy addressing client non-payment of fees to be reviewed and approved in the agency area plan.

(B) Clients will be given a copy of the agency policy pertaining to client non-payment of fees upon initial eligibility determination.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.430 & ORS 410.450

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDD 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

# ADMINISTRATIVE RULES

## 411-032-0044

### Fee for Service Schedule

(1) Fees start at the federal poverty level net monthly income and increase by approximately \$25 income increments up to 200% of the federal poverty level. Families with net monthly incomes over 200% of the federal poverty level will pay the full hourly rate of services provided. The Department, after consultation with the Governor's Commission on Senior Services, will develop and publish a fee schedule for services based on the federal poverty level and distribute the schedule to the area agencies once a year.

(2) Maximum monthly fees will not be greater than 30% of net monthly income for a family of one, and 40% of net monthly income for families of two or more.

(3) Area agencies and providers will not be required to make a second attempt to collect Oregon Project Independence fees for service of less than \$5.00 per month.

Stat. Auth.: ORS 410.470

Stats. Implemented: ORS 410.470

Hist.: SSD 15-1985, f. 12-31-85, ef. 1-1-86; SSD 9-1988, f. & cert. ef. 8-1-88; SSD 13-1989, f. & cert. ef. 9-1-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD-11-1990(Temp), f. & cert. ef. 4-27-90; SSD 17-1990, f. & cert. ef. 8-20-90; SSD 11-1991, f. & cert. ef. 6-14-91; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

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**Department of Justice**  
**Chapter 137**

**Adm. Order No.:** DOJ 8-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:** 12-1-03

**Rules Adopted:** 137-025-0045, 137-025-0115, 137-025-0117, 137-025-0181, 137-025-0182, 137-025-0183, 137-025-0184, 137-025-0186, 137-025-0188, 137-025-0189

**Rules Amended:** 137-025-0020, 137-025-0160, 137-025-0180

**Subject:** 1. Adopts/amends rules to implement 2003 legislation authorizing linked progressive bingo games.

2. Amends OAR 137-025-0160(3) to ease bingo number display requirements for small prize games.

**Rules Coordinator:** Carol Riches—(503) 378-6313

### 137-025-0020

#### Definitions

For purposes of these rules, the following definitions shall apply:

(1) The "Department" means the Oregon Department of Justice.

(2) "Bingo" means a game played on a printed form or card containing a grid bearing horizontal and vertical lines of numbers. Each card must include the same number of numbers. The numbers may be pre-printed or completed by the players. Numbers are drawn from a receptacle containing no more than 90 numbers, until there are one or more winners. A winner(s) is determined by the player(s) to first cover or uncover the selected numbers in a designated combination, sequence or pattern as they appear on the player's card. The progress toward a "bingo" of the non-winning players shall be irrelevant in determining the prize payout for the winner(s). A "blackout" (i.e., covering all squares on the grid) shall qualify as a designated sequence or pattern. Games which do not qualify as bingo include, but are not limited to, games marketed as "quick shot bonanza," "pick X" bingo, and "pick-8" bingo in the format utilizing a 40 square grid.

(3) "Pull Tab" means a single folded or banded ticket or card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol or set of symbols, a few of which numbers or symbols out of every set of pull tabs have been designated in advance and at random as prize winners.

(4) "Raffle" means a form of a lottery in which each participant buys a ticket for an article or money designated as a prize and where the winner is determined by a random drawing. A raffle includes the elements of consideration, chance and a prize. Consideration is presumed to be present unless it is clearly and conspicuously disclosed to prospective participants that tickets to the drawing may be acquired without contributing something of economic value.

(5) "Door Prize Drawing" means a drawing held by a nonprofit organization at a meeting of the organization where both the sale of tickets and the drawing(s) occur during the meeting and the total value of the prize(s) does not exceed \$500.

(6) "Handle" means the total amount of money and other things of value bet on the bingo, lotto or raffle games, the value of raffle chances sold or the total amount collected from the sale of imitation money during Monte Carlo events.

(7) "Responsible Officials of the Organization" means the officers of the organization and the board of directors, if any.

(8) "Bingo Game Manager" means any person who is responsible for the overall conduct of bingo games of a charitable, fraternal or religious organization.

(9) "Regular Bingo Game" means a bingo game where players use hard cards or paper cards from a packet which have been purchased for a package price and may be used by players during more than one game of a session.

(10) "Special Bingo Game" means a bingo game where players must purchase individual paper cards where use is limited to a specific bingo game.

(11) "Concessions" means the sale of food, beverages, related bingo supplies, such as daubers, glue and other retail items using a bingo theme sold to bingo players.

(12) "Management or Operation" means supervising the games.

(13) "Administration or Operation" means supervising the games.

(14) "Supervise" means to direct, oversee and inspect the work of others; to exercise authority with respect to decision-making or the implementing of decisions; and responsibility for the performance of functions integral to the operation of bingo and raffles, including operation of the games and operation of the facility used to conduct the games.

(15) "Drawing" means an approved random selection process for determining winners in a raffle. To be random, each number in the drawing must have an equal chance of selection.

(16) "Monte Carlo event" means a gambling event at which wagers are placed with imitation money upon contests of chance in which players compete against the house. As used in this subsection, "imitation money" includes imitation currency, chips or tokens.

(17) "Monte Carlo equipment supplier" means a person or organization who leases equipment to a non-profit tax exempt organization for operation of a Monte Carlo event.

(18) "Monte Carlo event contractor" means a Monte Carlo event supplier who is employed to operate a Monte Carlo event on behalf of a non-profit tax exempt organization.

(19) "Monte Carlo event licensee" means any organization which has obtained a Monte Carlo event license pursuant to OAR 137-025-0410.

(20) "Related party" means an officer, director or bingo game manager of the licensed organization. Related party includes the family of such an individual. Family shall include a spouse, domestic partner, brothers and sisters (whether by the whole or half blood), ancestors and lineal descendants. Related party also includes corporations wherein the preceding individuals directly, or indirectly, own 50% or more of the capital interest and a trust in which the preceding individuals serve as fiduciaries or are named beneficiaries.

(21) "Sleeper Bingo" — A bingo game where the licensee adopts a house rule providing that a bingo prize may be shared between player(s) announcing a qualifying bingo on the last number called and player(s) who achieved a qualifying bingo as a result of a previously called number.

(22) "Linked Progressive Bingo Game" means a standard non-linked bingo game where an additional prize is paid to a winner based upon a designated combination, sequence or pattern. The additional prize is paid from a common prize pool which is collected from multiple participating licensees.

(23) "Linked Progressive Bingo Contractor" means a person or organization who leases equipment to bingo licensees for operation of a linked progressive bingo game.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1) & 914

Stats. Implemented: HB 3009, 1997, SB 716, 2003

Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 1-1989, f. & cert. ef. 3-1-89; JD 1-1991, f. 2-1-91, cert. ef. 3-1-91; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

### 137-025-0045

#### Operation of Linked Progressive Bingo Games- Generally

Operation of linked progressive bingo games shall be of two types: single hall and multiple hall games. Multiple hall games shall be operated by a licensed Linked Progressive Bingo Contractor. Single hall games shall also be operated by a Linked Progressive Bingo Contractor except that linked progressive bingo games played at a single hall, involving prizes not

# ADMINISTRATIVE RULES

exceeding \$2500, may be operated by the licensees operating non-linked games at that location.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0115

### Application for Linked Progressive Bingo Contractor License

(1) An application for a Linked Progressive Bingo Contractor license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement as to whether or not the organization has had a license to provide equipment or services for bingo or other gambling activity denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full names and physical addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) Proof of compliance with applicable state and local business registration laws and regulations.

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees, and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection and testing of equipment and to examine records maintained by licensees.

(d) A description of the Linked Progressive Bingo Game(s) which the applicant intends to offer to Oregon bingo licensees.

(e) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fee is \$500.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0117

### Application for Linked Progressive Bingo Game Escrow Agent

(1) An application for a Linked Progressive Bingo Game Escrow Agent license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the person or organization;

(b) A statement as to whether or not the person or organization has had a license to provide equipment or services for bingo or other gambling activity denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full name(s) and physical address(es) of the responsible official(s) of the applicant.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the applicant:

(a) Proof of compliance with applicable state and local business registration laws and regulations.

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees, and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection of equipment and to examine records maintained by licensees.

(d) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fee is \$50 for an applicant licensed pursuant to ORS 696.505 et seq. The fee for all other applicants is \$250.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0160

### Conduct of Bingo in General

(1) No employee of the licensee involved in the conduct of bingo games may receive a prize or participate as a player at a bingo game session in which the employee is actually involved in the conduct of the bingo games.

(2) All prizes awarded in connection with bingo games, whether in cash or merchandise, and all rules by which such prizes may be won, including costs to a participant, shall be disclosed to each participant prior to that participant taking part in the activity or paying for the opportunity to take part in the activity. Disclosures shall be made by conspicuously posting or displaying upon the premises where the activity is operated a complete description of the rules of the activity, an explanation of how each prize can be won, and the cost to participate in the activity.

(3) The numbers for bingo shall be physically selected from a container, and players shall be able to view the selection process, including an unobstructed view of the container or blower chamber. Immediately following the drawing of each number in any bingo game wherein a prize valued at \$100 or greater is offered, the caller shall display the letter and number for viewing by the participants. Numbers shall not be selected by electronic equipment, such as a computer. For any game in which a prize valued at less than \$100 is offered, upon request by a player to any employee or volunteer of the licensee, the player, accompanied by a management representative of the licensee, shall be allowed to inspect the bingo caller's cradle to verify the bingo numbers called before the bingo numbers are returned to the blower chamber.

(4) All prizes, or script redeemable for prizes, paid to the winner(s) shall be paid by the licensee; no prizes or script shall be transferred from non-winners to the winner(s).

(5) Bingo cards may not be purchased or played other than at the approved location of the licensee's game; a player must be present to win.

(6) Except for the conduct of "bonanza" bingo described in section (7) of this rule, the numbers shall be drawn and announced during the play of the game; each player covers the corresponding number, if present on the bingo card, as each number is called.

(7) A licensee may play "bonanza" bingo by drawing a predesignated quantity of bingo numbers before the actual playing of the bonanza bingo game only if the licensee complies with the following procedures:

(a) Bonanza bingo cards shall remain sealed until such time as they are sold to the players;

(b) The balls drawn in advance of the bonanza bingo game shall be drawn during a bingo session in the presence of the players; and

(c) The quantity of numbers drawn in advance shall be fewer than the number which would produce a probable instant winner, based upon the rules of the game and the expected number of players.

(8) No operator shall engage in any act, practice, or course of operation as would operate as a fraud to affect the outcome of any bingo game.

(9) Cages or blowers used to mix and select bingo numbers shall be designed and constructed in such a manner which reasonably provides a thorough mix of the numbers and random selection. Cages and blowers shall be cleaned and maintained in good repair so as to prevent damage to the bingo numbers.

(10) Bingo numbers shall be periodically inspected, cleaned and maintained in good condition by the licensee. No bingo numbers may be used in play which are defective, cracked, broken, illegible, out of round or damaged in such a manner that would interfere with or affect the random selection process. Only sequentially complete sets of bingo numbers shall be placed in play; there shall be no duplication of numbers.

(11) No person shall tamper with, mutilate, weight, or otherwise alter a bingo number in any manner that would interfere with or affect the random selection process.

(12) The Department may immediately remove any bingo number or set of bingo numbers from play if a violation is found. The number or number set shall not be returned to play until the violation is corrected. The

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Department may require that any bingo number or number set be replaced or tested for compliance if a violation is found or suspected.

(13) With the exception of "sleeper bingos", a prize may be awarded only to the bingo player(s) who first covers or uncovers the selected numbers in a designated combination, sequence or pattern. Multiple prizes may be awarded in the course of a game if each prize is given to the first player to achieve a designated pattern, such as those offered in "work up" games. No awards, including consolation awards, such as "monitor bingos", shall be made to players other than the prizes described above.

Stat. Auth.: ORS 464.250(1) & 464  
Stats. Implemented: ORS 464.250(7), SB 716, 2003  
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 1-1991, f. 2-1-91, cert. ef. 3-1-91; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0180

### Bingo Operating Limits

(1) Unless excepted by the Department, a licensee shall not operate bingo games for more than 15 hours nor more than three days in any one calendar week. However, a Class C or D licensee may operate without restriction as to number of days or hours per week if its total operations are limited to no more than 12 consecutive days during its license year. All bingo games must be conducted at a single physical location. No more than two bingo games may be operated simultaneously at a location. One licensee may not operate simultaneous games. Simultaneous games occur when numbers are pulled from more than one container/blower at the same time.

(2) A licensee shall not award non-linked progressive game prizes exceeding \$2,500 in value in any one game except a licensee may award prizes not to exceed \$10,000 per game up to 2 times during the license year. A licensee may award an unlimited number of prizes in excess of \$2,500 for authorized linked progressive bingo games. On the licensee report as provided by OAR 137-025-0140, the licensee shall record the date(s) and amount(s) of any prizes awarded exceeding \$2,500 per game which were not paid by a licensed Linked Progressive Game Bingo Escrow Agent. A licensee shall not offer a non-linked progressive game prize in excess of \$2,500 unless the licensee has such funds available in an account with a financial institution or has evidence that it has purchased current insurance from a surety/insurance company providing for payment if such a prize is won by one or more of the licensee's players. Any such prize won by a player shall be paid by a corporate or cashier's check no later than the close of the second business day after the prize is won.

(3) The "operating expenses" of all bingo and raffle games, conducted by the licensee as defined in ORS 167.117(14), excluding prizes and money paid to players, shall not exceed 18 percent of the total of the annual handle of those games:

(a) If expenses are related to both the bingo operations and the non-bingo operations of a licensee (such as rent, utilities and employee salaries), a reasonable allocation shall be made between the bingo and nonbingo activities. Employee salaries shall be allocated based upon hours spent in bingo and nonbingo activities;

(b) All leasehold improvements and improvements to bingo facilities owned by the licensee may be reasonably amortized;

(c) No salary of an employee of the licensee shall be considered an operating expense for purposes of this subsection, if less than 20 percent of the employee's time is devoted to activities directly related to the games;

(d) Fees paid to the Department are not operating expenses for purposes of this subsection;

(e) If a licensee subleased its space or equipment to one or more additional licensees, the licensee may pro rate its rental expenses based on proportional use of the property; the pro rate shall be based on the actual hours of use by that licensee compared to the total hours of use of the other licensees.

Stat. Auth.: ORS 464.250(1)  
Stats. Implemented: HB 3009, 1997, SB 716, 2003  
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2004, f. 2-19-04, cert. ef. 4-1-04; DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0181

### Operation of Linked Progressive Bingo Games

A licensed Linked Progressive Bingo Contractor shall not operate such a game in Oregon unless it complies with the following:

(1) The specific characteristics/format of the game and the equipment/software have been approved by the Department.

(2) The Contractor has furnished to the Department proof of certification by Gaming Laboratories International, Inc. testing laboratory pursuant to GLI-12 standards or certification by another nationally recognized laboratory pursuant to the preceding standards or standards determined by

the Department as being equivalent and any other integrity standards communicated by the Department to the testing laboratory.

(3) The approved Oregon game is not conducted at locations other than those sites of Oregon bingo licensees licensed by the Department.

(4) The contractor has submitted and the Department has approved:

(a) A model contract between the contractor and bingo licensees;

(b) A schedule of lease fees to be charged to bingo licensees, including any proposed discounts; and

(c) A model contract between the contractor and the linked progressive bingo game escrow agent.

(5) A contractor that desires to change the specific characteristics/format of a game which has been approved by the Department pursuant to paragraph (1) above, shall make written application for changes to the Department. The application shall certify that all participating bingo licensees have been notified of the proposed change(s). The Department shall approve or disapprove of the proposed change(s) within 5 business days.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0182

### Linked Progressive Bingo Game Contracts

The contract between the Linked Progressive Bingo Game Contractor and a bingo licensee shall provide for the schedule of prize pool contributions to be made by the licensee to the linked progressive bingo game escrow agent. The schedule shall be the same for all licensees and may not be changed without the approval of the Department. The contractor shall provide that if a licensee does not make scheduled payments to the escrow agent, its access to the game(s) will be terminated. A bingo licensee's access to the game shall not be activated until a copy of the signed completed contract has been received by the Department.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0183

### Access to Linked Progressive Bingo Games

A Linked Progressive Bingo Game Contractor shall be responsible for implementing and maintaining adequate security measures to restrict access to the electronic linked bingo system to other than authorized parties. Only authorized parties may access the system for legitimate lawful purposes. Authorized parties include Oregon gaming licensees, the designated escrow agent and the Department. A linked bingo system shall be restricted from access by the general public through internet and any other electronic means.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0184

### Linked Progressive Games-Manner of Conducting

(1) A licensee shall activate the linked progressive bingo game equipment in its possession in order to host or participate in a linked progressive bingo game and the system equipment shall record and maintain a record of the number of such games hosted or in which the licensee participated.

(2) A winning player must have achieved bingo on the last number called. A progressive bingo game can be played within or as an accompaniment to any other primary bingo game; however, if a winning player achieves the primary bingo on the last number called then the system equipment shall display the winning bingo card for viewing by the players at the location and if a primary bingo is verified, regardless of whether it also qualifies for the progressive prize, that particular linked progressive bingo game is also concluded.

(3) As each linked progressive bingo game is played at a participating licensed location, the bingo prize shall be increased by designated payments per licensee and participating locations will be notified of the increased amount of the progressive prize.

(4) If a linked progressive bingo game is played in conjunction with a standardized non-linked game and a player is charged an extra fee to participate in the linked progressive bingo game, the Linked Progressive Bingo Game Contractor shall operate the linked progressive game in a manner so that it can be verified that any winning player did pay the extra fee to participate in the linked progressive game.

(5) When a linked progressive bingo game winner is initially verified, the Linked Progressive Bingo Game Contractor equipment shall immediately be activated to notify the other participating licensee halls of a likely winner and the players shall be made aware that the progressive prize

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amount has been frozen. Once the contractor and the host licensee have completed all appropriate activities to verify the winner, the escrow agent shall be notified and the prize shall be reset to the advertised minimum plus any increases due to sales after the prize was frozen. The licensee hosting the game which produced the winner shall obtain all relevant federal W2G form information from the winner. The licensee shall also obtain information as to whether the winner prefers to receive the prize check from the licensee, from the escrow agent or by certified and insured mail delivery at an address provided by the winner. The licensee shall immediately transmit the above information, along with a statement of the amount of the prize, to the escrow agent.

(6) Linked Progressive Bingo Game Escrow Agents may charge the Linked Progressive Bingo Contractor a reasonable fee for their services.

(7) The escrow agent shall establish a "sweep account" with a commercial bank with branch offices throughout Oregon. All participating licensees will be notified as to the identity of the commercial bank. Participating licensees shall establish an account for prize pool contributions at a local branch of the commercial bank and shall execute the necessary documents so that the sums deposited may be swept by the escrow agent, into the sweep account. Participating licensees shall transfer the required prize pool contribution no later than three business days from the date a linked progressive bingo game was conducted.

(8) The escrow agent shall immediately notify the Department if a participating licensee fails to transfer a scheduled prize pool deposit for a linked progressive bingo game. The Department shall immediately notify the licensee of the delinquency and if the delinquent amount is not paid within two business days, the Department shall notify the Linked Progressive Bingo Game Contractor to terminate the licensee's access to the game.

(9) The Department may direct the Linked Progressive Bingo Game Contractor to renew the delinquent licensee's access to the game if the Department has received confirmation that the licensee has contributed the full amount of the delinquency plus a \$100 delinquency fee to the licensee's prize pool contribution account.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0186

### Operation of Linked Progressive Bingo Games

Such games may be operated by a Linked Progressive Bingo Contractor or a group of licensees operating games at the hall. If operated by a Contractor, the contractor shall be licensed and comply with all rules as provided for Multiple Hall Linked Progressive Bingo Games, including those providing for the utilization of a licensed escrow agent. If operated by the licensees, they shall comply with the following:

(1) The licensees shall apply to the Department for approval to operate the game. Approval shall include:

- (a) The specific characteristics/format of the game;
- (b) Any specific equipment/software to be utilized to operate the game;

(c) The proposed arrangement and mechanics for operation of a common prize pool, including the identity of the licensee that will hold the prize pool funds; and

(d) The proposed method of verifying winners of linked progressive bingo games, including the method for confirming that winners have paid to participate in the linked progressive bingo game if an additional payment is required.

(2) When a linked progressive bingo game winner is verified, all other participating licensees shall immediately be notified and the game prize shall immediately be reset to the advertised minimum prize.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0188

### Linked Progressive Bingo Games Escrow Agent Reports

(1) Each Linked Progressive Bingo Games Escrow Agent shall file a monthly report with the Department not later than 10 days after the end of each month. The report shall be on a form prescribed by the Department. The report shall include the following information:

- (a) The total escrowed funds deposited during the reporting period.
- (b) An itemized record of the escrowed funds paid to the escrow agent by each participating licensee, listing the amount and date received.
- (c) The total prize payouts made by the escrow agent, listed by participating licensee and each winning player and showing the date of the payout.

(2) Escrow agents will maintain adequate records to document the custody and transfer of funds under their control for a period of not less than three years.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

## 137-025-0189

### Linked Progressive Bingo Game Escrow Agents — Generally

(1) Persons or organizations acting as escrow agents for linked progressive bingo game prizes must be licensed by the Department pursuant to ORS Chapter 464 and the administrative rules adopted pursuant to that law. Licensees shall be licensed pursuant to ORS 696.505 et. seq. or shall comply with subparagraph (2) below. To act as an escrow agent, licensees shall be third parties independent of any Linked Progressive Bingo Contractor or bingo licensee involved in the operation of the linked progressive bingo game. All funds held in escrow for charitable gaming licensers shall be held in a designated escrow account or deposit with a commercial bank, located within the state of Oregon and approved by the Department.

(2) A Linked Progressive Bingo Game Escrow Agent not licensed pursuant to ORS 696.505 et seq. shall deposit with the Department a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the Department in the amount of \$25,000.

(3) An escrow agent may satisfy the preceding requirement by depositing with the State Treasurer an amount equal to \$25,000 in a form satisfactory to the Department for the faithful performance of the agent's linked progressive bingo game activity.

(4) The designated escrow agent for a particular linked progressive bingo game shall, upon obtaining the relevant information from the host licensee, immediately obtain a cashier's check for the winning amount, made payable to the winner, and shall prepare the appropriate federal W2G form. The escrow agent shall then immediately deliver the check to the winner in a manner consistent with the winner's expressed method of delivery as communicated to the host licensee.

Stat. Auth.: ORS 167.117(10)(12), 464.250(1), 914  
Stats. Implemented: SB 716, 2003  
Hist.: DOJ 8-2004, f. & cert. ef. 5-19-04

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**Rules Adopted:** 137-105-0001, 137-105-0010, 137-105-0020, 137-105-0030, 137-105-0040

**Subject:** The proposed rules facilitate the enforcement of the State's Non-Participating Manufacturer statutes. The rules establish the procedure, authorized by chapter 801, Oregon Laws, 2003, by which the Department of Justice (DOJ) may establish and operate the Tobacco Products Manufacturers Directory. The rules further establish the protocols for quarterly escrow deposits as required by ORS 295.535 and Chapter 801, Oregon Laws 2003. Finally, the rules establish the reporting requirements for distributors of certain tobacco products and the method for calculating periods of time for the purpose of the rules.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-105-0001

### Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in division 105 unless the context requires otherwise:

- (1) "Brand Family" has the meaning given that term in ORS 180.405.
- (2) "Cigarette" has the meaning given that term in ORS 323.800.
- (3) "Certification" means the information required to be provided to the Attorney General under ORS 180.410 and 180.415.
- (4) "Directory" means the listing of tobacco product manufacturers that have provided current and accurate certifications pursuant to the provisions of ORS 180.425.
- (5) "Distributor" has the meaning given that term in ORS 180.405(3).
- (6) "NPM Distributor report" means the information required to be provided to the Attorney General under ORS 180.435(1).
- (7) "Escrow deposit" means deposits required to be made into a qualified escrow fund pursuant to ORS 323.806(2)(a).
- (8) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.

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(9) "Participating manufacturer" has the meaning given that term in ORS 180.405.

(10) "Qualified escrow fund" has the meaning given that term in ORS 323.800.

(11) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

(12) "Units Sold" has the meaning given that term in ORS 323.800.

Stat. Auth.: ORS 180.445

Stats. Implemented:

Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

## 137-105-0010

### Tobacco Product Manufacturers Directory

(1) In exercising the discretion granted by ORS 180.425(2), the Attorney General will consider the following:

(a) Whether the entity tendering a certification is a tobacco product manufacturer;

(b) Timeliness of the certification made by the tobacco product manufacturer;

(c) Completeness, or lack thereof, of the certification made by the tobacco product manufacturer;

(d) Whether the tobacco product manufacturer has provided all requested documents supporting its certification;

(e) Whether the certification is based on misrepresentation, false information, nondisclosure or concealment of facts;

(f) Whether the tobacco product manufacturer is in full compliance with all provisions of Local, State and Federal Law, including but not limited to the provisions of ORS 180.410, 180.415 and 323.800 to 323.806.

(g) Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand is the subject of an injunction obtained by the State of Oregon for previous failure to comply with the nonparticipating manufacturer statutes;

(h) Whether the tobacco product manufacturer has failed to fully or timely fund a qualified escrow fund approved by the Attorney General;

(i) Whether all final judgments and penalties, including interest, costs and attorney fees thereon, in favor of the State of Oregon, or any political subdivision thereof, for violation of any Oregon statute, administrative rule or other law, including but not limited to violations of ORS 323.800 to 323.806, have been fully satisfied for the name, brand family, or tobacco product manufacturer;

(j) Whether the tobacco product manufacturer has corrected deficiencies in its certification or criteria set forth in this section in a timely and thorough manner;

(k) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the Attorney General for additional information or documentation supporting its certification or the criteria set forth in this section; and

(l) Any other facts or circumstances the Attorney General determines are relevant.

(2) In a manner provided in subsection (5) of this rule, the Attorney General shall remove a tobacco product manufacturer or brand family from the directory if the Attorney General determines that the tobacco product manufacturer or the brand family no longer meet the requirements of ORS 180.410 and 180.415.

(3) In the manner provided in subsection (5) of this rule, the Attorney General shall reject the application of a tobacco product manufacturer or brand family to be listed in the directory if the Attorney General determines that the tobacco product manufacturer or the brand family does not meet the requirements of ORS 180.410 and 180.415.

(4) The Attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) if the manufacturer has met the requirements of ORS 180.410 and 180.415 and will be included in the directory. The notice shall include each brand family that the Attorney General determines will be included in the directory.

(5) If, on or after the effective date of these rules, the Attorney General intends to deny a tobacco product manufacturer or brand family a place in the directory, to remove a manufacturer or brand family from the directory, or to exclude an entity because the entity is not a tobacco product manufacturer, the Attorney General shall mail a written Notice of Intended Action to the manufacturer or entity. The Notice of Intended Action shall specify:

(a) The factual and legal basis upon which the Attorney General's intended action rests;

(b) The actions that the tobacco product manufacturer or entity must complete to cure the factual or legal deficiencies upon which the intended action is based; and,

(c) The date upon which attempts to cure the deficiencies must be completed and documentation of completion must be submitted to the Attorney General. In no event shall the Attorney General allow the tobacco product manufacturer or entity less than 15 days within which to cure the deficiencies upon which the Attorney General's intended action is based.

(6) On or before the deadline set in the Notice of Intended Action, the tobacco product manufacturer or entity shall provide documentation to the Attorney General detailing the actions, if any, that the tobacco product manufacturer or entity has taken to cure the deficiencies identified by the Attorney General in the Notice of Intended Action.

(7) Within 45 days of the date on which a certification that is the subject of a Notice of Intent is received, the Attorney General shall determine whether the deficiencies have been cured.

(a) If the deficiencies have been cured to the satisfaction of the Attorney General, the attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) that the manufacturer or brand name family will be included in the directory.

(b) If any of the deficiencies have not been cured to the satisfaction of the Attorney General, the Attorney General shall promptly issue an order in Other than Contested Case denying a manufacturer, brand name family, or entity a place in the directory.

(8) A tobacco product manufacturer or entity that has complied with subsection (6) of this rule and is aggrieved by an Order denying the manufacturer or brand name family a place in the directory may file a petition for judicial review of the Attorney General's order as provided in ORS 183.484.

(9) The Attorney General may, for any reason and at the Attorney General's discretion, extend any period allowed by these rules.

Stat. Auth.: ORS 180.445

Stats. Implemented:

Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

## 137-105-0020

### Escrow Deposits

(1) Discretionary authorization to make annual payments. The Attorney General may at any time permit a tobacco product manufacturer to make annual escrow deposits for any period, provided that:

(a) The tobacco product manufacturer has previously established and funded a qualified escrow fund for the State of Oregon;

(b) The tobacco product manufacturer has not failed to make a full and timely escrow deposit into a qualified escrow fund for the State of Oregon for any period as required under ORS 323.806(2)(a) or by these rules;

(c) The Attorney General has no reason to believe that the tobacco product manufacturer or brand family should be removed or excluded from the directory; and,

(d) The Attorney General has no reason to believe that the tobacco product manufacturer may not make its full required escrow deposit at the end of the sales year.

(2) Timing of deposits; conditions:

(a) Deposits for the period ending January 1, 2005. Unless ordered by the Attorney General to make quarterly payments, tobacco product manufacturers that have been in full and continuous compliance with the provisions of ORS 323.806, 180.410 to 180.420 and 180.430 to 180.440 may make annual payments on April 15 for the periods January 1, 2003 through January 1, 2004 and January 1, 2004 through January 1, 2005.

(b) Deposits for periods beginning January 1, 2005 or thereafter.

(A) Unless authorized by the Attorney General to make annual deposits, beginning with the deposit due for the period January 1, 2005 through March 31, 2005, each tobacco product manufacturer shall make the escrow deposits required by ORS 323.806 in quarterly payments for each of the following periods of the year: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The quarterly escrow payments shall be made no later than 15 days after the end of each quarter.

(B) As provided in subsection (1) of this rule, the Attorney General may authorize a tobacco product manufacturer required to make annual deposits for any period after January 1, 2005.

(c) Discretionary authority to require quarterly payments for any period. The Attorney General may at any time require a tobacco product manufacturer to make quarterly escrow deposits if the Attorney General determines that any of the following circumstances exist:

(A) The tobacco product manufacturer has not previously established and funded a qualified escrow fund for Oregon;

(B) The tobacco product manufacturer has failed at any time during the four quarters preceding the date on which the manufacturer's deposit to

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escrow would be due to make a full and timely escrow deposit into a qualified escrow fund for the State of Oregon for any period as required under ORS 323.806(2)(a) or by these rules;

(C) The Attorney General has reason to believe that the tobacco product manufacturer or brand family should be removed or excluded from the directory; or

(D) The Attorney General has reason to believe that the tobacco product manufacturer may not make its full required escrow deposit at the end of the sales year.

(3) The Attorney General may at any time, upon written request, require a tobacco product manufacturer to produce all documents and information that the Attorney General determines are relevant to determining whether a tobacco product manufacturer is in compliance with ORS 180.400 to 180.455, and with these rules.

(4) Nonparticipating tobacco manufacturers who are required to make quarterly escrow deposits must provide the Attorney General with official notification of the quarterly escrow deposit by filing an Oregon Quarterly Certification of Escrow Funding Compliance form with the Office of the Attorney General no later than ten (10) days after the deadline for which an escrow deposit is required.

Stat. Auth.: ORS 180.445  
Stats. Implemented:  
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

## 137-105-0030

### Distributor Reports ("Schedule B")

(1) Prior to the enactment into law of ORS 180.400 to 180.455, distributors reported information to the Attorney General through the Department of Revenue. Distributors submitted reports to the Department of Revenue on a form entitled "Schedule B" attached to the distributors' quarterly cigarette excise tax payment.

(2) For reports due on or prior to January 20, 2004 (that is, for reports relating to sales in any quarter of 2003), distributors shall continue to submit quarterly reports on Schedule B to: State of Oregon, Cigarette and Tobacco Tax, Oregon Department of Revenue, P.O. Box 14110, Salem, Oregon 97309-0910.

(3) The Department of Justice shall promulgate a form entitled Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers. Distributors shall use the Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers form for reports due on or after January 20, 2004 (i.e. reports relating to sales in 2004 and subsequent years). Brand Specific Report for Cigarettes, Little Cigars, and Roll-Your-Own Product with Oregon Tax Paid for All Manufacturers forms shall be mailed to Department of Justice, Civil Enforcement, 1162 Court Street NE, Salem, Oregon 97301.

(4) The calculation for the amount of the escrow deposit required for deposit into the qualified escrow fund for any given quarter will be based on the number of units sold by the tobacco product manufacturer during the corresponding quarter, as adjusted for inflation pursuant to ORS 323.806(2)(a)(A)-(E).

Stat. Auth.: ORS 180.445  
Stats. Implemented:  
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

## 137-105-0040

### Calculation of Time for Purposes of These Rules

In computing any period of time prescribed or allowed by these rules, the period shall be calculated as provided in Oregon Rule of Civil Procedure 10A.

Stat. Auth.: ORS 180.445  
Stats. Implemented:  
Hist.: DOJ 9-2004, f. & cert. ef. 5-25-04

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

**Adm. Order No.:** DMV 6-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 735-020-0000, 735-020-0020

**Subject:** ORS 803.097 requires DMV to determine by rule what constitutes receipt of an application for a security interest for purposes of perfection of security interest in a vehicle. To implement its electronic vehicle registration program (EVR), DMV recently entered

into an agreement with an EVR integrator under the authority of ORS 802.600. The agreement authorizes the EVR integrator to process title and registration applications on behalf of DMV. The agreement also authorizes the EVR integrator to subcontract with qualified Oregon vehicle dealers who, with customer approval, file title and registration applications on behalf of their customers. These rules are amended to specify that for purposes of perfecting a security interest, an application for security interest may be received by DMV or the EVR integrator. OAR 735-020-0000 has been amended to define the terms "agent," "EVR" and "EVR integrator." OAR 735-020-0020 has been amended to specify that both DMV and the EVR integrator may accept an application for a security interest under ORS 803.097 and to clarify what constitutes receipt of an application as required by ORS 803.097(2).

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-020-0000

### Perfection of a Security Interest — Definitions

The following terms and definitions apply to OAR 735-020-0000 to 735-020-0060:

(1) "Agent" means a person designated by DMV to accept applications and fees for vehicle titles and registrations, and includes a person issued a vehicle dealer certificate under ORS 822.020.

(2) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(3) "EVR" means DMV's electronic vehicle registration program.

(4) "EVR integrator" is a person designated by DMV by written agreement to facilitate transactions related to the titling and registering of motor vehicles between DMV and those Oregon vehicle dealers approved by DMV to conduct EVR transactions, including but not limited to the processing of applications for vehicle title and registration.

(5) "Evidence of Ownership" as used in ORS 803.097 means a document that contains a description of the vehicle, the name of each owner of the vehicle and the name of each person to whom interest is assigned, awarded or transferred; and

(a) Is a primary ownership document as provided in OAR 735-020-0010; or

(b) Is a transitional ownership document (TOD) as provided in OAR 735-020-0015.

(6) "Ownership document" has the same meaning as "ownership record" as defined in ORS 801.377 and as used in ORS 803.130 through 803.138.

(7) "Primary ownership document" has the same meaning as "primary ownership record" as defined in ORS 801.402 and as used in ORS 803.130 through 803.138.

(8) "Transitional ownership document" has the same meaning as "transitional ownership record" as defined in ORS 801.562 and as used in ORS 803.130 through 803.138.

Stat. Auth.: ORS 184.616, 184.619 & 803.097  
Stats. Implemented: ORS 801.130, 801.402, 801.562, 803.097 & 803.130 - 803.138  
Hist.: MV 2-1988, f. & cert. ef. 1-7-88; Administrative Renumbering 3-1988, Renumbered from 735-110-0500; MV 18-1988, f. & cert. ef. 6-1-88; MV 9-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 5-2000, f. & cert. ef. 8-10-00; DMV 10-2002, f. & cert. ef. 6-24-02; DMV 6-2004, f. & cert. ef. 5-24-04

## 735-020-0020

### Perfection of a Security Interest — Application for Notation of a Security Interest

(1) An application for notation of security interest for purposes of perfection of a security interest in a vehicle, hereafter referred to as an "application for security interest" is:

(a) A completed and signed DMV application for Oregon title submitted to DMV;

(b) A letter, a memo, or other written form; or

(c) A transitional ownership document (TOD) submitted to DMV as provided in ORS 801.562, OAR 735-020-0015, and 735-020-0040 through 735-020-0045.

(2) An application for security interest must include the following:

(a) If submitted on an application for Oregon title as described in subsection (1)(a) of this rule:

(A) The name of each owner of the vehicle;

(B) The name and address of the security interest holder; and

(C) The vehicle identification number (VIN).

(b) If the application for security interest is a TOD as described in subsection (1)(c) of this rule, the TOD must comply with all applicable pro-

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visions of ORS 801.562, OAR 735-020-0015, 735-020-0040 and 735-020-0045.

(3) If the application for security interest is submitted on an application for Oregon title, the application must be accompanied by a primary ownership document unless DMV is in possession of the primary ownership document or the primary ownership document will be submitted separately, and the applicant provides the following information:

(a) A description of the vehicle, including VIN number, sufficient to connect the application for security interest and the primary ownership document;

(b) A statement that the primary ownership document is in the possession of DMV or will be submitted to DMV separate from the application for security interest;

(c) The date the primary ownership document was submitted or will be submitted to DMV; and

(d) If DMV has possession of the primary ownership document, the DMV office where it was submitted. If the primary ownership document will be submitted at a later date, it must be mailed to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314 or submitted to an EVR integrator.

(4) If an application for security interest is a TOD, the provisions of ORS 801.562, OAR 735-020-0015, 735-020-0030, and 735-020-0040 through 735-020-0045 will determine when and if security interest is perfected.

(5) When the notation application is in any form other than a TOD, the date DMV or an EVR integrator has both an application for security interest that meets the requirements of this rule and the primary ownership document will determine when all requirements for perfection have been met:

(a) Except as provided in subsection (c) of this section, when the application for security interest and primary ownership document are submitted separately, the date when both the application and the primary ownership document are in the possession of DMV or the EVR integrator will determine the date the application for security interest is first received;

(b) When an application for security interest is accepted by an agent of DMV, the date the application is first received will be the date DMV or an EVR integrator and not the agent, receives both the application and primary ownership document; and

(c) If the application for security interest does not contain the information required under subsection (2)(a) of this rule, or if the application or primary ownership document is returned to the applicant or agent by DMV or an EVR integrator, the date marked on the application or entered in the DMV vehicle record as the date it was first received, is not the date of perfection of the security interest. The DMV vehicle record will indicate the date when all requirements for notation of a security interest are again received by DMV or an EVR integrator.

(6) For purposes of perfecting a security interest in a vehicle, when DMV or an EVR integrator first receives an application for security interest as set forth in section (5) of this rule:

(a) The date will be marked on the application for security interest; or

(b) DMV will indicate in the vehicle record the date the application for security interest was first received by DMV.

(7) DMV will only change a date described under section (5) of this rule if DMV determines the date marked on the application or recorded in the DMV vehicle record does not accurately reflect the date the application for security interest was first received by DMV or the EVR integrator.

Stat. Auth.: ORS 184.616, 184.619, 802.600 & 803.097

Stats. Implemented: ORS 801.402, 801.465, 801.562, 802.600, 803.097 & 803.130 - 803.138

Hist.: MV 2-1988, f. & cert. ef. 1-7-88; Administrative Renumbering 3-1988, Renumbered from 735-110-0520; MV 18-1988, f. & cert. ef. 6-1-88; MV 20-1989, f. & cert. ef. 10-3-89;

MV 9-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 6-2004, f. & cert. ef. 5-24-04

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**Adm. Order No.:** DMV 7-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 735-020-0070

**Rules Amended:** 735-024-0010

**Rules Repealed:** 735-020-0070(T), 735-024-0010(T)

**Subject:** The adoption of OAR 735-020-0070 is necessitated by Section 1, Chapter 24, Oregon Laws 2003 (HB 2216), which amended ORS 803.045. The amendment prohibits DMV from issuing a vehicle title, if the current title, certificate or ownership document is a junk title, junk certificate or similar ownership document issued by another jurisdiction, or has a junk or similar brand or notation. The

purpose of OAR 735-020-0070 is to specify what constitutes a “junk title,” “junk certificate” or “similar ownership document” and “junk or similar brand or notation” for purposes of amended ORS 803.045. The amendments to OAR 735-024-0010 remove terms used by other jurisdictions that, prior to the enactment of HB 2216, formed the basis for DMV to determine if an Oregon title would be issued with a title notation indicating the vehicle was previously damaged in another jurisdiction. This rulemaking replaces temporary rules adopted January 1, 2004.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-020-0070

### Junk Titles

(1) Pursuant to ORS 803.045, DMV will not issue an Oregon title or salvage title for a vehicle that has been issued a junk title, junk certificate, or similar ownership document, or junk or similar brand or notation that includes a word, term, brand or notation including but not limited to the following:

- (a) Destroyed;
- (b) Dismantled;
- (c) Hulk;
- (d) Junk;
- (e) Non-rebuildable;
- (f) Non-repairable;
- (g) Parts only;
- (h) Scrap; or
- (i) Wreck or Wrecker only.

(2) A designation as described in section (1) of this rule is based strictly on a determination made by another jurisdiction, as reflected on the current title or other ownership document issued by that jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 803.045

Stat. Implemented: ORS 803.045

Hist.: DMV 31-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; DMV 7-2004, f. & cert. ef. 5-24-04

## 735-024-0010

### Previously Damaged Notation Based on Information from Other States — Definitions

As used in this rule and OAR 735-024-0020, the following definitions apply:

(1) “Damaged, Wrecked or Salvaged” means an incident, or occurrence or condition relating to a vehicle that impaired or altered the vehicle from its original state, and:

(a) When these terms appear on a certificate of title or other documents from another jurisdiction, they shall form a basis for determining whether to issue an Oregon title with a notation indicating the vehicle was previously damaged in another jurisdiction;

(b) These terms when used by other jurisdictions do not necessarily carry the same meaning as they do when used in other areas of Oregon law or Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) rules, but shall be construed to be words of similar import.

(2) “Words of Similar Import” means any word, term or phrase that means the same or has the same effect as the terms defined in section (1) of this rule:

(a) Words of similar import may include, but are not limited to: reconstructed; rebuilt; assembled; restored salvage; or other terms used by other jurisdictions to denote a vehicle that has been damaged, wrecked or salvaged;

(b) Words that would not be considered as “words of similar import” include but are not limited to: gray market; non USA; prior police; prior taxi; and bonded.

(3) “Previously Damaged” means that DMV has received some indication from another jurisdiction, that the vehicle was damaged, wrecked or salvaged, or words of similar import. The use of this term does not reflect the extent of damage nor to what extent or how well the vehicle may have been repaired. The term “previously damaged” as described in this rule does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction under OAR 735-020-0070.

(4) “Salvage Title,” and “salvage certificate” mean documents issued for a vehicle that indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. “Salvage title” does not refer to Oregon salvage titles, unless the Oregon salvage title reflects a notation that indicates the vehicle was damaged in another jurisdiction, prior to being titled in Oregon.

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(5) "Similar Document" means any report, information, or paperwork that fulfills the same function as the documents listed in section (4) of this rule. Similar documents shall include but are not limited to:

(a) A report or information from a law enforcement agency, the Motor Vehicles Division, or equivalent agency in another jurisdiction, or any other government agency, that indicates a vehicle is damaged, wrecked or salvaged, or words of similar import;

(b) A report or information from a government agency of another jurisdiction that the title from the other jurisdiction should have carried a brand or notation of damage to the vehicle;

(c) A report or information from a government agency of another jurisdiction that a salvage title, salvage certificate or similar document should have been issued for the vehicle;

(d) A salvage bill of sale, or other document used by other jurisdictions to indicate that a vehicle has been damaged, wrecked, or salvaged or words of similar import.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.015, 803.045, 819.016 & 821.060  
Stats. Implemented: ORS 803.015, 803.045 & 803.420  
Hist.: MV 32-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0570; MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 23-2001, f. 11-9-01, cert. ef. 1-1-02; DMV 31-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 7-2004, f. & cert. ef. 5-24-04

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**Adm. Order No.:** DMV 8-2004  
**Filed with Sec. of State:** 5-24-2004  
**Certified to be Effective:** 5-24-04  
**Notice Publication Date:** 3-1-04  
**Rules Amended:** 735-032-0010  
**Rules Repealed:** 735-032-0010(T)

**Subject:** The need to amend this rule was necessitated by legislation passed by the 2003 Legislative Assembly. Specifically, Section 48, Chapter 618, Oregon Laws 2003 (HB 2041) amended ORS 803.570. HB 2041 repealed the requirement formerly in ORS 803.570(3) that DMV establish plate fees based on plate manufacturing costs. As amended, ORS 803.570 requires DMV to determine by rule the fee amount charged for each registration plate or plates issued, but sets a limit on the amount DMV may charge at \$3 per single plate and \$5 per pair of plates. As amended, OAR 735-032-0010 establishes the registration plate fee at \$3 for a single plate and \$5 for a pair of plates. Previous fees were \$2 for a single plate and \$3 for a pair of plates. This rulemaking replaces the temporary rule adopted January 1, 2004.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-032-0010

### Plate Manufacturing Fee

(1) As provided in ORS 803.570 the Driver and Motor Vehicle Services Division of the Department of Transportation shall establish by rule the fee for each registration plate issued and for each set of two plates issued. The fee may not exceed \$3 for one plate and \$5 for a set of two plates. This fee shall be charged each time a plate(s) is issued, except as otherwise provided by law.

(2) The fee shall be:

(a) \$3.00 if a single plate is issued; or

(b) \$5.00 if two plates are issued.

Stat. Auth.: ORS 184.616, 184.619 & 803.570

Stats. Implemented: ORS 803.570

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0310; MV 21-1988, f. 6-29-88, cert. ef. 7-1-88; DMV 4-1997, f. 1-24-97, cert. ef. 4-1-97; DMV 5-2003(Temp), f. 5-14-03, cert. ef. 7-1-03 thru 12-27-03; DMV 32-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 8-2004, f. & cert. ef. 5-24-04

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**Adm. Order No.:** DMV 9-2004  
**Filed with Sec. of State:** 5-24-2004  
**Certified to be Effective:** 5-24-04  
**Notice Publication Date:** 3-1-04  
**Rules Adopted:** 735-154-0005

**Rules Amended:** 735-034-0010, 735-150-0040, 735-150-0070

**Rules Repealed:** 735-034-0010(T), 735-150-0040(T), 735-150-0070(T), 735-154-0005(T)

**Subject:** The need to amend these rules is necessitated by the passage of Chapter 600, Oregon Laws 2003 (HB 2388), which in part, amended ORS 803.600. The law change requires licensed vehicle

dealers and towing companies to remove the registration stickers from the registration plates of vehicles they sell that have Oregon registration plates. Exceptions from the requirement occur only if a dealer or tow company submits title and registration documents to DMV on behalf of the vehicle buyer, or if a dealer or tow company sells a vehicle to a licensed dealer. The law change authorizes dealers and towing companies to issue a new 10-day trip permit that allows vehicle buyers to operate their vehicles until DMV issues new registration stickers. DMV amended its trip permit rules to conform them to the new law. As amended, OAR 735-034-0010 adds language that specifies the procedures and requirements for issuance of the new 10-day trip permit. OAR 735-150-0040 has been amended to add the 10-day trip permit to the list of trip permits that may be issued by vehicle dealers. OAR 735-150-0070 has been amended to specify when a 10-day trip permit may be issued by a dealer. OAR 735-154-0005 has been adopted to specify the authority of towing businesses to issue 10-day trip permits. This rulemaking replaces temporary rules adopted January 1, 2004.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-034-0010

### Procedures for Issuance of Trip Permits

(1) This rule describes the procedures and requirements for vehicle trip permits issued under the authority of ORS 803.600. Vehicle trip permits may be issued by:

(a) A trip permit agent pursuant to ORS 803.600 and OAR 735-034-0005;

(b) A vehicle dealer pursuant to ORS 802.031 and OAR 753-150-0040, including a vehicle dealer who issues 10-day trip permits as described under ORS 803.600; or

(c) A towing business that issues 10-day trip permits as described under ORS 803.600.

(2) A person described under section (1) of this rule must comply with the following requirements:

(a) Unless otherwise authorized in writing by DMV, trip permits must be purchased from DMV in advance.

(b) Each trip permit issued must be legibly completed with the following information:

(A) The name and address of the vehicle's registered owner or the person applying for the trip permit. The name and address is recorded on the issuer's copy and DMV's copy of the permit;

(B) The driver license number of the vehicle's registered owner or the person applying for the trip permit, if available. Nothing may be written on the purchaser's (window) copy of the permit to identify the person to whom the permit was issued;

(C) A complete vehicle description, including the year, make, body style and vehicle identification number (VIN);

(D) The written signature of the person who issues the permit. This must include at least the person's full first and last name;

(E) The identification number of the trip permit agent, if one has been assigned by DMV, or the certificate number of the dealer or towing business;

(F) The effective date and expiration date of the permit;

(G) For a registration weight trip permit, the registration weight of the vehicle.

(c) For a light vehicle trip permit, the person who issues the permit must require the applicant to sign a certification stating:

(A) The insurance company name and policy number; and

(B) The motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(d) A vehicle dealer or towing business that issues a 10-day trip permit:

(A) Must ensure the Oregon registration stickers have been removed in accordance with 803.565;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(e) For a recreational vehicle trip permit, the person who issues the permit must require the applicant to:

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(A) Provide proof of ownership as described in OAR 735-034-0050;  
(B) Sign a certification stating that the applicant has not been issued recreational vehicle trip permits that when included with the permit being applied for, would grant more than 10 days vehicle operation for the preceding 12 months;

(C) Provide the insurance company name and policy number if the trip permit is for a motor home; and

(D) Sign the certificate on the permit, stating that the recreational vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid if the trip permit is for a motor home.

(f) A person authorized to issue a trip permit under section (1) of this rule:

(A) Must send DMV's copy of the permit to DMV within five days of the date a permit is issued; and

(B) May not loan, transfer or assign a trip permit to any other person.

(3) Any alteration of the permit information will automatically void the permit:

(a) When a trip permit is voided, the trip permit agent, vehicle dealer, or towing business must return the vehicle (purchaser's) copy and DMV's copy to DMV within five (5) days of the date it was voided, along with an explanation of why the permit was voided. If either copy of the voided permit is unavailable for submission to DMV, the explanation must state the reason; and

(b) If DMV is satisfied that a prepaid permit was not used for the operation of a vehicle, DMV will refund the prepaid permit fee to the trip permit agent, vehicle dealer or towing business who purchased the permits from DMV.

(4) Upon receipt of a written request from a trip permit agent, vehicle dealer or towing business subject to this rule, DMV will refund the fee amount for each unissued prepaid permit.

(5) Upon DMV's written request, a trip permit agent, vehicle dealer or towing business subject to this rule must immediately cease issuing permits and immediately return all unused trip permits to DMV. DMV will issue a refund to the trip permit agent, vehicle dealer or towing business for any unused prepaid permits returned to DMV.

(6) DMV may revoke the authority of a trip permit agent, vehicle dealer or towing business to issue trip permits for failure to comply with the provisions of this rule, or at any time DMV determines it is no longer in the interest and convenience of the motoring public or a change in state or federal law or regulation prohibit the designation.

(7) The failure of a trip permit agent, vehicle dealer or towing business to comply with the provisions of this rule may result in the revocation of the authority to issue trip permits.

Stat. Auth.: ORS 184.616, ORS 184.619, 803.600 - 803.650 & 806.080

Stats. Implemented: ORS 803.565, 803.600, 803.602 & 803.645

Hist.: MV 19-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-110-0060; MV 2-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 9-1998, f. & cert. ef. 8-20-98; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04

## 735-150-0040

### Designation of Dealers as Agents

(1) Persons issued a dealer certificate under ORS 822.020 are designated as agents of DMV as provided in ORS 802.031.

(2) All snowmobile dealers and Class I and Class III all-terrain vehicle dealers are designated as agents of DMV as provided in ORS 802.031.

(3) DMV may impose sanctions against a dealer's status as an agent of DMV as provided in OAR 735-150-0120.

(4) Dealers designated as agents of DMV may:

(a) Accept applications and fees for titles and registrations of vehicles they sell, as provided in OAR 735-150-0050;

(b) Perform vehicle identification number inspections on vehicles they sell, as provided in OAR 735-022-0070 when the vehicle has been registered or titled in another jurisdiction subject to the limitations of OAR 735-022-0070;

(c) Issue temporary registration permits for unregistered vehicles they sell, as provided in ORS 803.625 and OAR 735-150-0060;

(d) Issue trip permits for unregistered vehicles they sell, as provided for in OAR 735-150-0070 and 735-150-0080;

(e) Issue 10-day trip permits for registered vehicles they sell, as provided in ORS 803.600, OAR 735-150-0070, 735-150-0080 and 735-034-0010. When issuing a 10-day trip permit as described in this subsection, a vehicle dealer:

(A) Must insure the Oregon registration stickers have been removed in accordance with ORS 803.600;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(f) Issue mobile home trip permits for mobile homes they sell or transport, as provided in OAR 735-140-0140 and 735-150-0090; and

(g) Accept applications and fees for transfers of registration plates as provided in OAR 735-150-0060(2).

(5) A dealer who, on behalf of a purchaser, accepts application, collects fees and obtains registration plates, stickers and temporary registration, as applicable, must ensure prompt delivery of the items obtained to the purchaser. Such dealer must, within five working days of receipt from DMV:

(a) Deliver the items to the purchaser;

(b) Mail the items to the purchaser; or

(c) Advise the purchaser the items are at the dealership and, if the purchaser agrees, arrange for the purchaser to pick up the items at the dealership.

(6) The dealer must document in the dealer's records the actions taken by the dealer to notify the purchaser or to deliver the registration plates, stickers and temporary registration.

(7) No dealer may, as a result of a dispute between the purchaser and dealer or for any other reason, withhold registration plates or stickers or temporary registration from the purchaser.

(8) Designated agents must only charge document, title transfer and registration fees in the amount authorized by Oregon Revised Statutes and Oregon Administrative Rule when collecting such fees on behalf of DMV.

(9) A dealer may not accept applications and fees for the transfer of plates under subsection (4)(g) of this rule if the dealer determines that the plates that the purchaser wants to transfer are not from a current issue of plates, are not customized plates described under ORS 805.240 or are so old, damaged, mutilated or otherwise rendered illegible as to be not useful for purposes of identification.

Stat. Auth.: ORS 184.616, 184.619, 802.031, 803.530, 803.600, 803.625, 821.060, 821.080  
Stats. Implemented: ORS 802.031, 803.565, 803.600, 803.602, 803.645, 821.060, 821.080, 822.005, 822.080

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 2-1985, f. & ef. 1-30-85; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0007; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 5-1998(Temp), f. & cert. ef. 4-30-98 thru 10-26-98; DMV 13-1998, f. & cert. ef. 10-15-98; DMV 7-2000, f. & cert. ef. 8-10-00; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04

## 735-150-0070

### When Trip Permits May Be Issued by Dealers

(1) Pursuant to ORS 803.600, OAR 735-034-0010 through 735-034-0040 and this rule, a designated dealer may issue light vehicle and recreational vehicle trip permits for the vehicles they sell providing:

(a) The vehicle purchaser or lessee is not subject to Oregon registration requirements and must operate the vehicle over Oregon highways to leave the state.

(b) The vehicle is to be driven directly to a Department of Environmental Quality (DEQ) inspection station in order to receive a certificate of compliance with pollution control equipment before applying for registration;

(c) The vehicle is to be driven directly to a DMV office or a law enforcement agency for a vehicle identification number inspection (VIN); or

(d) The dealer is not submitting the application for transfer of title and registration on behalf of the purchaser or lessee and the purchaser or lessee must operate the vehicle until they can get to a DMV office.

(e) This subsection does not apply to 10-day trip permits.

(2) In addition to the trip permits described in section (1) of this rule, a vehicle dealer may issue 10-day trip permits for vehicles they sell providing:

(a) Before issuance, the dealer ensures the Oregon registration stickers have been removed in accordance with ORS 803.565;

(b) The dealer complies with all applicable provisions of ORS 803.600 and OAR 735-034-0010 through 735-034-0040;

(c) The dealer is not submitting the application for transfer of title and registration on behalf of the purchaser or lessee and the purchaser or lessee must operate the vehicle until they can get to a DMV office;

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(d) The 10-day permits are issued specifically for the purpose of registering the vehicle. For purposes of ORS 803.600 and this section, "registering the vehicle" means authorization to operate a vehicle to obtain:

(A) Title, registration or new registration stickers from DMV; or

(B) A (VIN) inspection or DEQ inspection before DMV may issue title, registration or new registration stickers as described under this subsection.

(3) Trip permits must be purchased in bulk in advance from DMV's Salem headquarters office.

(4) A designated dealer may charge and retain a fee for a trip permit issued by the dealer but may not charge more than the fee provided in ORS 803.645 for the permit.

(5) Each trip permit is valid for a period of consecutive days; 21 days for a light vehicle trip permit and 10 days for a recreational vehicle trip permit and a 10-day trip permit. Each permit is effective from the date it is issued to midnight on the date of expiration.

(6) The issuance of trip permits under this rule is limited as follows:

(a) No more than one light vehicle or recreational vehicle trip permit may be issued under subsection (1)(a), (c) or (d) of this rule in any 12-month period for any one vehicle unless all registered owners are replaced with new owners;

(b) No more than two light vehicle trip permits may be issued under subsection (1)(b) of this rule in any 12-month period for any one vehicle unless all registered owners are replaced with new owners; and

(c) No more than two 10-day trip permits may be issued under section

(2) of this rule for the same motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 803.600, 822.035

Stats. Implemented: ORS 803.565, 803.600, 803.602 & 803.645

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0012; MV 4-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04

## 735-154-0005

### Authority of Towing Business to Issue 10-day Trip Permits

(1) A towing business may issue 10-day trip permits as provided in ORS 803.600, if the towing business:

(a) Submits a completed and signed Agreement to Issue Oregon Trip Permits (DMV Form 7115) to DMV; and

(b) Agrees to abide by the Oregon statutes and administrative rules relating to the issuance and sale of 10-day trip permits, including but not limited to ORS 803.600 and OAR 735-034-0010.

(2) DMV may revoke the authority of a towing business to issue 10-day trip permits if the towing business fails to comply with the requirements of ORS 803.565 and OAR 735-034-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.600, 822.205, 822.215

Stats. Implemented: ORS 822.215 & Ch. 600, OL 2003

Hist.: DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04

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**Adm. Order No.:** DMV 10-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 735-150-0250, 735-150-0260

**Rules Repealed:** 735-150-0250(T), 735-150-0260(T)

**Subject:** These rules are needed to implement Section 3, Chapter 459, Oregon Laws 2003 (HB 2455), which amended ORS 822.015 and added new provisions. The law change requires a lien claimant, who sells or offers for sale a vehicle being sold to foreclose a possessory lien, or sells or offers for sale a vehicle acquired through possessory liens, to keep records sufficient to establish that all vehicles being sold or offered for sale were acquired by the lien claimant as the result of a possessory lien. The new provision authorizes DMV to adopt rules to establish record keeping and notification requirements and impose civil penalties. OAR 735-150-0250 specifies the requirements, form and retention period of records required to be maintained by a lien claimant pursuant to HB 2455. The rule also specifies how a lien claimant will notify DMV of the sale of a vehicle subject to the new statutory requirements. OAR 735-150-0260 adds a civil penalty schedule DMV may use when determining appropriate civil penalty amounts for violations of OAR 735-150-

0250. This rulemaking replaces temporary rules adopted December 15, 2003.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-150-0250

### Lien Claimant Records; Notification of Sale

(1) Purpose. This rule establishes the requirements, form and retention period for lien claimant records pursuant to ORS 822.093. The rule also specifies how a lien claimant will notify DMV of the sale of a subject vehicle.

(2) Definitions. For purposes of ORS 822.093, OAR 735-150-0260 and this rule:

(a) "Owner" means any individual(s) or business shown in the records of DMV as having an ownership interest in a subject vehicle.

(b) "Subject vehicle" means a vehicle sold by a lien claimant to foreclose a possessory lien, or acquired by a lien claimant through a possessory lien foreclosure that is sold or offered for sale by the lien claimant.

(c) "Violation" means failure by a lien claimant to keep records in accordance with this rule.

(3) Records. A lien claimant who sells or offers for sale a subject vehicle must maintain records sufficient to establish that subject vehicles were acquired by the lien claimant as the result of a possessory lien. The following records must be maintained:

(a) A signed and dated copy of an original tow notification, repair order, an impound form from law enforcement or other similar form or document showing how the lien claimant acquired possession of the subject vehicle, or a written record that identifies the person or entity that authorized the lien claimant to take possession of the subject vehicle (e.g. specific law enforcement agency, business, etc.) and the time and date of contact.

(b) A signed and dated copy of an original claim or notice of possessory lien, a notice of foreclosure sale form applicable to the possessory lien or similar form or document showing the owner of the vehicle was notified of the possessory lien;

(c) A signed and dated copy of the DMV certificate of possessory lien foreclosure form applicable to the possessory lien as specified in OAR 735-020-0012 for each subject vehicle; and

(d) A bill of sale, if applicable.

(4) Retention. Records required under this rule must be retained for a period of five (5) years by the lien claimant:

(a) For an individual, at a location that complies with section (5) of this rule;

(b) For a business, including the holder of a current valid towing business certificate issued under ORS 822.205, for a period of five years; two years on the premises of the main business location or at a supplemental location of the lien claimant if the vehicle is sold to foreclose a possessory lien, and an additional three-year period at any location within the State of Oregon that is convenient for the lien claimant; or

(c) Any other location that is approved in writing by DMV.

(5) Maintenance; Form. Lien claimant records must be maintained in a manner allowing for timely and efficient retrieval of any record requested by DMV for inspection. Records maintained under this rule must be the original records or an exact copy of the original records and may be maintained in hard copy, on film, or by electronic means. DMV may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

(6) Notice to DMV. A lien claimant must notify DMV within 10 days of the sale or transfer of interest of a subject vehicle by submitting to DMV:

(a) A completed and signed Notice of Sale or Transfer of Vehicle (DMV Form 6890), if the subject vehicle is covered by an Oregon title; or

(b) A completed and signed Notice of Lien Foreclosure; Sale or Transfer of Vehicle (DMV Form 6890A), if the subject vehicle is not covered by an Oregon title.

Stat. Auth.: ORS 184.616, 184.619, 803.097, 822.035, 822.042 & 822.093

Stats. Implemented: ORS 87.152, 87.162, 87.166, 87.172, 87.176 - 206, 90.425, 90.675, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.097, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160, 819.230, 822.035, 822.042, 822.045, 822.093

Hist.: DMV 26-2003(Temp), f. & cert. ef. 12-15-03 thru 6-11-04; DMV 10-2004, f. 5-24-04, cert. ef. 6-1-04

## 735-150-0260

### Civil Penalty Consideration, Lien Claimant Records

(1) In addition to any other penalty or sanction provided by law, a lien claimant who violates any provision of ORS 822.093 or OAR 735-020-0250 relating to lien claimant records may incur a civil penalty in an amount not to exceed \$1,000 for each violation. DMV will assess a penalty amount determined by DMV to be appropriate for the particular violation. In determining an appropriate penalty amount DMV may use the

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schedule set forth in section (2) of this rule as a guideline and may consider the following criteria:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional;
- (d) The prior history of penalties imposed by DMV against the lien claimant;
- (e) The number of violations compared to the volume of transactions by the lien claimant; or
- (f) Other circumstances determined by DMV to be applicable to the particular violation.

(2) Pursuant to ORS 822.093, DMV may impose a civil penalty for failure to comply with any provision of OAR 735-020-0250, concerning lien claimant records:

- (a) For first offense: warning;
- (b) For second offense: \$250;
- (c) For third offense: \$500;
- (d) For fourth and subsequent offense: \$1,000.

(3) Prior to the issuance of a final order, DMV may reassess the civil penalty amount and may agree to payment of an amount less than that assessed in the Notice of Imposition of Civil Penalty, after review of:

- (a) The criteria listed in section (1) of this rule; and
- (b) Any explanatory information provided to DMV.

Stat. Auth.: ORS 184.616, 184.619, 803.097, 822.035, 822.042 & 822.093  
Stats. Implemented: ORS 87.152, 87.162, 87.166, 87.172, 87.176 - 206, 90.425, 90.675, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.097, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160, 819.230, 822.035, 822.042, 822.045, 822.093  
Hist.: DMV 26-2003(Temp), f. & cert. ef. 12-15-03 thru 6-11-04; DMV 10-2004, f. 5-24-04, cert. ef. 6-1-04

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**Adm. Order No.:** DMV 11-2004(Temp)

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04 thru 11-19-04

**Notice Publication Date:**

**Rules Adopted:** 735-090-0130

**Subject:** ODOT-DMV (DMV) currently does not have a process in place to continue an implied-consent administrative hearing in order to secure the personal appearance of a hearsay witness at an implied consent administrative hearing when DMV initially relies on that witness's hearsay evidence in support of its suspension of a person's driving privileges. On April 8, 2004, the Oregon Supreme Court issued its opinion in *Cole v. DMV* and *Dinsmore v. DMV*, holding that although hearsay evidence can constitute substantial evidence in administrative hearings, a petitioning party's due process rights might be violated if DMV does not secure the personal appearance of the hearsay witnesses for cross-examination. Moreover, under its holding in *Dinsmore v. DMV*, where DMV initially relies on hearsay evidence, fails to secure the attendance of the hearsay witness, and the petitioning party then introduces countervailing evidence in the administrative hearing record, the hearsay evidence no longer constitutes substantial evidence. It is necessary for DMV to adopt a process which authorizes a continuance of an implied consent hearing when the personal appearance of a witness is necessary in order for DMV to present evidence to uphold the suspension of driving privileges.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-090-0130

### Error of the Department

In accordance with the definition of "Error of the Department" specified in OAR 735-090-0000(3), in a hearing that determines the validity of a suspension of driving privileges under ORS 813.410, if the department presents hearsay evidence to establish the required elements under ORS 813.410(5) and a petitioning party presents substantial evidence that contradicts the hearsay evidence, the department shall rescind the suspension and continue the hearing pursuant to ORS 813.440(1)(c) in order for the department to subpoena the hearsay witness to the continued hearing.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Implemented: ORS 813.410 & 813.440

Hist.: DMV 11-2004(Temp), f. & cert. ef. 5-24-04 thru 11-19-04

## Department of Transportation, Highway Division Chapter 734

**Adm. Order No.:** HWD 5-2004

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 734-071-0010, 734-071-0050

**Subject:** Cement Products Manufacturing Co., Inc. (Petitioner) requested an amendment to rules related to the definition of overall length in Division 71. Division 71 rules describe lengths of vehicles, loads and vehicle combinations that may operate without a special variance permit. Petitioner specifically requested that a small forklift attached to the rear of a motor truck be excluded from overall length, similar to the current exclusion for a small forklift attached to the rear of a semi-trailer. Current exclusions to overall length determination have been moved from OAR 734-071-0010 to 734-071-0050. An exclusion for a motor truck or a motor truck and trailer combination with attached forklift has been added to OAR 734-071-0050.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 734-071-0010

### Designated Highways and Definitions

(1) The types of vehicles, combinations of vehicles, or loads listed in **Table 1** may operate without special permit upon Group 1, Group 2 and Group 3 highways as shown on Group Map 1 as published by the Department when the dimensions do not exceed those listed in Table 1 for the corresponding highway group. Group **Map 1**, revised November 2001 is adopted by reference and made a part of division 71 rules.

(2) Definitions for the purpose of division 71 rules:

(a) "Auxiliary axle" is an axle that qualifies as a booster axle, flip axle or lift axle;

(b) "Booster axle" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning;

(c) "Dromedary truck-tractor" means a motor vehicle having more than 15,000 pounds GVWR designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer;

(d) "Flip axle" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length and hauling capacity of the trailer;

(e) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298;

(f) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground;

(g) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation;

(h) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers, and having more than 15,000 pounds GVWR;

(i) "Overall length" includes the vehicle or combination of vehicles and any load overhangs. Exclusions to overall length determination are provided in OAR 734-071-0050.

(j) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use, having 15,000 pounds or less GVWR;

(k) "Pickup truck" means a motor vehicle designed to carry passengers and to carry a load, having 15,000 pounds or less GVWR and which shall not tow more than one vehicle, except as provided in OAR 734-071-0030(2);

(l) "Stinger-steered" is as defined in ORS 801.507; and

(m) "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 more than 15,000 pounds GVWR.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060

Stats. Implemented: ORS 810.060, 818.220

Hist.: 1 OTC 5-1980, f. & ef. 3-27-80; 2HD 5-1982(Temp), f. & ef. 10-5-82; 2HD 8-1983, f. & ef. 3-30-83; HWY 3-1993(Temp), f. & cert. ef. 7-13-93, HWY 3-1994(Temp), f. 5-19-94, cert. ef. 5-20-94; HWY 2-1995, f. & cert. ef. 10-16-95; HWY 5-1997, f. & cert. ef. 5-9-97;

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TO 5-1998, f. & cert. ef. 4-16-98; TO 2-2001, f. & cert. ef. 6-14-01; TO 10-2002, f. & cert. ef. 12-13-02; HWD 1-2003, f. & cert. ef. 8-21-03; HWD 5-2004, f. & cert. ef. 5-20-04

## Department of Transportation, Rail Division Chapter 741

### 734-071-0050

#### Length Exclusive Devices

(1) Devices that do not extend more than 24 inches in length beyond the rear of a trailer or semitrailer that are used exclusively to facilitate loading and unloading from the rear of a semitrailer or trailer are excluded from semitrailer, trailer, and overall combination length determination.

(2) Appurtenances at the front or rear of a semitrailer or trailer the function of which is related to the safe and efficient operation of the semitrailer or trailer are excluded from semitrailer, trailer, and overall combination length determination.

(3) Determination of overall length does not include a small forklift designed to be attached to either a motor truck, trailer or semitrailer, which is used exclusively for the loading and unloading of the motor truck, trailer or semitrailer. For purposes of this rule an attachment bracket may be used to secure the forklift providing the bracket does not exceed 24 inches in length. The attachment bracket shall be excluded from measurement provided it carries no load other than the forklift. This forklift may be attached to the rear of a vehicle and not be included in determining overall length if:

(a) On a motor truck, the forklift including attachment brackets do not:

(A) Extend beyond the rear of the motor truck by more than seven feet;

(B) Cause overall length of the motor truck including forklift and attachments to exceed 45 feet; and

(C) Cause rear overhang to exceed three-fourths of the wheelbase of the motor truck;

(b) In a motor truck and trailer combination, the forklift including attachment brackets do not:

(A) Extend beyond the rear of the trailer by more than seven feet;

(B) Cause the overall length of the trailer including forklift and attachment brackets to exceed the otherwise maximum allowable length by more than three feet;

(C) Cause overall length of the combination including forklift and attachment brackets to exceed 80 feet; and

(D) Cause rear overhang to exceed one-third of the wheelbase of the combination;

(c) In a truck tractor and semitrailer combination the forklift, including attachment brackets, do not:

(A) Extend beyond the rear of the semitrailer by more than seven feet;

(B) Cause the overall length of the semitrailer including forklift and attachment brackets to exceed 56 feet; and

(C) Cause rear overhang to exceed one-third of the wheelbase of the combination;

(d) In a truck tractor, semitrailer and trailer combination, or truck tractor, semitrailer and semitrailer combination (B train), the forklift is attached to the rear of the lead semitrailer or to the rear of the second trailer and the forklift and attachment brackets do not:

(A) Extend beyond the rear of the semitrailer or trailer by more than seven feet;

(B) Cause the overall length of the semitrailer to exceed 40 feet;

(C) Cause the distance between the front of the first semitrailer and the rear of the second semitrailer or trailer, inclusive of the forklift, to exceed 68 feet.

(D) Cause the lead trailer to be shorter than the rear trailer, inclusive of the forklift.

(4) Determination of overall length does not include a motor attached to the front of a concrete mixer truck manufactured prior to January 1, 2000, that is used to turn the mixer drum, including a protective bumper for the motor, that does not exceed four feet in length from the foremost point of the vehicle exclusive of the motor and protective bumper.

(5) Determination of overall length does not include a pump attached to the front of a concrete pump truck manufactured prior to January 1, 2000, including a protective bumper for the pump, that does not exceed two feet in length from the foremost point of the vehicle exclusive of the pump and protective bumper.

(6) No device or appurtenance excluded from length determination shall be designed or used for carrying property.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & ORS 810.060

Stats. Implemented: ORS 810.050 & ORS 810.060

Hist.: TO 9-2001, f. & cert. ef. 12-17-01; HWD 5-2004, f. & cert. ef. 5-20-04

**Adm. Order No.:** RD 3-2004

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 741-020-0010, 741-020-0020, 741-020-0025, 741-020-0030, 741-020-0040, 741-020-0050, 741-020-0060, 741-020-0070, 741-020-0080

**Subject:** These rules establish the procedure for determining eligibility and the application procedure for grants and loans under the Industrial Spur Track Program.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

#### 741-020-0010

##### Purpose

Chapter 741, Oregon Laws 2003 created the Industrial Rail Spur Fund, allowing for the issuance of lottery bonds to for the purpose of financing grants and loans to fund industrial rail spurs. The purpose of Division 20 rules is to establish the Industrial Spur Track Program for the distribution of the funds as well as procedures, standards and criteria for its operation.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10, Ch. 741 OL 2003

Hist.: RD 3-2004, f. & cert. ef. 5-20-04

#### 741-020-0020

##### Definitions

For the purposes of Division 20 rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Approved Project" means a Project that the Department has determined will receive funding through either a grant or loan from the Industrial Spur Rail Fund.

(2) "Department" is as defined in ORS 184.610(2).

(3) "Director" is as defined in ORS 184.610(3).

(4) "Industrial Spur Track" means a segment of trackage used for the rail transportation of raw materials and finished products between manufacturing facilities and mail line rails or that serves a transloading, reloading and teaming facility.

(5) "Program" means the Industrial Spur Track Program established by Division 20 rules to administer the Industrial Rail Spur Fund.

(6) "Program Funds" means the money appropriated by the Legislature to the Industrial Spur Fund. These funds may be used as either grants or loans to eligible projects.

(7) "Project" means installation and/or upgrading of industrial spur track. A Project may also include the upgrade of trackage at an industrial facility to handle 286,000-pound GWR rail car shipments or the installation and/or upgrade of trackage that is adjacent to the project and is necessary for the proposed project to function properly.

(8) "Railroad" as is defined in ORS 824.020.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10, Ch. 741 OL 2003

Hist.: RD 3-2004, f. & cert. ef. 5-20-04

#### 741-020-0025

##### Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the Industrial Rail Spur Fund, as funding is available.

(2) Project applications will be reviewed for compliance with the requirements in OAR 741-020-0040 and as prescribed in OAR 741-020-0050.

(3) Projects not funded may be resubmitted during application submission periods prescribed by the Department.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10, Ch. 741 OL 2003

Hist.: RD 3-2004, f. & cert. ef. 5-20-04

#### 741-020-0030

##### Application Requirements

Persons or entities interested in receiving funds from the Industrial Rail Spur Fund may submit to the Department a written application. The application shall be in a format prescribed by the Department and shall contain or be accompanied by such information as the Department may require.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10, Ch. 741 OL 2003

Hist.: RD 3-2004, f. & cert. ef. 5-20-04

# ADMINISTRATIVE RULES

## 741-020-0040

### Application Review and Approval

Upon receipt of an application the Department shall determine whether the Project is eligible for Program Funds. Projects that meet the following criteria are eligible:

(1) The applicant is a railroad doing business within the state of Oregon; a public jurisdiction within the state of Oregon; a company, foreign or domestic, incorporated or registered with the Oregon Secretary of State to do business within the state of Oregon.

(2) The Project will assist in developing a system of industrial rail spur tracks that supports state and local government efforts to attract new industries to Oregon or that keeps and encourages expansion of existing industries.

(3) The Project will serve the public good and would benefit from the provision of public assistance.

(4) The Project is not a replacement for an industrial spur track that would have been constructed without public assistance.

(5) The project will not require or rely upon continuing subsidies from the Department.

(6) The applicant is current on all state and local taxes, fees and assessments.

(7) If the Project is not eligible, the Department shall, within 30 days:

(a) Reject the application; or

(b) Specify the additional information the applicant must provide to establish eligibility.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10. Ch. 741 OL 2003

Hist.: RD 3-2004, f.& cert. ef. 5-20-04

## 741-020-0050

### Project Funding Priorities

The Department shall consider the following in its determination of which eligible Projects will be approved for receipt of funds from the Industrial Rail Spur Fund:

(1) The amount of funding available.

(2) Whether the Project will facilitate creation of new jobs and capital investment or the retention of existing jobs and capital investment that would otherwise be lost to Oregon.

(3) Whether the Project leverages other development efforts by the state or other government units.

(4) Supportive documents from the industry(s) and the railroad indicating the number of new carloads expected to be created within the first three years after construction of the project.

(5) Whether the Project facilitates the retention and/or creation of jobs in economically distressed areas of the state.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10. Ch. 741 OL 2003

Hist.: RD 3-2004, f.& cert. ef. 5-20-04

## 741-020-0060

### Grant Awards and Match

(1) Grant awards shall not exceed 75% of the total Project costs. Loans may be for the full amount of the project. In no case, shall any one project receive more than 50% of the funds available to the Program.

(2) Any required local share of a project grant can be cash, or a combination of cash and in-kind services.

(3) Grants and loans will be awarded only when there are sufficient funds available to cover the costs of the loans and grants.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10. Ch. 741 OL 2003

Hist.: RD 3-2004, f.& cert. ef. 5-20-04

## 741-020-0070

### Project Administration

(1) The Department and the successful applicant shall execute a grant/loan contract prior to the disbursement of Program Funds for an Approved Project.

(2) Documentation of the projected costs for an Approved Project shall be submitted to the Department prior to the disbursement of Program Funds.

(3) Disbursement of Program Funds for grants will not exceed one disbursement per month.

(4) Upon request, the successful applicant must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(5) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(6) Amendments to Approved Project grant contracts are required to change a project's cost, scope, objectives or timeframe.

(7) The Department will require that a lien be placed upon the improvements in the county in which an Approved Project is located. This lien shall be in form approved by the Department and remain in effect for a period of not less than 10 years from the disbursement of the first Program Funds.

(8) If after three years the Approved Project does not generate the carloads and/or the jobs anticipated, the Department may request that the applicant repay up to 40% of Program Funds given as a grant. This shall only occur after the Department investigates the situation and a determination is made as to the cause(s) of the failure to meet the original objectives of the Approved Project.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10. Ch. 741 OL 2003

Hist.: RD 3-2004, f.& cert. ef. 5-20-04

## 741-020-0080

### Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against applicants that fail to comply with the requirements governing the Program. The Department will not impose sanctions until the applicant has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the Approved Project activities have begun within six months of notification of the award of money from the Industrial Spur Program;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the Approved Project grant/loan contract; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project, and those corrective actions are not, or will not be, made within a reasonable time.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the applicant from applying for future assistance.

(e) Other remedies that may be incorporated into grant/loan contracts.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

(4) The Director will consider appeals of the Department's funding decisions. Only the applicant may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.

(5) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 367.070 & Sec. 10. Ch. 741 OL 2003

Hist.: RD 3-2004, f.& cert. ef. 5-20-04

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**Adm. Order No.:** RD 4-2004

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 741-025-0010, 741-025-0020, 741-025-0025, 741-025-0030, 741-025-0040, 741-025-0050, 741-025-0060, 741-025-0070, 741-025-0080

**Subject:** These rules establish the procedure for determining eligibility and the application procedure for grants and loans under the Short Line Railroad Rail Infrastructure Program.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 741-025-0010

### Purpose

The Short Line Credit Premium Account is established in ORS 367.067. The purpose of Division 25 rules is to establish the Short Line

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Railroad Rail Infrastructure Improvement Program as well as procedures, standards and criteria for its operation.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0020

### Definitions

For the purposes of Division 25 rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

- (1) "Department" is as defined in ORS 184.610(2).
- (2) "Director" is as defined in ORS 184.610(3).
- (3) "Program" means the Short Line Railroad Rail Infrastructure Improvement Program as established by Division 25 rules to administer the Short Line Credit Premium Account.

(4) "Program Funds" means the amount of money appropriated by the Legislature to the Short Line Credit Premium Account. These funds may be used as either grants or loans to eligible projects.

(5) "Project" means repair and refurbishment of trackage, right of way, structures or appurtenances of a shortline railroad's rail line for the purpose of either restoring the line to rail service or upgrading infrastructure to meet Legislative criteria set forth in OAR 741-025-0040.

(6) "Short line railroad" means a Class II or Class III railroad as defined in 49 C.F.R. 1201.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0025

### Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the Short Line Credit Premium Account, as funding is available.

(2) Project applications will be reviewed for compliance with the requirements in OAR 741-025-0040 and as prescribed in OAR 741-025-0050.

(3) Projects not funded may be resubmitted during application submission periods prescribed by the Board.

Stat. Auth.: ORS 367.066 - 367.067  
Stats. Implemented: ORS 367.067(2)  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0030

### Application Requirements

Applications for infrastructure assistance from the Short Line Credit Premium Account shall be in a format prescribed by the Department and shall contain or be accompanied by such information as the Department may require.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0040

### Application Review and Approval

(1) Upon receipt of an application the Department shall determine whether the proposed Project is eligible for Program Funds. Proposed Projects that meet the following criteria are eligible:

- (a) The applicant is a short line railroad;
- (b) The Project will not require or rely upon continuing subsidies from the Department; and
- (c) The applicant is current on all state and local taxes, fees and assessments.

(2) If the Project is not eligible, the Department shall, within 30 days:

- (a) Reject the application; or
- (b) Require the applicant to submit additional information as may be necessary.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0050

### Project Funding Priorities

(1) In evaluating eligible Projects to determine which shall receive infrastructure assistance, the Department shall consider:

- (a) The amount of funds available in the Short Line Credit Premium Account.
- (b) Whether the Project has a demonstrable public benefit.
- (c) Whether the Project leverages railroad and shipper contributions.

(d) Whether the Project regains or creates jobs in economically distressed areas of the state.

(2) In evaluating eligible Projects to determine which shall receive infrastructure assistance, the department shall give priority to eligible Projects that:

- (a) Enhance public safety;
- (b) Enhance the environment;
- (c) Appear creditworthy, providing financially secure sources of repayment to secure a federal credit instrument;
- (d) Promote rural economic development;
- (e) Reduce demand for expansion of highway capacity;
- (f) Enable Oregon companies to be more competitive in regional, national, and international markets;
- (g) Preserve or enhance rail or intermodal service to small communities or rail areas; and
- (h) Will be operated by a short line railroad with federal credit assistance under the RRIFP.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0060

### Grant Awards and Match

(1) Grants shall cover 100% of any Credit Risk Premiums set forth in the granting of a federal RRIF loan.

(2) No one Project shall receive more than 30% of the funds available to the Program outside of projects for RRIF financing.

(3) Any railroad and/or shipper contributions can be cash, or a combination of cash and in-kind services.

(4) Grants and loans will be awarded only when there are sufficient funds available to cover the costs of the loans and grants.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0070

### Project Administration

(1) The Department and successful applicant shall execute a grant/loan contract prior to the disbursement of Program Funds.

(2) Documentation of projected costs for the Project costs shall be submitted to the Department prior to the disbursement of Program Funds.

(3) Disbursement of Program Funds for a grant will not exceed one disbursement per month and will be on a voucher basis.

(4) Upon request the successful applicant must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(5) Any Program Funds disbursed but not used for an approved Project must be returned to the Department.

(6) Amendments to project grant contracts are required to change a Project's cost, scope, objectives or timeframe.

(7) The Department will require that a lien be placed upon the improvements in the county in which the project is located. This lien shall be in form approved by the Department and remains in effect for a period of not less than 10 years from the disbursement of the first funds.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

## 741-025-0080

### Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against the applicants that fail to comply with the requirements governing the Program. The Department will notify the applicant in writing of deficiencies and give a reasonable amount of time for the applicant to respond to and correct the deficiencies before imposing sanctions. The following circumstances may warrant sanctions:

(a) None of the Project activities have begun within six months after award.

(b) State statutory requirements have not been met.

(c) The Project substantially deviates from the contract.

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds, and those corrective actions are not, or will not be, made within a reasonable time.

(2) One of more of the following sanctions may be imposed by the Department:

(a) Revoke an existing award;

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- (b) Withhold unexpended funds;
  - (c) Require return of unexpended Program Funds or repayment of expended Program Funds;
  - (d) Bar the applicant from applying for future assistance;
  - (e) Other remedies that may be incorporated into grant/loan contracts.
- (3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.
- (4) The Director will consider appeals of the Department's funding decisions. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.
- (5) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011  
Stats. Implemented: ORS 367.066(2) & 367.067  
Hist.: RD 4-2004, f. & cert. ef. 5-20-04

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**Division of State Lands**  
**Chapter 141**

**Adm. Order No.:** DSL 1-2004

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**Rules Amended:** 141-085-0005, 141-085-0006, 141-085-0010, 141-085-0015, 141-085-0018, 141-085-0020, 141-085-0022, 141-085-0024, 141-085-0025, 141-085-0027, 141-085-0028, 141-085-0029, 141-085-0031, 141-085-0034, 141-085-0036, 141-085-0064, 141-085-0066, 141-085-0070, 141-085-0075, 141-085-0079, 141-085-0080, 141-085-0085, 141-085-0090, 141-085-0095, 141-085-0096, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0136, 141-085-0141, 141-085-0146, 141-085-0151, 141-085-0156, 141-085-0161, 141-085-0166, 141-085-0171, 141-085-0176, 141-085-0240, 141-085-0244, 141-085-0248, 141-085-0254, 141-085-0256, 141-085-0257, 141-085-0262, 141-085-0263, 141-085-0264, 141-085-0266, 141-085-0400, 141-085-0406, 141-085-0410, 141-085-0421, 141-085-0425, 141-085-0430, 141-085-0436, 141-085-0440, 141-085-0640, 141-085-0650, 141-085-0660, 141-089-0100, 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0120, 141-089-0130, 141-089-0135, 141-089-0140, 141-089-0145, 141-089-0150, 141-089-0155, 141-089-0165, 141-089-0170, 141-089-0175, 141-089-0180, 141-089-0185, 141-089-0190, 141-089-0200, 141-089-0205, 141-089-0210, 141-089-0215, 141-089-0225, 141-089-0230, 141-089-0240, 141-089-0245, 141-089-0250, 141-089-0255, 141-089-0260, 141-089-0265, 141-089-0275, 141-089-0280, 141-089-0285, 141-089-0290, 141-089-0295, 141-089-0300, 141-089-0310, 141-089-0400, 141-089-0405, 141-089-0410, 141-089-0415, 141-089-0420, 141-089-0430, 141-089-0500, 141-089-0505, 141-089-0510, 141-089-0515, 141-089-0520, 141-089-0530, 141-090-0005, 141-090-0010, 141-090-0015, 141-090-0020, 141-090-0025, 141-090-0030, 141-090-0035, 141-090-0040, 141-090-0045, 141-090-0050, 141-090-0055, 141-102-0000, 141-102-0010, 141-102-0020, 141-102-0030, 141-102-0040, 141-102-0045

**Subject:** Amendments to these rules are aimed: at accommodating changes in law (HB 2899, HB 2011 and SB 311 from the 2003 Session); responding to initiatives to streamline the permitting process to create certainty and consistency and to conserve the water resources of the state; and addressing recent contested case orders of the Director and courts decisions.

The amendments include but are not limited to: new General Authorization for the Oregon Department of Transportation bridge projects; changes to definition of certain terms; new expedited procedures for projects associated with certain industrial or traded sec-

tor sites under consideration for "project ready" certification or as "opportunity sites."

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3725, ext. 239

## 141-085-0005

### Purpose/Applicability

These rules:

(1) Apply to removal, fill and/or alteration of material within the waters of this state as expressed in ORS 196.668 to 196.692, 196.800 to 196.990, and 390.835.

(2) Establish procedures for applying for an individual removal-fill permit, a general authorization or an emergency authorization (referred to in these rules as either "permits" or "authorizations") and the Department's process for reviewing applications for any of these permits and authorizations.

(3) Establish standards and criteria that an applicant must meet to obtain a permit or an authorization.

(4) Establish general conditions and mitigation requirements to be applied to each approved authorization.

(5) Establish the procedures for enforcing ORS 196.800 to 196.990, 390.825 and 390.835.

(6) Define the "waters of the state" of Oregon that are subject to removal-fill permit requirements.

(7) Define the activities that are subject to (refer to OAR 141-085-0015) or exempt from (refer to OAR 141-085-0020) these rules. Generally, the following activities are subject to removal-fill authorization requirements if conducted in waters of the state. However, this is not an inclusive list and it does not address exemptions from permit requirements. Consult the rules to determine whether a particular activity is subject to authorization requirements. This list is solely for the purpose of giving general examples:

- (a) Streambank stabilization;
  - (b) Wetland restoration;
  - (c) Road, bridge or transportation structure construction (including culverts, road fills);
  - (d) Utility line construction including pipelines and overhead lines;
  - (e) Sand and gravel removal (commercial and non-commercial);
  - (f) Water diversion works/structures (permanent and temporary) including water intakes, weirs and push-up dams;
  - (g) Fish habitat enhancement (e.g. large rock placement; pool and pond construction; gravel placement; side channel construction; barrier removal; placement of large wood material; and streambank rehabilitation).
  - (h) Temporary construction works (e.g., cofferdams);
  - (i) Dredge material disposal;
  - (j) Stream gauging station construction;
  - (k) Waterfront structure construction (e.g. bulkheads, sheet piling, backfilling, filling);
  - (l) Boat ramp construction and improvement;
  - (m) Fill placement for the purpose of land development for institutional, public facilities, residential, commercial or industrial uses;
  - (n) Piling, dolphins;
  - (o) Access channel dredging including maintenance dredging;
  - (p) Underwater blasting;
  - (q) Streambank excavation (e.g., bank sloping, reshaping);
  - (r) Stormwater, wastewater, or sewer outfall construction;
  - (s) Channel or streambed relocation;
  - (t) Tidegate or other water control structure (e.g. levees, dikes, canals or irrigation ditches or drainage ditches) construction;
  - (u) Mining (e.g. placer mining); and
  - (v) Water storage improvement construction (e.g. ponds, reservoirs)
- (8) Govern the basics of the removal-fill program. They must be used in conjunction with other Department rules, which address specific subjects relating to removal and fill, including but not limited to:
- (a) Wetland Delineation Report Requirements and Jurisdictional Determinations for the Purpose of Regulating Fill and Removal within Waters of the State (OAR 141-090-0005 to 141-090-0055).
  - (b) Wetland Conservation Plans (OAR 141-086-0005 to 141-086-0100 and 141-120-0000 to 141-120-0230).
  - (c) The 1992 Lower Willamette River Management Plan as promulgated by the State Land Board and the Department and adopted by reference (OAR 141-080-0105).
  - (d) Essential Indigenous Anadromous Salmonid Habitat (OAR 141-102-0000 to 141-102-0045).
  - (e) Oregon Scenic Waterways (OAR 141-100-0000 to 141-100-0090).
  - (f) General Authorizations (OAR 141-089).

Stat. Auth.: ORS 196.600 - 196.692, 196.800 - 196.990 & 390.805 - 390.925

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Stats. Implemented: ORS 196.600 - 196.692, 196.800 - 196.990 & 390.805 - 390.925  
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0103; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0006

### Policy

(1) No authorization to place fill or remove material from the waters of the state shall:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation uses; or

(b) Be inconsistent with the protection, conservation and best use of the water resources of this state.

(2) To the extent possible, the Department shall administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

(3) The Department shall actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness and enhance protection of water resources.

(4) The Department shall recognize the interests of adjacent landowners, Tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies, and shall provide notice to such interests prior to issuance of an individual removal-fill permit or adoption of a general authorization.

(5) In regard to the regulation of wetlands, the Department shall administer these rules to ensure that:

(a) The protection, conservation and best use of the state's wetland resources, including their functional attributes, are promoted through the integration and coordination of the local comprehensive land use plans and the Department permitting process.

(b) A stable wetland resource base is maintained through impact avoidance and compensation for unavoidable wetland losses.

(6) The restoration of wetlands and other waters through voluntary restoration and conservation programs is encouraged and facilitated.

(7) The Department shall administer the removal-fill program in a manner consistent with and in support of:

(a) The Oregon Plan as described in ORS 541.405;

(b) The applicable Oregon Wetlands Benchmark; and

(c) The Oregon Coastal Management Program.

(8) The Department shall carry out its responsibilities under these rules in compliance with the coordination procedures established in its State Agency Coordination Program (OAR 141-095-0000).

(9) The Department shall coordinate administration of the Scenic Waterway Act (ORS 390.805) under OAR 141-0100 with these rules.

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0010

### Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905:

(1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(6)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris.

(2) "Adverse Effect" means the same as "reasonably expected adverse impacts".

(3) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization as evidenced by their signature on the application.

(4) "Department" means the Oregon Department of State Lands and the Director or designee.

(5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes com-

munities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(6) "Artificially Created" means constructed by artificial means.

(7) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(8) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.

(9) "Authorization Holder" or "permittee" means the person holding a valid authorization from the Department.

(10) "Bank" means: (a) for perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and (b) for intermittent streams, the bank extends to the ordinary high water line; the line between the bed and bank may be indistinguishable during dry months.

(11) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(12) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(13) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(14) "Beds" means: (a) for the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(15) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(16) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(17) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(18) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(19) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(20) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(21) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(22) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(23) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(24) "Channelized or Relocated Stream" means a natural stream that has been diverted, dredged, straightened or diked. Channelized or relocated streams can be characterized by the following:

(a) Have headwaters and may transport water from a spring or natural drainage;

(b) Is an integral part of a natural drainage;

(c) Have straight channels which may show signs of natural channel processes (e.g. meandering, pool and riffle development) if left undisturbed for a number of years;

(d) Typically flow along property or field boundaries; and

(e) May be perennial or intermittent.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

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(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation" means activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905 or these rules.

(34) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail proposed compensatory wetland mitigation.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(39) "Consent Order" means a formal, legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.

(45) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(47) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(48) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(49) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(50) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(51) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(52) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(53) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(54) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters. Drainage ditches can be characterized by the following:

(a) Typically have no headwaters;

(b) Carry water from local surface areas or subsurface drains;

(c) May be permanently or intermittently wet;

(d) Primarily constructed to remove excess water

(e) Dry ditches are typically dry in summer or early fall and are constructed primarily to carry away water during winter storm events;

(f) Wet ditches are wet all year round and carry water for drainage or irrigation purposes.

(55) "Dolphin" is a cluster of piles or piling which is bound together.

(56) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(57) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(58) "Dredging" means removal of bed material using other than hand held tools.

(59) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(60) "Emergency Letter of Authorization" is an expedited authorization that the Department may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(61) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(62) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(63) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(64) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(65) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(66) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological

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productivity, habitats and diversity of native species, unique features, and water quality.

(67) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(68) "Expiration Date" means the date the authorization to conduct the removal-fill specified in the authorization has ended. The authorization holder's obligation to comply with the Department's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(69) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(70) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(71) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(72) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(73) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(74) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(75) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(76) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(77) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(78) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(79) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(80) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(81) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(82) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen

of the stream and is covered with water when the waterway overflows its banks at flood stage.

(83) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(84) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) are those stream reaches that flow during a portion of every year, that contain food and game fish and all tributaries one stream order classification upstream. For example, if food and game fish are present in a second order stream, then all its first order tributaries would be classified under this definition.

(85) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(86) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(87) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankful stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(88) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values." For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(89) "General Authorization" means a rule adopted by the Department authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(90) "Geographic Region" for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(91) "Governmental Body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(92) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(93) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(94) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(95) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(96) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(97) "Headwater" means the source of a stream or river (e.g. a spring).

(98) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(99) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(100) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consist-

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ing of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(101) "Highbanking" means the use of a highbanker for the recovery of minerals.

(102) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(103) "Hydraulic" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(104) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(105) "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(106) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(107) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

(108) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(109) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(110) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(111) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(112) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (**Figure 1**, Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 8).

(113) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(114) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(115) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(116) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

(117) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(118) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(119) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(120) "Levee" means a human-made feature that restricts movement of water into or through an area.

(121) "Line of Nonaquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(122) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(123) "Location" as used in OAR 141-084-0010(76) means a physical place where a project is proposed, authorized or conducted.

(124) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the use of the structure. Maintenance includes expansion of a structure by not more than (20) twenty percent of its original footprint.

(125) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(126) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(127) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(128) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(129) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

(130) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(131) "Mitigation Bank Credit" or "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600(2) further defines this term.

(132) "Mitigation Bank Instrument" or "Instrument" means the legally binding and enforceable agreement between the Director and a mitigation bank sponsor that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Department makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(133) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Department. The Department uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(134) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Department and the Corps on wetland mitigation bank projects.

(135) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(136) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(137) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(138) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface.

(139) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish

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beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(140) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways as described in "Other Bodies of Water" (OAR 141-085-0015(2)(e)).

(141) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(142) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(143) "Non-Motorized Methods or Activities" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(144) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Department for the latest listing of navigable waterways.

(145) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

(146) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(147) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(148) "Off-site compensatory wetland mitigation" or "off-site CWM" means activities conducted away from the project site to restore, create or enhance wetland function attributes in order to compensate for the adverse impacts to wetlands from project development.

(149) "On-site compensatory wetland mitigation" or "on-site CWM" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(150) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(151) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to 496.192, administered by ODFW, and ORS 564.010 to 564.994 administered by the Oregon Department of Agriculture (ODA).

(152) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(153) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(154) "Other Waters" means waters of the state other than wetlands.

(155) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(156) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Department or by agreement of the Department to an approved third party.

(157) "Perennial Stream" means a stream with flow that lasts throughout the year.

(158) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(159) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(160) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(161) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(162) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(163) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(164) "Pond" means an artificially confined body of water.

(165) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(166) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(167) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(168) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(169) "Project" means the primary development or use intended to be accomplished (e.g. retail shopping complex, residential development).

(170) "Project Area" means the physical space in which the removal-fill takes place including any on site or off-site mitigation site. "Project Area" includes the entire area of ground disturbance, even though not within waters of the state, including all staging areas and access ways, both temporary and permanent.

(171) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Department to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(172) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(173) "Protection" means to prevent human activities from destroying or degrading functions of waters of state.

(174) "Public Body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(175) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(176) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e. pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a "removal"). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

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(177) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(178) "Reasonably Expected Adverse Impacts" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(179) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Department.

(180) "Reconstruction" means to rebuild; to construct again.

(181) "Reference Site" means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular compensatory wetland mitigation plan.

(182) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(183) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(184) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(185) "Restoration of an Estuarine Area" means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.

**NOTE:** Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(186) "Restoration Order" means a legally binding order requiring a violator to restore waters of the state and may require remittance of a civil penalty to the Common School Fund.

(187) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(188) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(189) "Riprap" means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(190) "Road Prism" means the excavation and embankment areas of roadbed.

(191) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(192) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(193) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(194) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(195) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

(196) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(197) "Showing Before the Department" means to prove, make apparent, or make clear by presenting evidence to the Director of the Department of State Lands or designee.

(198) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(199) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(200) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(201) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(202) "Stormwater" means the precipitation and snow melt that runs off of developed facilities through drains, gutters and curbs.

(203) "Stream" means a body of running water moving over the surface of the land in a channel or bed including stream types classified as perennial, intermittent and channelized or relocated streams.

(204) "Stream Order Classification" means a system to categorize streams. A small unbranched headwater tributary is a first order stream. Two first order streams join to make a second order stream. A third order stream has only first and second order tributaries and so forth.

(205) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(206) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose. Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(207) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(208) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(209) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects). Also called "performance standards" or "success targets."

(210) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(211) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(212) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(213) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(214) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(215) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(216) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(217) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(218) "Uplands" are any land form that does not qualify as waters of the state.

(219) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

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(220) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(221) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(222) "Violation" means removing material from or placing fill in any waters of this state without a permit (authorization) or in a manner contrary to the conditions set out in a permit issued under the Removal-Fill law or these rules.

(223) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(224) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(225) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(226) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(227) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

- (a) Measure or regulate the flow of water;
- (b) Divert fish into a trap; or
- (c) Raise the level of the waterway or divert stream flow into a water distribution system.

(227) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(228) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(229) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(230) "Wetlands" means those areas that are inundated or saturated by surface or ground water 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.

(231) "Woody Plants" means trees and shrubs.

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

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0015

### Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

(2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:

- (a) Estuaries and tidal bays, to the elevation of highest measured tide;
- (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
- (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;

(d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.

(e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

(A) Wetlands and ponds artificially created from uplands, unless specified in OAR 141-085-0015(4) or (5) that are:

- (i) Equal to or greater than (1) one acre in size; or
- (ii) Identified in a removal-fill authorization as a compensatory mitigation site.

(B) Except as described in OAR 141-085-0015(3) and (6), channels or ditches that are artificially created from upland that:

- (i) Contain food and game fish; and
- (ii) Have free and open connection to waters of the state.

(3) "Other Bodies of Water" do not include existing irrigation canals and ditches that meet the following requirements:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the canal/ditch or for stock water runs, provision of water for fire services or storm water runoff.

(4) "Other Bodies of Water" do not include wetlands artificially created from uplands of up to one acre in size for the purpose of controlling, storing or maintaining stormwater (ORS 196.687).

(5) "Other Bodies of Water" do not include channels, wetlands or ponds of any size artificially created from uplands for the purpose of:

- (a) Wastewater treatment;
- (b) Farm or stock watering (including crop irrigation);
- (c) Settling of sediment;
- (d) Fire suppression;
- (e) Cooling water;
- (f) Surface mining, where the site is managed for interim wetlands use or not protected as a significant wetland in the comprehensive plan (pursuant to ORS 196.672(10));

(g) Log storage; or

(h) Aesthetic purposes, including golf course features.

(6) "Other Bodies of Water" do not include drainage ditches alongside roads and railroads where the ditch is:

(a) Ten (10) feet wide or less at the ordinary high water line;

(b) Artificially created from upland or from wetlands (e.g. in mapped hydric soils);

(c) Not adjacent and connected or contiguous with other wetlands; and

(d) Do not contain food or game fish.

(7) Even if located within an area described in OAR 141-085-0015(2), to be subject to the removal-fill law and these rules the removal-fill must also be of a volume that meets one of the following thresholds and must not be exempt from removal fill authorization as described in OAR 141-085-0020:

(a) Oregon Scenic Waterways, the threshold volume is any amount greater than (0) zero, except for recreational prospecting, as defined in ORS 390.835(18)(c) and OAR 141-0100, and any non-motorized activities;

(b) Streams designated as Essential Indigenous Salmonid Habitat (ESH) (see OAR 141-102, the threshold volume is one cubic yard at any one site (for prospecting and non-motorized activities), and cumulatively no more than five cubic yards (for prospecting and non-motorized activities), or an authorization is required (unless exempted under OAR 141-085-0020);

(c) All other waters of the state subject to these rules, the threshold amount is no more than 50 cubic yards (or the equivalent weight in tons) of material removed or filled, or an authorization is required (unless exempted under OAR 141-085-0020).

(8) Fill volume is measured to the elevation of jurisdiction for all waters of the state; removal volume for all waters includes the full extent of the excavation within the jurisdictional area. For wetlands, fill volume is measured to the height of the fill excluding buildings.

(9) When calculating the volume for channel relocation the threshold is met if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(10) Removal-fill activities that are exempt under state law may nonetheless be regulated under applicable federal laws, including the federal Endangered Species Act (16 U.S.C. 1531 et seq.), section 404 of the federal Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as amended.

Stat. Auth.: ORS 196.800, 196.810 & 390.835

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

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Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0105; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0018

### Required Authorizations; Permits and Authorizations Generally

(1) Unless exempt as provided in OAR 141-085-0020, no person may conduct any removal-fill in waters of the state and within the thresholds (OAR 141-085-0015) without first being authorized by the Department by one of the following authorization types as appropriate:

(a) An individual removal-fill permit; or

(b) A letter of authorization issued under a General Authorization as defined in OAR 141-085-0070; or

(c) An emergency letter of authorization issued in accordance with OAR 141-085-0066.

(2) The Department shall prescribe the type of authorization to be issued.

(3) Each type of authorization, when issued, shall include, but not be limited to, the following:

(a) Project description.

(b) Expiration date. The date of expiration shall be no more than five years from the date of issue, unless authorized by the Department in accordance with OAR 141-085-0031 or 141-089.

(c) Permit or authorization holder information. Name, address and telephone number of the authorization holder and the person responsible for complying with the permit conditions;

(d) Authorization conditions. A comprehensive, specific listing of all performance requirements to be met by the authorization holder in order to complete the removal-fill activity in a manner that complies with these rules or any general authorization; and

(e) Compensatory mitigation plan. Compensatory freshwater or estuarine mitigation plans for all wetlands and compensatory mitigation plans for other waters as applicable.

Stat. Auth.: ORS 196.800, 196.810, 196.825 & 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0020

### Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Department shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Department for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of the state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of the state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for construction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, streambank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to removal fill within waters of the state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging).

(4) These rules do not apply to "normal farming and ranching activities" on converted wetlands, as defined in OAR 141-085-0010. Such activities include the following:

(a) Plowing,

(b) Grazing,

(c) Seeding,

(d) Cultivating,

(e) Conventional crop rotation,

(f) Harvesting for the production of food and fiber; and

(g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance.

(a) Drainage or maintenance of farm or stock ponds;

(b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of the state. Maintenance activities shall be confined to the same limits of the originally approved structure(s).

(c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal which involves changing any wetlands to a non-farm use.

(7) Exempt "activities customarily associated with agriculture". Fill or removal activities involving less than 50 cubic yards of material as defined in OAR 141-102 and 141-085-0010 for activities customarily associated with agriculture within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030) are exempt from these rules.

(8) Exempt maintenance or reconstruction of certain structures. Maintenance, or reconstruction of certain structures within waters of the state such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, irrigation structures and tile drain systems are exempt from the requirements of these rules, provided that:

(a) The structure was serviceable within the past five (5) years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Exempt maintenance, repair, replacement or removal of culverts. These rules do not apply to removal-fill activities within waters of the state for the maintenance, reconstruction or removal of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

(a) The removal fill is limited to the extent of the existing road prism (as defined in OAR 141-085-0010) and may, consistent with OAR 141-085-0010(124), expand the original footprint of the structure by up to 20 percent if fish passage design requires removal or fill outside the road prism in order to successfully pass fish, the removal/fill volume and area of impact is limited to the minimum necessary to restore the function of the structure and provide fish passage but not more than 20 percent of the original footprint;

(b) The culvert was serviceable within the past five (5) years;

(c) The removal-fill does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert.

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural bank full width and replicating the stream's natural streambed configuration).

(10) Exempt push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of the state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

(a) It has been reconstructed and used within the past five (5) years; and

(b) It has the same impact as when it was first constructed (i.e., size, extent and location); and

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(c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) On-going maintenance of push-up dams allowed. Once authorized by the Department, a post-1967 push-up dam within waters of the state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam's impact to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage). A push-up dam involving less than fifty (50) cubic yards, located within a stream designated as Essential Indigenous Anadromous Salmonid Habitat (see OAR 141-102) and used for "activities customarily associated with agriculture" as defined in OAR 141-102 and 141-085 is exempt from authorization requirements.

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of the state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of the state at any site where fish eggs are present.

(14) Exempt fish passage and fish screening in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810 & 196.805

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0022

### Removal-Fill Permits Authorized in Site Selection or Site Certificate Proceedings; Hazardous Substances

(1) Upon submission by the applicant of proper applications and payment of the proper fees, the Department shall issue the permits authorized by the authorized siting entity, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Department). The Department will continue to exercise enforcement authority over a permit issued pursuant to this section. This section applies to:

- (a) The decisions of the Corrections Facility Siting Authority, pursuant to ORS 421.628, relating to siting corrections facilities;
- (b) The decisions of the Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and
- (c) The decisions of the Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

(2) The standards contained in these removal-fill program rules do not govern complete applications received by any of the agencies listed above before the effective date of these removal-fill program rules. For all such applications, the standards in effect as of the date of receipt apply to consideration of whether the applicable agency shall approve or deny the application.

(3) Under ORS 465.315, no removal-fill authorization is required for the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the Department of Environmental Quality. The responsible party must notify the Department of its intended action, pay applicable fees in accordance with OAR 141-085-0064, and must comply with protective measures that the Department would otherwise apply.

Stat. Auth.: ORS 421.628, 459.047 & 469.300

Stats. Implemented: ORS 421.628, 459.047 & 469.300

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0023

### Expedited Process for Industrial or Traded Sector Sites

(1) The Department shall offer an expedited process of planning and authorizing removal-fill within waters of the state for certain industrial or traded sector sites identified by the Governor's Office of Economic Revitalization (GERT) or having the potential to be certified by the Oregon Economic and Community Development Department.

(2) The Director shall, upon the request of GERT or the Oregon Economic and Community Development Department, designate a site for expedited planning and processing as described in OAR 141-085-0023 of this rule. GERT or the OECD shall provide the contact information for the project proponent or sponsor. The proponent or sponsor shall have authority to authorize the Department or its agents physical access to the site.

(3) The Director shall assign a project leader from the Department to work with the sponsor and the other applicable regulatory and natural resource agencies. Such work includes assistance and guidance in the preparation of reports, plans and permits application documents necessary to expedite issuance of an authorization under these rules or to avoid the need to obtain an authorization by planning the project in such a way so as to not be within the jurisdiction of these rules.

(4) The project sponsor, the Department and any other parties, public or private, deemed appropriate by the primary partners (i.e. the Department and the project sponsor(s)) will enter into a partnership agreement for the project that outlines the roles and responsibilities of each party and the performance requirements of all involved including a projected schedule for completion and approval of all work.

(5) The work to be accomplished by the Department through the partnership could include, but is not limited to, the following:

(a) Coordination and direction of contracts for:

(A) The determination and delineation of waters of the state within the project site or mitigation site, if needed;

(B) The completion of functional assessments for the waters of the state within the project site or mitigation site if needed; and/or

(C) The completion of removal-fill authorization application materials (including but not limited to: alternatives analysis; compensatory mitigation plans)

(b) Review and concurrence with jurisdictional determinations in accordance with OAR 141-090;

(c) Technical assistance and guidance in the development of the site master plan with an emphasis on the mitigation (as defined in OAR 141-085-0115) of project impacts to waters of the state;

(d) Technical assistance in the preparation of removal-fill authorization application materials including guidance on the most appropriate and expedient removal-fill authorization to seek from the Department;

(e) Assistance with the early identification and resolution of issues raised by other agencies and the public; and/or

(f) Expedited review of removal-fill authorization application and prompt permit decision in accordance with these rules.

(6) The Department will endeavor to provide the assistance as described in OAR 141-085-0023 to the maximum extent possible taking into account budget constraints and limitations.

(7) The Department recognizes that time is of the essence in fulfilling the requirements of any partnership agreement and will carry out its responsibilities as expeditiously as possible.

Stat. Auth.: ORS 421.628, 459.047 & 469.300

Stats. Implemented: ORS 421.628, 459.047 & 469.300

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0024

### Pre-Application Conference

(1) A person contemplating conducting an activity subject to removal-fill authorization requirements may request a pre-application conference with the Department.

(2) At a pre-application conference, the Department will address pertinent factors based upon the information presented by the applicant, including:

(a) Whether the proposed project will require an authorization;

(b) The application requirements and type of authorization needed;

(c) Ways to avoid and minimize adverse impacts to the water resources and navigation, fishing and public recreation uses;

(d) The authorization review standards that will be applied to the proposed project;

(e) The proposed compensatory mitigation plan;

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(f) The need to provide additional information with the application; and/or

(g) The need to coordinate with certain agencies or public interests.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0025

### Application for Individual Removal-Fill Permits

(1) Any person planning a project subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Department before conducting the removal fill. Persons may submit an application in order for the Department to determine if a removal fill is subject to these rules and requires an authorization.

(2) To obtain an individual permit, a complete application is required in order for the Department to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of the state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of the state that involve listed species.

(3) A completed and signed application on forms provided by the Department along with any maps, photos and drawings, as required, that includes the following information:

(a) Applicant and property owner information including name, address and phone number;

(b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;

(c) Location of any off-site disposal or borrow sites if these sites contain waters of the state;

(d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of the state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);

(e) Description of the purpose and need for the project;

(f) Identification of the limits (area) of the waters of the state (e.g. wetland delineation or determination) and the proposed impact to waters of the state associated with the project;

(g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes. Adverse effects to be considered include but are not limited to:

(A) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);

(B) Increasing water flows from the project;

(C) Relocating water or redirecting water flow;

(D) Causing flooding or erosion downstream of the project.

(h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;

(i) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize impacts to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capable of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or managed to fulfill the project purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. Unless specified otherwise by the Department, an alternatives analysis is not required for projects involving up to 250 (two hundred fifty) cubic yards in non-essential salmon habitat areas (as designated in OAR 141-102) or for projects involving permanent wetland impacts equal to or less than 0.2 (two-tenths) acre. An alternative analysis is needed for estuarine fills. Circumstances when an alternatives analysis may be required in the application include but are not limited to projects involving

conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:

(A) Those located in waters of the state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.

(B) Small in size; in relationship to the affected waters of the state.

(C) Those that cause only temporary impacts.

(k) Names and addresses of adjoining property owners (including those across a stream or street from the project as required by the Department);

(l) Local government land use information (as shown on the application form);

(m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);

(n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:

(A) A site survey;

(B) A database query completed by the Oregon Natural Heritage Program; or

(C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;

(o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.

(4) If reasonably expected adverse impacts to the water resources cannot be avoided, minimized, rectified or reduced, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 thru -0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary impacts to waters of the state, as required in OAR 141-085-0171.

(5) If the proposed removal fill involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 thru -0055 shall be submitted by the applicant or required by the Department:

(a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed impacts (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Department may conclude that a wetland determination is sufficient to identify wetland impacts or to establish the extent, if any, of wetland impacts.

(b) Whenever possible, wetland determination or delineation reports should be submitted to the Department for a jurisdictional determination well in advance of a permit application (i.e., within 90 days of submitting an application) to ensure that the project design is based upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.

(6) If the proposed removal fill involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.

(7) If the proposed removal fill will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:

(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4)); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

(A) The public use of the proposed project;

(B) The public need for the proposed project;

(C) The availability of alternative, non-estuarine sites for the proposed use; and

(D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) An applicant for fill and removal of material at locations not more than one mile apart may combine them into one application. Applicants for linear transportation or utility corridor projects may apply on a single application if the projects:

(a) Consist of integrally-related activities; and

(b) Are planned, phased, designed and budgeted as a discrete construction unit.

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(9) The Department may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) The application may include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815, 196.825 & 196.845  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0027

### Determination of Complete Application for Individual Removal-Fill Permit

(1) Upon receipt of an individual removal-fill permit application, the Department shall review the application materials to determine whether all the forms, plans, maps and other information required in OAR 141-085-0025 are present.

(2) The Department shall determine no later than thirty (30) calendar days from the date the Department receives the application whether the application is complete (including the payment of fees in accordance with OAR 141-085-0064). If the Department fails to make such a determination within the thirty 30 calendar day time period and fails to so notify the applicant, the application shall be deemed a complete application.

(3) The Department will determine if the project, as described in the application, is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020. If the Department determines that the application is for a project that is not subject to these rules, it shall notify the applicant in writing and state the reasons for the determination.

(4) The Department will determine if the project, as described in the application, may be eligible for approval under a general authorization as described in OAR 141-089. The Department will notify the applicant of this determination and offer the opportunity for the application to be processed under the applicable general authorization.

(5) The Department will accept a wetland delineation or wetland determination report along with the application in accordance with OAR 141-085-0025(5). A jurisdictional determination in accordance with OAR 141-090 will be completed prior to or at the time of the permit decision.

(6) Once the Department deems the application complete, the Department shall commence, without unnecessary delay, to process the application in accordance with OAR 141-085-0028(6).

(8) If the Department determines that the application does not meet the requirements of OAR 141-085-0025 and is therefore deficient and incomplete, the Department shall, within a reasonable time, but no later than thirty (30) days after the initial receipt of the application, notify the applicant in writing and list the missing information. The applicant must resubmit the entire amended package for reconsideration, unless instructed by the Department to do otherwise. Examples of information that may be cause for rejection of the application include, but are not limited to, the following:

- (a) Major errors, omissions or inconsistencies in the application;
- (b) Major errors, omissions or inconsistencies in the wetland delineation or determination report, if one is required.

(c) Lack of a wetland delineation or wetland determination where wetlands are affected by the project.

- (d) Unclear, illegible maps and drawings;
- (e) Lack of a compensatory wetland mitigation plan;

(f) Lack of an analysis of the adverse effects of the project on the water resources or the navigation, fishing and public recreation uses; or

- (g) Lack of payment of fees.

(8) Minor errors, omissions or inconsistencies, as determined by the Department, will not be cause for rejection.

(9) Submission of a new application package commences a new 30-day review period.

Stat. Auth.: ORS 196.815; 196.825; 196.845  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0028

### Individual Removal-Fill Permit Review Process Including the Public Review and Notice Process

(1) General Description. The Department shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Department will do one of the following:

(a) Approve the application and issue an individual removal-fill permit with conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit with special conditions; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or OAR 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Department determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Department agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Department shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OR 141-085-0028(1). If no agreement is reached, the Department shall take any action described in OAR 141-085-0028(1)(a) (b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Department at any time prior to the permit decision. If the modification is determined by the Department to be substantially different in nature or effect from the original application (e.g. large increase in area of development, or large increase of volume of fill/removal), the Department shall treat the modified application as a new application and process it in accordance with these rules. The Department shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Department will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Department.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Department shall provide notification of the availability of the application for review to:

- (a) Adjacent property owners;
- (b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;
- (c) Affected local government land use planning and zoning departments;

(d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;

(e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency Department, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and

- (f) Affected Tribal governments.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Department shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Department office nearest the project location.

(9) The Department will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public inter-

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est groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Department may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Department's discretion, the Department may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Department within the period established by the Department, but not more than thirty (30) calendar days from the date of the notice. However, the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment if the application requires certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended (i.e. 401 certification), unless the Department, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and the Department. In no case shall the extension granted be in excess of one year. If an agency or unit of government fails to comment on the application within the comment period, the Department shall assume the agency or other unit of government has no objection to the project.

## (11) Applicant Response to Comments

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant the Department will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a request, either orally or in writing, for additional time to respond to comments, and the Department shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Department may, as a result of the public review process and/or the Department's investigations, request that the applicant voluntarily submit supplemental information prior to the Department making the permit decision. The Department shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Department, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0029

### Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Department shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval To issue an individual removal-fill permit the Department must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Department may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Department will not issue an individual removal-fill permit for a project that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Department may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering practicable mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis The Department will issue an individual removal-fill permit only upon the Department's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses. Unless otherwise specified by the Department, and except in essential salmon habitat, no alternative analysis will be required for projects involving less than 250 (two hundred fifty) cubic yards of fill or removal or projects involving permanent wetland impacts equal to or less than 0.2 (two-tenths) acre. An alternative analysis is required for all estuarine fills. In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Department will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Department with all information necessary to make this determination. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and

(c) The project meets all other review standards of these rules.

(5) Mitigation The Department will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Department's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Department shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Department determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Department shall then consider whether limiting the degree or magnitude of the removal fill and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Department determines that project impacts to the waters of the state cannot be further minimized, the Department shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the removal fill impact area can rectify the impact;

(d) Reduction or elimination. When removal fill impacts have been minimized and rectified to the maximum extent practicable, the Department will consider whether the impacts can be further reduced or

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eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Department shall then consider how the applicant's project would compensate for reasonably expected adverse impacts of project development by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(6) Direct and Indirect Effects The Department shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development to waters of the state.

(7) Permit Conditions If the project meets the requirements of this section, the Department shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development to waters of the state. The Department may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order to mitigate for the reasonably expected adverse impacts of project development to waters of the state. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The removal fill shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. removal fill conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Department based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Department.

(e) The removal fill shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction to waters of the state, the permit holder shall immediately cease work at the discovery site and contact the Department and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Department, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Department may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill in waters of the state any material defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use in waters of the state any fill material such as chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wet-

land or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

(8) Long Term Protection of Mitigation Sites

(a) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(b) The applicant shall offer a preferred method and justification.

(c) The Department will make the final determination for the need and type of long-term protection based upon the risk of loss of the compensatory mitigation site taking into account 8(a)(A)(B)(C) and (D) above.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0031

### Documentation of Individual Removal-Fill Permit Decision; Term of Certain Individual Removal-Fill Permits

(1) The Department shall prepare written findings documenting and supporting any decision to deny an individual removal-fill permit. In addition, the Department shall prepare written findings to support any decision to issue an individual removal-fill permit for the following:

(a) Projects involving fill of two acres or more in freshwater wetlands.

(b) Projects involving fill in estuaries (except cable crossings, pipelines, or bridge construction).

(c) Projects involving the removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging).

(d) Projects involving placement of greater than 2,500 cubic yards riprap in coastal streams and estuaries.

(e) Projects in the Oregon territorial sea in accordance with Statewide Planning Goal 19-Ocean Resources.

(2) The Department shall prepare written findings documenting and supporting a permit decision that is contrary to the recommendation of a state agency.

(3) Terms of Permits

(a) The Department may issue an individual removal-fill authorization for up to five (5) years for projects that occur on a continuing basis or will take more than one year to complete as follows:

(A) For commercial aggregate removal including dredging and bar scalping when the Department determines that:

(i) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(ii) The applicant has conducted removal in compliance with any individual removal-fill authorization conditions for the same site for at least one year preceding the pending application.

(B) For projects associated with flood event recovery (e.g. stream-bank stabilization) when the Department determines that the project(s) are part of a comprehensive multidisciplinary flood recovery plan that specifically addresses and supports the type of treatment that is proposed in the removal-fill authorization application.

(C) For projects that are for the purpose of watershed restoration that are developed from a watershed assessment and identified as a priority in a watershed action plan.

(D) For other types of projects, when the Department determines that:

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(i) The project is expected to require more than one year to complete; or

(ii) The project purpose requires annual activity or reconstruction (e.g. irrigation diversions); and

(iii) The project purpose, location or methods of construction or operation described in the application are not expected to change during the course of the project.

(E) Fees for a multi-year period permit, in accordance with ORS 196.9159(5), shall be paid annually on the anniversary date of the permit as established by the Department.

(F) The Department may modify conditions of a multi-year authorization based upon new information or project monitoring that indicate a need for different operating conditions.

(G) Before modifying any condition that significantly affects the scope and extent of the removal fill (e.g. amount of material to be filled/removed) of any individual removal-fill authorization authorized for more than one year, the Department shall give notice as described in OAR 141-085-0028(4) and treat the proposed notification in the same manner as described in OAR 141-085-0028(6) thru (12).

(H) If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Department may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Department under the Removal-Fill Law and these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0034

### Transfer of Authorization/Waiver or Modification of Authorization Conditions

(1) The person or party listed on the authorization is responsible for complying with the conditions of the authorization, unless the authorization is transferred in writing by the Department to a different person or party through the following process:

(a) A transfer form shall be submitted by the authorization holder.

(b) If the original authorization has not expired, the authorization may be transferred by issuing a modification to the original authorization.

(c) If the authorized activity has been completed and/or the authorization expired, but mitigation monitoring is still required as a condition of the original authorization, that obligation shall be transferred to the new authorization holder.

(d) If a bond was required for the mitigation, a new bond must be provided prior to the transfer.

(2) Upon the written request of the authorization holder, the Department may grant a waiver or modification of any condition. The authorization holder shall have the burden to prove, to the satisfaction of the Department, that the waiver or modification will not result in adverse impacts on the water resources or otherwise be contrary to the policies in OAR 141-085-0006. Significant modifications of individual removal-fill permit conditions may require public review as specified in OAR 141-085-0028(6) thru (12).

(3) Exceptions to a permit condition regarding the in-water work period shall be authorized by the Department as described in OAR 141-085-0029(7)(C).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0036

### Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Department under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Department shall notify the permit holder of the expiration date and request that the applicant report to the Department in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Department may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for up to an additional one-hundred and twenty (120) calendar days, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Department may extend the expiration date of the permit for not more than 120 days, one time only, if:

(a) The permit holder makes a written request to the Department prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) The Department may require a new permit application or additional information if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse impacts of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse impacts of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse impacts than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse impacts may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.825

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0064

### Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied by a base fee in accordance with the following schedule:

(a) For a removal by a private operator, or a person contracting to perform services for a private operator, \$50.

(b) For a removal by a public body: \$150.

(c) For a removal by a commercial operator: \$150.

(d) For a fill by a private operator, or a person contracting to perform services for a private operator: \$150.

(e) For a fill by a public body: \$375.

(f) For a fill by a commercial operator: \$375.

(g) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons: no fee.

(2) In addition to the base fee for removal established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities involving 500 to 4,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 5,000 to 50,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities over 50,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(3) In addition to the base fee for fill established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities of 500 to 2,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 3,000 to 10,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities of over 10,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(4) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher, per ORS 196.815(4), according to the fee schedule described in section (1) to (3) of this rule.

(5) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1)

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of this rule. Fees for a multi-year period permit, in accordance with ORS 196.815(5), shall be paid annually on the anniversary date of the permit. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(6) There shall be no application fee for the issuance of an Emergency Authorization (OAR 141-085-0010(59) or Letter of Authorization (OAR 141-085-0010(118).

(7) Fees received under this section shall be credited to the Common School Fund for use by the Department in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0066

### Emergency Authorization for Removal-Fill

(1) In the event an emergency exists, as described in OAR 141-085-0010, the Department may issue an emergency authorization. Activities covered by OAR 141-085-0020 are exempt from this section.

(2) Any person requesting an emergency authorization may apply orally or in writing. Written applications may be submitted in the same manner as described in OAR 141-085-0025 and sent via facsimile, e-mail or via U.S. mail. Any request submitted orally must be documented, in writing, by the Department and provided to the applicant.

(3) The application and review requirements described in OAR 141-085-0025, -0027, and -0028 do not apply to emergency authorizations. An application for an emergency authorization shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request.

(4) Applications for an emergency authorization shall contain enough information for the Department to determine:

(a) The applicant and responsible party planning and carrying out the activity;

(b) The physical area of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) The approximate volume of material to be removed and/or filled;

(e) The schedule for doing the work;

(f) The date and approximate time when the event that caused the emergency took place;

(g) The area of impact of the emergency and the proposed emergency action;

(h) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(i) A description of how the work will be accomplished.

(5) In order to make a timely and legally defensible determination, the Department may request additional information from the applicant. The Department may authorize an Department employee or other person to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(6) In determining whether or not to approve the application, the Department shall determine, as quickly as is reasonable and feasible, whether:

(a) An emergency, as defined in OAR 141-085-0010 exists, and the factual circumstances indicate:

(A) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, farm or cropland;

(B) Some prompt removal-fill is required to reduce or eliminate the threat; and

(C) The nature of the threat does not allow the time necessary to obtain some other form of authorization as described in these rules.

(b) The removal-fill is planned for waters of the state, including wetlands and is an activity subject to these rules; and

(c) The planned minimizes, to the extent practicable, adverse impacts to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state; and

(7) Based upon the review of the application as described in OAR 141-085-0066(6) the Department may:

(a) Approve the emergency authorization as requested;

(b) Approve the emergency authorization with conditions;

(c) Request additional information from the applicant and make a decision to reject, approve with conditions or approve the application without conditions; or

(d) Deny issuance of the emergency application.

(8) An emergency authorization shall contain conditions designed to minimize the reasonably expected adverse impacts of the activity to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state while taking into account the impact of the emergency on persons and property. The Department may also require compensatory mitigation in some cases where significant loss of water resources and/or navigation, fishing and public recreation uses has resulted directly from the authorized removal fill.

(9) If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization in accordance with the procedures set out in these rules.

(10) If an emergency authorization is issued orally, the written form of the emergency authorization shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation.

(11) The term of the emergency authorization shall be limited to the time necessary to complete the planned removal-fill activity and be specifically stated in the authorization. In no case shall the term exceed 60 days. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Stat. Auth.: ORS 196.810  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0070

### General Authorizations; Standards and Criteria; Process for Establishing General Authorizations (see OAR 141-089)

(1) A person may be exempt from the requirement to obtain an individual removal-fill permit through the use of an applicable general authorization. Any person proposing to conduct a removal-fill under a general authorization shall first notify the Department in writing in accordance with the requirements of the specific general authorizations being sought.

(2) General authorizations, are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550).

(3) The Department may propose to adopt a general authorization upon a finding that the category of removal-fill, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impact;

(c) Will not result in long-term harm to the water resources of the state; and

(d) Are consistent with the policies of these rules as described in OAR 141-085-0006.

(4) The Department may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill conducted under the general authorization has resulted in or would result in more than minimal environmental impact or long-term harm to the water resources of this state. Any person may request the Department invoke this provision. Such a request must include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request. The Department may process the request in the same manner as described in OAR 141-085-0070(2).

(5) No general authorization is valid where the removal-fill is prohibited by the local comprehensive land use plan or implementing regulations or other applicable ordinance.

(6) The rule promulgating the general authorization shall be effective for up to a five-year term and shall be reviewed, every five years. Upon review, the general authorization shall be reissued in a similar or amended form or repealed.

(7) Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: LB 6-1984, f. & ef. 12-17-84; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

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## 141-085-0075

### Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Department may request the Department enter into an alternative dispute resolution process. The Department and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been deemed incomplete, denied, or who objects to any of the conditions imposed by the Department under OAR 141-085-0029(6), may, within twenty-one (21) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Department.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Department may file a written request for a hearing with the Department within twenty-one (21) calendar days after the date the authorization was granted.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Department's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill to the Department.

#### (5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

#### (6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Department shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in removal/fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Department delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Department shall consider the record, any exceptions, and enter

an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Department's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Department offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0079

### Revoking or Suspending an Authorization; Allowing Corrective Action

(1) The Department may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization.

(2) The Department shall give notice of suspension to the permit holder and advise them as to the reasons and terms of the suspension.

(3) The Department may initiate the following proceedings to revoke an authorization:

(a) The Department shall issue a preliminary order to the alleged violator indicating the intent to revoke the authorization;

(b) The preliminary order shall include, but not be limited to, the following information:

(A) A statement of the alleged violator's right to a contested case hearing, as provided in ORS 196.865 before a hearing officer before the authorization may be revoked, and the time period in which such a request may be made;

(B) A statement of the authority and jurisdiction under which the contested case hearing is to be held;

(C) A reference to the particular portions of the removal-fill law and these rules involved; and

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s).

(c) The preliminary order may include a statement of the action, if any, that may be taken by the alleged violator to correct or offset the effects of the violation including, but not limited to, removal of filled material:

(A) If such action is specified in the preliminary order, the order shall include a reasonable time period of not less than twenty (20) calendar days in which to complete the corrective action;

(B) If the alleged violator completes such action within the specified time period, the revocation procedure shall be terminated.

(d) If the authorization holder fails to request a contested case hearing as allowed under ORS 196.865, the Department may issue a final order revoking the authorization after presenting a prima facie case demonstrating that a violation has occurred.

Stat. Auth.: ORS 196.865

Stats. Implemented: ORS 196.800 - 196.990

Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0080

### Violations and Investigations

(1) In its discretion, the Department shall conduct appropriate investigations of reported violations and make compliance inspections to determine whether violations of the removal-fill law, these rules (OAR 141-085) or the terms and conditions of any authorization have occurred.

(2) The Department shall make a reasonable effort to obtain permission from the landowner or agent, or a duly authorized representative of the landowner or agent, for the Department or its authorized representative to

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conduct a site visit. The Department shall document its efforts to obtain permission to conduct a site visit.

(3) As described in OAR 141-085-0080(1) a violation includes, but is not limited to:

- (a) Fill, removal, or channel relocation without a valid authorization;
- (b) Non-compliance with any condition of an authorization;
- (c) Obtaining an authorization or reporting on conditions of an authorization by misrepresentation or by failure to fully disclose known material facts;
- (d) Failing to comply with any terms of an enforcement order; or
- (e) Violation of any condition of an approved wetlands conservation plan.

(4) Alleged or suspected violations may be reported to the Department by e-mail, facsimile, telephone or in writing.

(5) When reports of alleged or suspected violations are submitted to the Department in confidence and the information is not otherwise required by law to be submitted, the Department may keep the name of the person making the report confidential if the criteria set forth in ORS 192.501 or 192.502 are met.

Stat. Auth.: ORS 196.860

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0405 and 141-085-0420; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0085

### Enforcement Actions and Procedures

(1) The Department is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870 and ORS 196.890):

- (a) Consent orders;
- (b) Consent agreements;
- (c) Cease and desist orders;
- (d) Restoration orders;
- (e) Civil penalties; and
- (f) Liens;

(2) The Department shall give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the Department may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Department may take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Department under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Department shall set forth if applicable the dates of notice and hearing and the specific rule or order of the Department, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Department may enter an order requiring any person to cease and desist from any violation if the Department determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

- (A) May be entered without prior notice or hearing.
- (B) Shall be served upon the person by personal service or by registered or certified mail.
- (C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.
- (D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Department shall hold a contested case hearing before a hearings officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Department nor any duly authorized representative of the Department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Department's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

Stat. Auth.: ORS 196.860, 196.870 & 196.875

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0090

### Civil Penalties

(1) In addition to any other remedy allowed by law or these rules (OAR 141-085), the Department may assess a civil penalty for any violation of the removal-fill law or these rules (OAR 141-085).

(2) More than one civil penalty may be assessed for an unauthorized removal or fill activity.

**Example:** A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(3) Required notice; contents of notice. The Department shall give written notice of Intent to Assess a civil penalty by personal service or by registered or certified mail to the permitholder or person (hereinafter referred to as "party") incurring the civil penalty. The notice shall include, but not be limited to, the following:

- (a) The particular section of the statute, rule, order or authorization involved;
- (b) A short and plain statement of the matter asserted or charged;
- (c) A statement of the party's right to request a hearing within twenty (20) calendar days of receiving the notice; and
- (d) A statement of the amount of civil penalty assessed and terms and conditions of payment.

(e) The party may request a contested case hearing in accordance with procedures described in OAR 141-085-0075.

(4) Calculating the civil penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, shall be determined by the Department using the following formula: F = BPCI.

(A) B is the base fine factor of \$600;

(B) "P" is the prior knowledge factor to be determined as follows:

- (i) A value of 1 shall be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation; or
- (ii) A value of 2 shall be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation (e.g., permit non-compliance, prior penalties or other exposure to the Removal-Fill Law);
- (iii) A value of 5 shall be applied if the alleged violator had a previous violation. A previous violation exists, for example, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent order or consent agreement. This value shall not be imposed if the previous violation occurred more than (5) five years prior to the current incident.

(C) The cooperation value (C) shall be determined by the Department after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

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(i) A value of 1 shall be applied where the person complies with restoration as requested by the Department without the need for an enforcement order or court action by the Department, or where the Department determines that restoration efforts would be unlikely to benefit the resource;

(ii) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Department and the Department must issue an enforcement order or obtain a court order to restore.

(D) "I" is water resource impact factor to be determined as follows:

(i) A value of 1 shall be applied if the damaged resource is expected to naturally self-restore within one year; or

(ii) A value of 3 shall be applied if the adverse effects are not expected to naturally self-restore within one year.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, as determined by applying the calculation methods described in OAR 141-085-0090(4) shall be doubled, not to exceed \$10,000 per day.

(5) Failure to pay civil penalty. Once the final adjudication of any civil penalty calculated in the manner described in OAR 141-085-0090(4) has been completed in accordance with OAR 141-085-0090(3), the amount of the civil penalty shall increase by the amount of the original civil penalty for every twenty (20) calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case shall the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid as required by OAR 141-085-0090(5), interest shall accrue at the rate of nine percent per annum pursuant to ORS 82.010 on the unpaid balance.

(6) Civil penalty relief. The Department may, upon written request of the alleged violator assess a civil penalty as described in OAR 141-085-0090 and including evidence of financial hardship, remit or mitigate the amount of any civil penalty. The request shall be received within twenty (20) calendar days from the date of personal service or mailing of the notice of civil penalty as described in OAR 141-085-0090(3). Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 196.890

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 4-1986, f. & ef. 4-8-86; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0095

### Request to Close Specified Waters of the State to the Issuance of Removal-Fill Authorizations

(1) The Department may request the Oregon Water Resources Commission (OWRC) to close, by administrative rule, specified waters of the state to the issuance of removal-fill authorizations (ORS 196.840).

(2) Any state resource agency listed in ORS 196.825 may make such a request of the Department. In determining whether or not to submit a request to the OWRC the Department shall consider:

(a) The reasons for requesting a closure;

(b) The specific waters of the state to be affected;

(c) The effect, including economic effects, of the proposed closure on potential future applicants;

(d) The effect, including benefits, of the proposed closure on aquatic life, water quality and public use of the waters; and

(e) The time period the closure should be recommended to be in effect.

(3) Prior to submitting a closure request to the OWRC, the Department shall hold at least one public hearing within the affected watershed. Interested and affected parties, including local government and watershed councils are to be notified at least thirty (30) calendar days prior to the hearing date. Public comment on the proposal shall be accepted at least fourteen (14) calendar days following the last hearing. The Department shall issue a report explaining the proposal and outlining the reasons for considering a closure. Notice of the Department's final decision shall be provided all participating parties and parties of interest as identified by the Department.

Stat. Auth.: ORS 196.840

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0096

### Monitoring; Annual Report; Public Information and Education

(1) Program Monitoring. Pursuant to ORS 196.910, the Department will monitor removal and fill authorized under these rules to determine:

(a) Compliance with permit conditions;

(b) The effectiveness of permit conditions in achieving the policies of these rules; and

(c) The adverse impacts of authorized activities on salmonid spawning and rearing habitat and wetland functional attributes.

(2) Annual Reporting. Pursuant to ORS 196.885, commencing with fiscal year 2002-2003 and continuing each fiscal year thereafter, the Department shall submit an annual report to the State Land Board on the activities conducted under these rules. The report shall be delivered to the State Land Board and posted on the Department's website no later than 120 days after the end of the fiscal year. The report shall also be provided to the appropriate legislative committee(s). The annual report shall include the following:

(a) The number of removal-fill authorizations applied for, denied and authorized. For all authorizations granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body that shows:

(A) The total number of authorizations, the number of new authorizations and the number of renewal authorizations.

(B) The volume and/or wetland acreage of removals and fills authorized during the past year, and to the extent possible, the volume and/or wetland acreage of fills and removals completed during the past year.

(C) The areal extent of wetlands lost, by habitat type, and the areal extent of wetlands gained, by habitat type, through compensatory wetland mitigation.

(b) A summary of compensatory mitigation measures, including a description of each compensatory mitigation project approved during the past year including the location and size of each compensatory mitigation project, whether creation, enhancement or restoration, and a report on the status of all compensatory mitigation projects pending or completed during the past year.

(c) A summary of enforcement activities, including:

(A) The number of complaints reported.

(B) The number of compliance investigations conducted.

(C) The results of compliance actions, including:

(i) The number of cases resolved by either voluntary compliance, administrative hearings or judicial enforcement proceedings;

(ii) The penalties assessed; and

(iii) The penalties recovered.

(d) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(e) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.640 and 196.655.

(f) The number of and average time for responding to notices received by local governments and the number of responses that took more than thirty (30) calendar days.

(g) The number of wetland conservation plans approved by the Department and a description of each, including the issues raised during the approval process.

(3) Public Information. The Department shall develop and maintain a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values;

(b) The status and trends of Oregon's wetlands;

(c) The Statewide Wetlands Inventory; and

(d) Wetland identification, regulations and permit requirements.

(4) Technical Assistance and Cooperation. Upon request, within the limits of staffing ability and available resources, the Department shall provide technical assistance to other state agencies, local governments and the public in identifying wetlands.

Stat. Auth.: ORS 196.885, 196.910 & 196.688

Stats. Implemented: ORS 196.800 - 196.990 & ORS 196.600 - 196.692

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0115

### Compensatory Mitigation

(1) The Department may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public

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recreation uses on waters of the state other than freshwater wetlands or estuarine areas.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Offsite or onsite enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Offsite or onsite improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Department, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Department, may contract with a third party to construct, monitor or maintain the compensatory mitigation site.

(3) The Department may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03;

DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04;

DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0121

### Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR-141-085-0121 to 141-085-0151, apply to removal-fill that occur within freshwater wetlands and do not apply to removal-fill:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR-141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse impacts of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that on-site CWM is impracticable. The applicant may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site CWM to provide the replacement of the functional attributes of the lost wetland. If on-site CWM is impracticable as documented by the applicant, off-site CWM shall be utilized. In considering off-site CWM, the applicant may create, restore or enhance a wetland or if the project development occurs within the service area of an established wetland mitigation bank, the applicant may purchase credits, if available, from the bank to fulfill CWM requirements so long as the functional attributes of the lost wetland are replaced. If no mitigation bank is available, CWM may be fulfilled through payment to provide as described in OAR 141-085-0131.

(5) The Department will review the CWM plan for sufficiency and compliance with these rules. The Department may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Department will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Department may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Department shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes. The assessment shall assess:

(a) Existing functional attributes at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) A functional assessment of the impact site is not needed if the proposed CWM plan utilizes payment to provide or the purchase of credits from a wetland mitigation bank to satisfy all the compensatory wetland mitigation requirements.

(10) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(11) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Department, the "Judgmental Method" in the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(12) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(13) Additional assessments or data may be required by the Department if the functional assessment results, public/agency review comments, or the Department's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-

2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0126

### Requirements for All CWM

(1) CWM shall replace:

(a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system (e.g., palustrine forested); and

(b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands 2001); and

(c) The functional attributes of the lost wetland (impact wetland).

(2) The Department may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Department, may at any time contract with a third party to construct, monitor or maintain the CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.

(5) CWM:

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(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136.

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) CWM sites may fulfill multiple purposes including stormwater retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) CWM using wetland enhancement must conform to the following additional requirements. The CWM shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;

(c) Not replace existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;

(d) Not convert one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a CWM plan, as specified in OAR 141-085-0029(8).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0131

### Requirements for CWM Involving Wetland Mitigation Banks, Payment-to-Provide or Conservation

(1) The requirements in this section are in addition to the general requirements in OAR 141-084-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment to provide mitigation. The Department will approve the bank option only after on-site mitigation has been examined and found to be impracticable.

(3) Payment to provide mitigation:

(a) The removal-fill permit for an authorized activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Department. Once an approved removal-fill permit activity has begun as proposed, the payment to provide mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Department to provide CWM shall be the average cost of credits available from all active mitigation banks in the state as compiled annually by the Department.

(4) Conservation in lieu:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation in lieu should be encouraged as the preferred CWM option when the impact site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for indirect CWM using conservation in lieu. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Department.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0136

### Ratio Requirements for CWM

(1) The purpose of CWM ratios is to:

(a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;

(b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, impacted wetland);

(c) Replace wetland functions that may be size dependent; and

(d) Compensate for the likelihood of success in the different CWM methods (creation, restoration, enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the impacted wetland.

(2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:

(a) Restoration: One (1) acre of restored wetland for one (1) acre of impacted wetland.

(b) Creation: One and one-half (1.5) acres of created wetland for one (1) acre of impacted wetland.

(c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of impacted wetland.

(d) Enhancement of cropped wetland as determined by the Department: Two (2) acres of enhanced cropped wetland for one (1) acre of impacted wetland.

(e) Conservation in Lieu: Variable: See OAR 141-085-0131(4).

(3) The Department shall double the minimum ratio requirements for project development impacting existing CWM sites; for example, using enhancement to compensate for impacts to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre impacted.

(4) The Department may increase the ratios when:

(a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or

(b) Mitigation is not proposed for implementation concurrently with the authorized impact.

(5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland impacted;

(b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland impacted;

(c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland impacted.

(6) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(b) Based on the value the Department determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Department, to pay the entire cost of CWM:

(A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or

(B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0141

### Requirements for All CWM Plans/Application Requirements

(1) On-site or off-site CWM involving the creation, restoration and/or enhancement of wetlands by the applicant. A CWM plan shall, at a minimum, include:

(a) CWM site information including:

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(A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Physical Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment, except when PTP or purchase of credits from a wetland mitigation bank is proposed, of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR-141-085-0176), if the impact is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(2) Other CWM. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR 141-085-0131 (4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement);

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0146

### Removal-Fill Authorization Conditions for CWM Plans

(1) For permits involving CWM:

(a) The approved CWM plan shall become part of the removal fill authorization and, by reference, all portions of the CWM plan shall become conditions of the authorization.

(b) Additional compensatory mitigation conditions may be included in the authorization.

(c) All compensatory mitigation conditions shall be enforceable until the CWM is deemed successful by the Department in accordance with OAR 141-085-0151, regardless of the authorization expiration date.

(2) Conditions for authorizations shall also state:

(a) If applicable, the amount of the payment to provide mitigation made by the applicant and how it was calculated; and

(b) If applicable, the mitigation bank utilized; and

(c) The loss of wetland by area, Cowardin and HGM class(es), and function(s) of wetland(s) expected to be lost or impaired; and

(d) The applicant's remaining responsibility after payment to provide mitigation payment was made, if any; and

(e) No removal or fill of any amount of material shall be permitted within compensatory wetland mitigation sites without prior authorization of the Department.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0151

### Monitoring Requirements for CWM Plans Involving On-site or Off-site Creation, Restoration or Enhancement of Wetlands

(1) The purpose of the CWM monitoring requirement is to provide information for the Department to:

(a) Determine if the CWM complies with the conditions of the authorization;

(b) Evaluate whether the CWM meets the goals, objectives and success criteria of the CWM plan; and

(c) Provide information for removal/fill program monitoring.

(2) The permit holder shall monitor the CWM site and provide to the Department:

(a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Department, the post construction report shall be submitted within ninety (90) calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and success in meeting the CWM goals. These data may include photographs, topographic surveys, plant survival data, hydrologic data and other information as required to demonstrate compliance. The report shall include the following sections:

(A) Introduction;

(B) Goals, objectives and success criteria;

(C) Methods;

(D) Results;

(E) Summary and recommendations;

(F) Figures;

(G) Appendices with data and photographs.

(3) Monitoring shall be conducted for 5 years unless otherwise specified by the Department.

(4) The Department may require modifications to the CWM plan as well as require additional monitoring any time the CWM is failing to meet the CWM goals.

(5) At the end of the five (5) year monitoring period, the Department shall determine if the mitigation project meets the CWM success criteria. If it fails to meet the success criteria, the Department may require modifications to the CWM site as well as additional site monitoring.

(6) When the CWM complies with the compensatory mitigation success criteria, as described in the approved removal-fill authorization, the

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Department shall notify the permit holder in writing of compliance with the authorization's conditions and that additional monitoring is not required. If the Department fails to notify the permit holder within ninety (90) calendar days of the Department's receipt of the final monitoring report, the permit shall be deemed in compliance and no further monitoring required.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0156

### Payments; Expenditure of Funds for Compensatory Wetland Mitigation Payment to Provide; Agency Accounting of Payment to Provide Funds and Expenditures

(1) The Department shall utilize the Oregon Wetlands Mitigation Bank Revolving Fund Account authorized pursuant to ORS 196.640 et seq. to hold and disperse money collected from the program.

(a) The Department shall expend funds collected under the payment to provide option of compensatory wetland mitigation only to:

(A) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functional attributes lost or diminished as result of an approved removal-fill authorization activity;

(B) Purchase credits from an approved wetland mitigation bank for the purpose of fulfilling the CWM requirements of an approved removal-fill authorization activity.

(C) Monitor the compensatory wetland mitigation; or

(D) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful.

(2) The Department shall expend funds collected under the payment to provide option of compensatory wetland mitigation only within the geographic region, as defined by OAR-141-085-0010 of these rules, in which the wetland functional attributes occur, unless the Department determines, in writing that expending the funds is not feasible or appropriate within a respective region.

(3) The Department shall expend funds collected from specific approved removal-fill activities within two (2) years from the authorization issuance date unless the Department determines, in writing, that meeting the two year time limit is not feasible.

(4) Third party recipients of funds collected under the payment to provide option of a compensatory wetland mitigation plan shall sign a written agreement provided by the Department that requires the recipient(s) to utilize the funds for specific wetland compensatory mitigation that has been reviewed and approved by the Department. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Department.

(5) All payment to provide monies collected and expended, as well as the success of the compensatory wetland mitigation, authorized by the Department in accordance with these rules, shall be recorded by the Department and shall include:

(a) A description of the compensatory wetland mitigation funded and including an evaluation of the success of these projects in meeting project goals.

(b) A description of the wetland functional attributes lost or diminished from approved removal-fill activities summarized individually and cumulatively by basin;

(c) A summary of the amount of payments collected and expended on individual compensatory wetland mitigation projects as well as cumulatively by basin.

(d) A description of the wetland functions expected to accrue as a result of compensatory wetland mitigation projects funded in accordance with these rules and summarized by basin and statewide.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0161

### Department Responsibilities Under Payment to Provide Option

(1) The Department, by eliminating the applicant's responsibility for compensatory wetland mitigation by approving a removal-fill authorization including a payment to provide option, assumes the following responsibilities to:

(a) Defend the sufficiency of the compensatory wetland mitigation plan to compensate or replace the wetland functional attributes lost or diminished; and

(b) Monitor, manage, and otherwise assure the success of the compensatory wetland mitigation project performed by the Agency Department or designated third party(ies) under these rules.

(2) The Department, as part of an intergovernmental agreement, may transfer or extend the Department's responsibility for the compensatory wetland mitigation plan to another person or governmental agency.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0166

### Advance Mitigation

(1) As part of an existing, active individual removal-fill permit application process, an applicant may request that the Department consider the possibility that the applicant's proposed CWM project, if successful, could result in producing potential mitigation credits in excess of those needed to satisfy the requirements of OAR 141-085-0029(5).

(2) If the applicant desires to preserve the option of possibly receiving additional mitigation credit for future projects from the excess credits identified under subsection (1) above, then the following additional information shall be submitted as a part of the applicant's Compensatory Wetland Mitigation Plan:

(a) Identify the specific area(s) of the CWM site that compensates for the specific permitted impact, and identify the specific areas of the CWM site that are proposed for credit in future projects;

(b) Include separate protection instruments for each area of the CWM site (existing and proposed);

(c) Provide a separate monitoring program for each section of the CWM site (existing and proposed);

(d) Provide a table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site.

(3) If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that the proposed future wetland impact is a permissible action, or that the CWM will be authorized as suitable CWM for any application. A separate alternatives analysis conducted under OAR 141-085-0029(4) shall be required for each and every separate individual removal-fill permit application.

(4) Monitoring to determine if success criteria are met shall continue for five (5) years or until the success criteria is achieved, whichever is longer. Such success criteria monitoring requirements shall apply to each designated mitigation area or the entire mitigation site, if constructed at one time.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0171

### Mitigation for Temporary Impacts

Projects that do not result in the permanent loss of wetland functions and values, must, as part of the application, provide a rehabilitation plan for temporary impacts, including:

(1) Plans and specifications for rehabilitating the area of temporary impacts, including grading plans and planting plans, timeline and location of fill disposal areas; and

(2) Planting plans shall specify species, number and spacing. Such plans shall be designed to re-establish the pre-impact conditions of the site as rapidly as is reasonably possible.

Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0176

### Security Bonding and Instruments

(1) Financial Security Instruments are required for CWM projects for impacts greater than (two-tenths) of an acre. Financial security instruments are not required when CWM is satisfied by purchase of credits from wetland mitigation bank or payment to provide mitigation is utilized. To ensure compliance with CWM requirements, the Department may allow for any of the following types of financial security instruments:

(a) Surety bond;

(b) Certificate of Deposit;

(c) Irrevocable letter of Credit; or

(d) such other financial instrument as the Department deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

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(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument (s) on a form prescribed and furnished by the Department. The financial security instrument(s) shall be made payable to the Oregon Department of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Department and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Department shall set the amount of the financial security instrument based on the estimated cost of implementing, maintaining and monitoring the CWM if the Department were to carry out the CWM plan as authorized by the removal-fill authorization. The applicant may submit cost estimates for the construction, maintenance and monitoring of the proposed CWM for consideration by the Department.

(6) General terms and conditions of financial security instruments.

(a) The shall be in an amount determined by the Department as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Department of State Lands".

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permit holder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Department, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required to complete the CWM. The scope of work to be guaranteed and the liability assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permit holder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Department, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Department.

(c) The letter must be payable to the "Department of State Lands" in part or in full upon demand by and receipt from the Department of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Department may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Department shall not release an existing financial security instrument until the permit holder has submitted and the Department has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Department shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permit holder shall file a request with the Department for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area.

(b) The permit holder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permit holder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Department shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permit holder defaults on the conditions under which the financial security instrument was posted. The Department shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permit holder shall forfeit the amount of the financial security instrument for which liability is outstanding and either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0240

### Purpose

(1) The purpose of these rules is to set out the policy of the Department relating to estuarine mitigation. Mitigation is required as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(2) The purpose of mitigation is to maintain the functional characteristics and processes of an estuary — such as its natural biological productivity, habitats and diversity of native species, unique features and water quality — when intertidal or tidal marsh resources are destroyed by removal or fill activities.

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0244

### Application and Review Procedure

(1) Whenever any person submits an application for permit for filling or removal of material from an intertidal or tidal marsh area, the Department shall advise the applicant that mitigation will be required as a condition of any permit for such activity as may be issued.

(2) The Department shall notify the applicant that the application for permit is not complete until a written proposal for mitigation has been received.

(3) The Department shall review any application for intertidal removal or fill permit in conjunction with a written mitigation proposal. The Department's review shall consider the statutory criteria set out in ORS 196.830 to determine whether a permit shall be issued. When a permit is to be issued, the Department shall consider the mitigation proposal and determine its adequacy in accordance with these rules.

(4) The Department shall review and process the application in the same manner as described in OAR 141-085-0027, 0028, and 0029.

(5) Each application for a removal or fill permit involving mitigation shall provide the following information relating to mitigation in addition to such other information as may be required:

(a) A map and site plan of the area that will be affected by intertidal removal and fill. The development site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The development site plan shall also show the boundaries and area of each estuarine habitat type present at the site. (OAR 141-085-0246 thru 141-085-0254 for a description of estuarine habitats found in Oregon estuaries);

(b) A written mitigation proposal for the intertidal removal or fill activity described in the application. The mitigation proposal shall comply with and supply information as required under OAR 141-085-0136, 0141 and 0146. The mitigation site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The mitigation site plan shall also show the boundaries and area of each estuarine habitat type present at the site;

(c) Any provisions of the comprehensive land use plan for the area as those provisions relate to the proposed intertidal removal-fill site and the proposed mitigation site.

(6) In reviewing an application for a removal-fill permit involving mitigation, the Department shall determine:

(a) The adverse affects of the proposed project, i.e., the type and areas extent of habitats destroyed or adversely affected; the nature and magnitude of associated water quality degradation; unique features destroyed or adversely affected;

(b) The extent of compensating activity inherent in the proposed activity, e.g., uplands converted to intertidal or shallow subtidal areas; water quality enhancement caused by improved circulation or flushing. Creation of a subtidal area by removing material from an intertidal area is not a compensating activity under these rules;

(c) The availability of areas in which mitigation activities could be performed. The Department may rely on local comprehensive land use

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plans and local, state, and federal planning and resource agency staff to develop this information;

(d) How and to what extent an estuarine area will be created, restored or enhanced;

(e) How the proposed mitigation will maintain the functional characteristics and processes of an estuary such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0248

### Estuarine Land Described

(1) Intertidal and tidal marsh areas of an estuary can be described in terms of substrate material, vegetative cover and salinity regime.

(2) Lower elevation intertidal landforms having a gradual slope and normally occurring in areas sheltered from strong currents are called Beds and Flats, Figure 1 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 8). Beds and flats may be vegetated or unvegetated depending on current and wave conditions. Locations of beds and flats vary, but most occur in the bay and slough subsystems. Beds and flats are broader, more gradual in slope, and subject to slower current than adjacent shores.

(3) Community structure is influenced by sediment characteristics, currents, wave action, temperature, and salinity. Regularly flooded beds and flats support diverse populations of tube-dwelling and burrowing invertebrates including worms, clams, and crustaceans.

(4) These invertebrates are primarily detritus feeders. Macroalgae, diatoms, and seagrasses also commonly colonize beds and flats. Animals and plants have adapted to the wide ranges of temperature and salinity characteristics of flats. A flat may be relatively stable, or may increase in total area, elevation, or percentage of vegetative cover. Beds and flats seldom decrease in elevation or size under normal conditions.

(5) Higher intertidal landforms that are more than 30 percent covered by erect, rooted herbaceous hydrophytes are called Tidal Marshes. The *tidal marsh* generally occurs from slightly below mean high water (MHW) inland to the line of nonaquatic vegetation. Community composition varies primarily with tidal elevation but is also influenced by sediment type and salinity.

(6) Plant producers in salt marshes include not only marsh grasses but also macroalgae entwined among the vascular plant stems, microalgae on the mud surface, and phytoplankton in the water column. Organic material and nutrients stored by marsh producers are consumed directly or transported to other portions of the estuary as detritus. Marshes provide habitat for fish, invertebrates, waterfowl, and small terrestrial mammals. A diversity of insects lives among and grazes on marsh plants.

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

Stat. Auth.: ORS 196.825 & ORS 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0254

### Habitat Classification

(1) The ODFW under contract to the Department of Land Conservation and Development (DLCD) has developed an estuarine habitat classification system (Bottom et al., 1979, *Habitat Classification and Inventory Methods Management of Oregon Estuaries*) based on an existing U. S. Fish and Wildlife Service habitat classification system (Cowardin et al., 1979, *Classification of Wetlands and Deep Water Habitats of the United States*, Fish and Wildlife Service, U. S. Department of the Interior).

(2) In addition, ODFW has mapped habitat types in all major Oregon estuaries except the Columbia River and prepared resource inventories for selected inventories for selected estuaries. These reports provide the information base for implementation of mitigation policy. Figure 2 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 12) shows the Estuarine Mitigation Intertidal Habitat Classification System.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0256

### Mitigation Policy Generally

Mitigation means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality:

(1) No mitigation proposal may be inconsistent with an acknowledged comprehensive land use plan and implementing ordinances for the area where the removal-fill activity will occur or where the mitigative action is located.

(2) Mitigation must occur in the same estuary as the intertidal removal or fill activity except when the alternative is a partial waiver of mitigation under ORS 541.626(4)(a).

(3) Mitigation shall restore or enhance estuarine lands and resources in an area proportionate to the area affected by the intertidal removal or fill activity. The area affected shall include the actual area where material is removed or filled and any surrounding intertidal or tidal marsh area adversely affected by the activity. At minimum, the mitigation action shall offset the adverse effects of the intertidal or tidal marsh removal-fill activity.

(4) Mitigation shall "maintain" (replace) the natural biological productivity and diversity of native species of the intertidal removal-fill site by creation, restoration or enhancement of an appropriate area of another estuarine habitat. Any shallow subtidal or intertidal or tidal marsh estuarine habitat may be used to "replace" the habitat lost to intertidal removal-fill, but the area will be proportionate to the Relative Value of the habitats involved. The surface area of a mitigation site may not be smaller than the surface area of the development site.

NOTE: The purpose of this policy statement is to ensure conservation of estuarine surface area. However, a mitigation proposal shall not fail because the mitigation surface area is slightly less than the intertidal removal-fill area and no other mitigation area is available or the next alternative would be far more expensive.

(5) Habitat types found in Oregon estuaries have been evaluated and compared in terms of natural biological productivity and diversity of native species by trained scientists and natural resource managers knowledgeable and familiar with the physical, biological, and chemical processes of estuaries. The result of this evaluation is a set of Relative Values that can be used to determine how much area of one habitat is needed to mitigate each acre of another habitat lost to intertidal removal-fill. Figures 3 and 3A (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 16) are a matrix of habitat characteristics and Relative Values for habitats found in Oregon estuaries:

(a) The base Relative Values for estuarine habitats shall range from 1.0 to 6.0;

(b) The Department may adjust the Relative Value of any habitat type (except for relative values already established in a mitigation bank agreement) if site conditions and characteristics such as very low or exceptionally high resource values warrant such adjustment to carry out the provisions of the Removal-Fill Law. Such adjustment may not exceed 25 percent of base Relative Value in either direction.

(6) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

AM = (RVd/RVm) (AD) where  
AM = Area of mitigation site  
RVd = Adjusted Relative Value of the development site  
RVm = Adjusted Relative Value of the mitigation site  
AD = Area of development site

(7) The equation for determining how much shallow subtidal area is required for mitigation shall be:

AM = 2.0(RVd/RVm) (AD)

(8) Note that if shallow subtidal habitats are offered as mitigation, the required surface area is twice the size of the surface area required if an intertidal or tidal marsh area of equal Relative Value is offered. The surface area of the mitigation site (AM) may not be smaller than the surface area of the development site (AD).

(9) Figure 4 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 17) shows the relationship between the adjusted Relative Values of the development and mitigation sites and the ratio of the Mitigation Area to the Development Area (AM/AD) when the habitat replacement occurs under OAR 141-085-0256(4) of this rule.

(10) The Mitigation Credits attributable to any created or restored habitat may be obtained by multiplying the adjusted Relative Value of the created or restored habitat by the number of acres affected.

(11) The Mitigation Credits attributable to any enhanced habitat may be obtained as follows:

(a) Obtain the base Relative Value of the existing habitat from Figures 3 or 3A (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 16) and adjust appropriately;

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(b) Estimate or otherwise determine what the adjusted Relative Value of the affected habitat will be after mitigation occurs;

(c) Subtract (a) from (b) to obtain enhancement Relative Value;

(d) Multiply the enhancement Relative Value (c) times the number of acres enhanced.

(12) Mitigation shall “maintain” the unique features of estuaries that may be affected by intertidal removal-fill projects. The term “unique features” is defined in OAR 141-085-0010;

(a) The Department intends to rely upon acknowledged comprehensive land use plans for guidance in identifying “unique features” for mitigation purposes. Proposed intertidal removal-fill activities involving unique features shall be scrutinized carefully to determine whether or not a permit should be issued. If a permit is issued, mitigation shall be in-kind to the maximum extent possible and shall include the habitat replacement required under OAR 141-085-0256(4) of this rule;

(b) The objective of mitigation involving unique features shall be to replace lost habitat by substituting and, additionally, to replace or relocate as much of the unique feature as possible.

(13) Mitigation shall “maintain” habitats and diversity of native species. The law does not mandate that every habitat and species affected by intertidal removal and fill be replicated in the mitigation proposal. However, the law does require consideration of whether or not habitat or diversity of native species of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the impact. The Department will maintain habitats and diversity of native species through habitat replacement required under OAR 141-085-0256(4) of this rule;

(a) “In-kind” or “like-kind” mitigation will be encouraged whenever possible by approving mitigation proposals and mitigation banks that involve a diversity of resource-habitat types. The Department will maintain a record, by estuary, of the amounts and types of habitats involved in intertidal removal-fill sites and mitigation sites. No additional mitigation is required under this subsection unless the Department determines that a mitigation proposal under OAR 141-085-0256(4) of this rule would reduce or impair habitats and diversity of native species.

(14) Mitigation shall maintain “water quality” through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(a) Oregon has stringent water quality standards that the Department routinely incorporates into removal-fill permits. The Department will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Department approve a mitigation proposal that would degrade water quality. The Department will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(b) A mitigation proposal that produces an identifiable enhancement in estuarine water quality may be used to offset a portion of the resource losses of an intertidal removal-fill activity provided that the mitigation proposal also includes habitat replacement under OAR 141-085-0256(4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(c) A mitigation proposal claiming water quality enhancement as a mitigative action shall describe the action in detail and explain why and how the project will enhance water quality. The proposal shall identify the nature and areas extent of habitats affected by the water quality enhancements. A water quality enhancement activity mandated by a state or federal agency to raise water quality to state or federal standards is not mitigation under this section;

(d) If the Department determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in OAR 141-085-0256(9) of this rule.

**NOTE:** An acceptable mitigation must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. Mitigation that enhances water quality may serve as mitigation once sufficient estuarine area has been created, restored, or enhanced to meet the conservation of surface area requirement.

(15) Activities that do not require mitigation even though they may involve intertidal removal include:

(a) Maintenance dredging -- Provided that the applicant can show that the site has been dredged before and is part of a regularly used project. First time dredging activities that remove intertidal lands to obtain water depth will require mitigation;

(b) Aggregate mining — Provided that the site has been used historically for aggregate removal on a periodic basis.

(16) Examples of activities that are not considered mitigation within the meaning of ORS 196.830 except when mitigation would otherwise be waived in part under ORS 196.830:

(a) The transfer of private intertidal estuarine lands to public ownership (Att. Gen. Op. 3774, 1976);

(b) The dedication of intertidal estuarine lands for natural uses;

(c) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;

(d) Creation of subtidal lands except when the area was originally upland. In general, creation, restoration, and enhancement of subtidal lands produce less mitigation credit than similar actions relating to intertidal lands. Less credit is given because habitat replacement is not “in-kind,” i.e., not intertidal as are the lands affected by the removal-fill activity. For purposes of these rules, the creation, restoration, or enhancement of a subtidal habitat will produce one-half the mitigation credits produced by an intertidal area of the Relative Value.

**NOTE:** The Relative Values for subtidal habitats may be adjusted up to 25 percent up or down in the same manner as intertidal habitats.

(17) Examples of areas and activities considered suitable for restoration and enhancement activities include:

(a) Areas where poor water quality, or similar degradation, limits fish and shellfish production and harvest or public recreation;

(b) “Dredge spoil islands” which could be lowered to create or restore intertidal surface area;

(c) Tide flat or tidal marsh areas suitable for restoration;

(d) Areas where circulation or flushing can be restored or enhanced by breaching dikes or roadfills or removing pile groups or structures.

(18) Mitigation sites and activities need not be fully developed biologically at the time of acceptance, but there must be a high probability of success associated with the proposed action. There is no penalty assessed for a mitigative action that takes time to produce the anticipated resources and habitats;

(a) The Department may require bonding in an amount sufficient to cover the costs of site acquisition, any necessary physical alterations, monitoring and contingencies. The need for bonding will be considered especially carefully in cases where mitigation actions will be taken after the development project, or in cases where the results of the mitigation action will not occur for several years.

**NOTE:** Late maturing projects are not as acceptable as those where good results may be anticipated in one or two years.

(19) The Department will require monitoring of a mitigative action to determine performance over time in the same manner as described in OAR 141-085-0151.

(20) The Department may require funding for research in cases where the ramifications of a given mitigation action are uncertain. Such requirement shall be set out in detail in the authorization.

(21) The procedures described in this section are suitable for estimating the mitigation liabilities and credits of a proposed intertidal or tidal marsh removal-fill project and the attendant mitigative action. In most cases, these guidelines will produce a mitigation proposal acceptable to the Department and interested parties;

(a) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Department to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Department.

(22) The Department shall require security bonding for estuarine mitigation in the same manner as described in OAR 141-085-0176.

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

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0257

### Estuarine Resource Replacement

(1) As used in this section, “estuarine resource replacement” means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

(2) Except as provided in OAR 141-085-0257(4) of this section, the Department shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the Department requires estuarine resource replacement, the Department shall consider:

(a) The identified adverse affects of the proposed activity;

(b) The availability of areas in which replacement activities could be performed;

(c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;

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(d) The recommendations of any interested or affected state or local agencies; and

(e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS Chapter 195, 197 or the statewide planning goals adopted there under to the contrary, the Department may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the Department determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which estuarine resource replacement could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the Department to impose conditions on a permit under ORS 196.825 (4).

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0262

### Mitigation Trust Fund

(1) The Department may establish an Oregon Mitigation Trust Fund to provide loans for approved mitigation banks.

(2) Funds for the Oregon Mitigation Trust Fund may be provided by gift, bequest, donation, grant, or other similar source.

(3) Funds shall be loaned for a period not to exceed ten years. Repayment of the principal shall require no more than ten annual installments.

(4) Funds shall be loaned at not more than the prime rate with interest on the unpaid balance payable annually on the anniversary of the loan.

(5) The highest priority for loans will be given to mitigation banks in deep draft development estuaries. The next highest priority shall be given to mitigation banks in shallow draft estuaries.

Stat. Auth.: ORS 196.64, 196.645 & 196.650

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0263

### Estuarine Mitigation Banks

(1) Credits from an estuarine mitigation bank may be used only as a condition imposed on an authorization or to resolve a violation of ORS 196.800 to 196.905 or these rules approved within the same estuarine ecological system.

(2) The mitigation needs of an intertidal removal-fill can be met using mitigation "credits" stored in a "mitigation bank." Mitigation credits result from a mitigative action accomplished under agreement with the Department. Such credits can be used to offset the mitigation needs of projects that occur at some time after the mitigation bank is created.

(3) A "Mitigation Credit," the currency of a mitigation bank, is the product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s). For example, a mitigation action might involve a large diked former brackish marsh that could be restored to the estuarine system by breaching dikes. The site might yield acreage of high brackish marsh (Relative Value 4.0), low brackish marsh (Relative Value 5.0), and unvegetated brackish sand flats (Relative Value 3.0) that could be used for mitigation. Based on five acres of each habitat type, the bank would have some 60 mitigation credits available to offset mitigation liabilities of future projects.

(4) The following rules are established for the creation and use of mitigation banks and are to be used in conjunction with OAR141-085-0421.

(a) A mitigation bank may be created in any estuary to provide mitigation for one or more development projects in that estuary. More than one bank may be created in any estuary. Any legal entity may create a bank;

(b) Mitigation banks shall be created by written agreement with the Department and may be administered by the Department. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

(A) The exact physical location of affected real property;

(B) Proof of ownership or control, i.e., deed, title report;

(C) The nature and extent of the mitigative action. This analysis will require information about site salinity, elevation, wave and current actions, substrate, and other physical and biological characteristics;

(D) How and when the mitigative action will be performed;

(E) A statement of informed opinion as to what habitat types will result from the action and a statement as to Relative Value of each anticipated type;

(F) How the resulting habitat changes will be monitored and evaluated;

(G) How the mitigation site will be protected, i.e., dedication, conservation easement, deed;

(H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding;

(5) The Department may authorize creation of mitigation banks making use of restoration of estuarine lands caused by a naturally occurring or human activity that occurred after July 21, 1979, even though mitigation through restoration was not the intent of the action;

(a) Such mitigation banks shall be created under the procedures set out in OAR 141-085-0263(2) of this rule.

(6) Applicants for removal and fill permits requiring mitigation are not obligated, or automatically entitled, to use an existing mitigation bank to meet the mitigation needs of any project. Permit applicants must negotiate directly with the owner of a bank to secure the right to use the bank. Agreements between the owner of a bank and a permit applicant are subject to the Department's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS 196.600 - 196.665 & 196.825

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0264

### Maps and Charts

The following maps and charts are adopted by reference and are available from the Department (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 25).

(1) Salinity map, Columbia River.

(2) Salinity map, Necanicum River.

(3) Salinity measuring stations, Nehalem River.

(4) Mean quarterly salinities, Nehalem Bay.

(5) Salinity Measuring Stations, Tillamook Bay (Two maps).

(6) Mean quarterly salinities, Tillamook Bay (Two charts).

(7) Salinity Measuring Stations, Netarts Bay.

(8) Mean quarterly salinities, Netarts Bay.

(9) Salinity Measuring Stations, Nestucca River.

(10) Mean quarterly salinities, Nestucca River.

(11) Salinity Measuring Stations, Salmon River.

(12) Mean quarterly salinities, Salmon River.

(13) Salinity Measuring Stations, Siletz Bay.

(14) Mean quarterly salinities, Siletz Bay.

(15) Salinity Measuring Stations, Yaquina Bay.

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- (16) Mean quarterly salinities, Yaquina Bay.
  - (17) Salinity Measuring Stations, Alsea Bay.
  - (18) Mean quarterly salinities, Alsea Bay.
  - (19) Salinity Measuring Stations, Siuslaw River.
  - (20) Mean quarterly salinities, Siuslaw River.
  - (21) Salinity Measuring Stations, Umpqua River.
  - (22) Mean quarterly salinities, Umpqua River.
  - (23) Salinity Measuring Stations, Coos Bay (South Slough).
  - (24) Mean quarterly salinities, Coos Bay (South Slough).
  - (25) Salinity Measuring Stations, Coos Bay.
  - (26) Mean quarterly salinities, Coos Bay.
  - (27) Salinity Measuring Stations, Coos Bay (Isthmus Slough).
  - (28) Mean quarterly salinities, Coos Bay (Isthmus Slough).
  - (29) Salinity Measuring Stations, Coquille River.
  - (30) Mean quarterly salinities, Coquille River.
  - (31) Salinity Map, Rogue River.
  - (32) Salinity Map, Chetco River.
- Stat. Auth.: ORS 196.825 & 196.835  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0266

### Tidal Elevations in Oregon Estuaries

The figures and tables in Exhibit 1 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 47) illustrate the elevations of specified tidal datum for each Oregon estuary. The tables will assist in locating areas subject to the mitigation requirement.

Stat. Auth.: ORS 196.825 & 196.835  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0400

### Purpose

These rules describe when, and under what conditions, the Department will allow mitigation banking as a means of wetland compensation when fill or removal of material is proposed in wetlands regulated by the State of Oregon. Mitigation banking is used to provide larger scale compensatory wetland mitigation in advance of anticipated smaller wetland losses. These rules also specify the requirements to obtain authorization to develop a wetland mitigation bank.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665  
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990  
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0406

### Applicability

- (1) These rules shall apply to:
  - (a) All wetland mitigation banks proposed after rule adoption; and
  - (b) Existing mitigation banks that are substantially modified after rule adoption.
- (2) The sponsor of a mitigation bank that has been proposed, is under construction, or was established prior to the adoption of these rules, may request that the Department apply the provisions of these rules to the proposed, under construction, or established bank.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665  
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990  
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0410

### Policies

- (1) The Department shall encourage the development of and the expeditious approval of mitigation banks and other types of compensatory wetland mitigation.
- (2) Mitigation banks can only be used to provide compensatory wetland mitigation for anticipated losses in wetland functional attributes when on-site CWM is impracticable.
- (3) The availability or use of mitigation banks shall not:
  - (a) Create a presumption that the Department will be more willing to allow wetland losses under the Removal-Fill Law (ORS 196.800 through 196.990); or
  - (b) Eliminate the requirement to fully demonstrate that the applicant for a Removal-Fill Permit has considered alternatives that avoid and/or minimize losses to jurisdictional wetlands; and
  - (c) Eliminate the requirement to comply with these rules.

(4) Both freshwater and estuarine mitigation banks shall only be debited for a condition imposed in an authorization or to resolve a violation of these rules.

(5) Mitigation banks shall be designed to compensate for expected or historic wetland losses to:

- (a) Ensure maintenance of regional wetland function in their service area;
  - (b) More closely match the demand for wetland credits with wetland losses; and
  - (c) Meet other ecological or watershed needs as determined by the Department.
- (6) The long-term goal of mitigation banks is to provide compensatory wetland mitigation in advance of wetland losses.
- (7) Mitigation banks shall be subject to all rules governing freshwater and estuarine resource replacement in OAR 141-085-0102 thru 141-085-0266.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665  
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990  
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0421

### Requirements to Establish a Mitigation Bank

- (1) All persons proposing to establish a mitigation bank shall:
  - (a) Meet with the Department to discuss their proposed bank and the content of their Mitigation Bank Prospectus.
  - (b) Prepare and submit a Mitigation Bank Prospectus to the Department.
  - (2) The Mitigation Bank Instrument shall contain the following elements, as applicable:
    - (a) The physical location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).
    - (b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.
    - (c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.
    - (d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.
    - (e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas where grading will be required, location of buffers, vegetation planting plan, etc.
    - (f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.
    - (g) Description of the ecological goals and objectives of the bank.
    - (h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.
    - (i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.
    - (j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.
    - (k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.
- (1) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.
- (m) A site assessment of the proposed bank area providing information on the:
  - (A) Hydrogeomorphic and Cowardin wetland classes;
  - (B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), as well as vegetation, soils, hydrology, and wildlife habitat and usage; and
  - (C) Results of a wetland determination or delineation.
- (n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.
- (o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and

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legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085 -0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Department will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Department that does not provide sufficient information for review, or that appears to present a proposal in which the Department will not participate, will be returned to the sponsor with a written explanation.

(5) The Department reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

- (a) Need for the mitigation credits; or that
- (b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Department shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Department shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Department shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Department and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Department may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Department and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

- (A) Oregon Department of Environmental Quality;
- (B) Oregon Department of Fish and Wildlife;
- (C) Oregon Department of Land Conservation and Development;

- (D) U.S. Fish and Wildlife Service;
- (E) U.S. Environmental Protection Agency;
- (F) Soil and Water Conservation District; and
- (G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Department and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Department concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Department throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Department, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Department.

(b) Be approved and signed by the Department and the sponsor, at the discretion of the Department.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Department shall give public notice of the approval of the Mitigation Bank Instrument. This notice shall be called "Notice Of Mitigation Bank Instrument Approval" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to affected city and county planning departments, affected state agencies, adjacent landowners, and persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Mitigation Bank Instrument.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0425

### Establishment of Mitigation Credits

(1) Credits can be established by using:

(a) The ratios stipulated in OAR 141-085-0136; or

(b) Any other wetland and habitat functional assessment and evaluation methodology approved by the Department, which provides that credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement, or creation activities, and the increased wetland functional attributes that result, or are expected to result, from those activities.

(2) Additional credits within the bank may be realized contingent on achievement of the performance standards contained in the Instrument over time and subject to the discretion of the Department. These credits are derived from the increased wetland functions that accrue as wetlands in the bank improve over time. Wetlands that are enhanced should exhibit a meas-

# ADMINISTRATIVE RULES

urable increase in wetland function more readily than those that are created. Credits created by restoration may be subject to certification at an earlier date. Adjustments in credits shall be calculated based on superior performance as follows:

(a) For banks utilizing ratios provided in OAR 141-085-0136(2) or 141-085-0256:

(A) After five (5) years, the remaining enhanced wetland credits within the bank may be increased by no more than one-third and after ten (10) years, remaining enhanced wetland credits may be increased by no more than two-thirds;

(B) After ten (10) years or more, the remaining created wetland credits within the bank may be increased by no more than one-half.

(C) For the purpose of calculating available credits by these rules, the new number of credits is determined by multiplying the relative proportion of restored, enhanced, created, and/or protected wetlands and buffers present at the time of bank establishment by the total number of credits remaining.

(b) For banks using wetland assessment methods other than the ratios provided in OAR 141-085-0136(2) or 141-085-0256, remaining credits within the bank may be reevaluated at five (5), and ten (10) year intervals at the discretion of the Department. A new number of available credits may be realized using the same assessment method as originally employed to determine credits expected to be produced from the bank. OAR 141-085-0425(4) of these rules does not apply when the chosen assessment method evaluates the included upland buffers along with the wetlands because credits for inclusion of upland buffers in the bank shall not be counted twice.

(3) Credits may be granted on an area basis for upland buffers at the discretion of the Department. The calculation provided here is only for banks using ratios provided in OAR 141-085-0136(2) or 141-085-0256 and wetland functional assessment methods that do not evaluate buffers. However, such credits can only be established if the buffers are included as an integral part of the bank, a majority of credits are produced by the bank are from wetland restoration, enhancement, or creation, and all performance standards required in the Instrument are met. Credits for buffers will be determined as follows:

(a) Five (5) years after construction, credits for buffers may be granted. Depending on the quality of the buffer, between 10 to 20 acres of buffer will produce one (1) acre of wetland credit.

(b) Ten (10) years after construction, credits for buffers may again be calculated. Depending on the quality of the buffer, between 5 to 10 acres of buffer will produce one (1) acre of wetland credit.

(4) Credit for the protection of existing wetlands shall be considered only if:

(a) The area(s) to be preserved exhibit(s) healthy wetland functional attributes that are not likely to be increased appreciably by restoration or enhancement. The existence of "healthy wetland functional attributes" may be evaluated partly through comparison of the level of each function in the wetlands with the levels of the same functions in wetlands (of the same hydrogeomorphic class) identified as being among the least altered in the region or basin;

(b) The functional attributes of the wetlands proposed for protection are clearly threatened by human activities outside of the control of the bank sponsor;

(c) Additional protections such as upland buffers, fencing, and removal of contaminated soils, in addition to appropriate long-term protection measures that will substantially reduce the threat are proposed; and

(d) The applicant provides proof of ownership of, or explicit legal and recordable permission granted by the landowner, to perpetually dedicate the protection of wetland(s) and buffer(s) through any mechanism that unequivocally preserves the functional attributes of the wetland(s);

(e) The applicant provides documentation of the signed and recorded perpetual protection mechanisms.

(5) Mitigation bank credits for conservation in lieu may be granted on an area basis at no less than a 10:1 ratio for wetland(s) protected to wetland(s) lost in compliance with the criteria in OAR 141-085-0131(4).

(6) All adjustments in credits shall be applied only to those credits remaining in, or newly added to, the bank.

(7) The Department reserves the right to allow a bank sponsor to create credits by improving nonwetland ecological resources such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components provided that a bank producing credits in such a manner has produced a majority of its credits by wetland restoration, enhancement, or creation. Sponsors seeking to derive credits for nonwetland ecological resources shall develop a

method to quantify and compare the derived credits. The method proposed must be acceptable to the Department, the Federal action agency, and the MBRT.

Stat. Auth.: ORS 196.825 & ORS 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & ORS 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0430

### Use and Sale of Mitigation Credits

(1) Mitigation credits may only be purchased from a sponsor to offset permitted wetland losses or to resolve violations under the removal-fill law. Credit sales and purchases for future anticipated adverse affects not part of removal-fill permit applications are prohibited.

(2) The Department may purchase credits from an approved bank with funds received from payment to provide mitigation payments where such purchases will provide off-site CWM.

(3) The maximum number of credits that may be sold in advance of certification of the bank credits by the Department shall be clearly specified in the Instrument. In no case shall more than thirty (30) percent of the total credits expected to be produced initially by the bank be sold prior to their certification.

(4) The Department shall not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the Instrument, the Removal-Fill Law, and all rules governing freshwater and estuarine resource replacement in OAR 141-085-0121 through 141-085-0266. The Department may consult with the MBRT for the bank in order to determine noncompliance and appropriate remedies, including enforcement action.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0436

### Siting of Mitigation Banks

(1) Banks shall be sited in locations where they will conflict to the least extent possible with other existing and potential land uses, while yielding the most functional benefits.

(2) Ecological criteria to be considered in the siting of banks include:

(a) Maintenance and enhancement of wildlife/fish habitat and corridors.

(b) Reliability of hydrological sources.

(c) Ability to provide stormwater storage/flood attenuation.

(d) Ability to enhance the water quality of the watershed.

(e) Ability to provide buffers for the site(s).

(f) Ability to provide a diversity of wetlands.

(g) Proximity to large undisturbed uplands, wetlands or other riverine or aquatic systems.

(h) Absence of disturbance by human (airports, dumping, vehicular intrusion, nearby presence of exotic species, etc.)

(i) Presence of rare plants or animals and the ability of the bank to accommodate them.

(3) Banks on public lands shall be allowed provided that the public agency owning or having authority over the subject land(s) grants its approval and perpetually dedicates the land upon which the bank, and any associated buffer, is proposed.

(4) To the extent possible, the Department shall require that bank site locations and/or bank construction activities will not result in any adverse affects to state or federally listed species, and that the bank is in compliance with the state and federal endangered species acts.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0440

### Removal-Fill Permits for Mitigation Banks

(1) Bank sponsors shall be required to obtain removal-fill permits if any of the actions necessary to create the proposed bank are subject to the requirements of the removal-fill law (ORS 196.800 through 196.990).

(2) When removal-fill permits are not required to establish a mitigation bank, the Instrument shall be accompanied by an order from the Department.

(3) If a removal-fill law is required for a bank, the Instrument shall become a part of that permit and an order will not then be required from the Department.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

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Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0450

### Records; Reporting

(1) The Department shall maintain a record of credit withdrawals for each active wetland mitigation bank.

(2) The Department shall report annually to the Land Board on funds expended from the Oregon Wetlands Mitigation Bank Revolving Fund for each wetland mitigation bank.

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: 2003 OL 738

Hist.: DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0640

### Plan Development Process

(1) The Department shall prepare a draft Oregon Wetlands Priority Plan, consistent with requirements of the Emergency Wetlands Resources Act, for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

(2) In preparing the draft plan, the Department shall consult with the Oregon Departments of Fish and Wildlife, Land Conservation and Development, Environmental Quality, Economic and Community Development, and State Parks and Recreation Department and a representative of Oregon's local governments.

(3) Upon completion, the draft plan shall be submitted for comment to:

(a) The state agencies in OAR 141-085-0640(2) of this rule;

(b) Other state agencies including, but not limited to those on the Department mailing list;

(c) Federal natural resource and regulatory agencies including but not limited to: the Corps of Engineers, National Park Service, U.S. Fish and Wildlife Service, National Marine Fisheries Services, Environmental Protection Agency, Forest Service, Bureau of Land Management, Natural Resources Conservation Service, Bureau of Reclamation and Federal Emergency Management Administration;

(d) Local governments and special districts including but not limited to port districts, and soil and water conservation districts;

(e) Conservation organizations and interested parties who have requested to be placed on a mailing list maintained by the Department for such purposes.

(4) The Department shall hold one or more public hearings to provide opportunity for clarifications, recommendations and other public input on the draft plan.

(5) The Department shall review and evaluate comments received to determine appropriate revisions to the draft plan.

(6) After consideration of comments received, the Department shall present to the State Land Board a recommended Oregon Wetlands Priority Plan. The presentation shall include a summary of comments made on the draft plan and an explanation of how the comments were accommodated in the recommended Plan or otherwise addressed.

(7) The Department shall submit the Oregon Wetlands Priority Plan, as approved by the Land Board, to the State Parks and Recreation Department for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0650

### Receipt and Application of Funds

(1) Funds made available to the State of Oregon from the federal Land and Water Conservation Fund to achieve the purposes of the Oregon Wetlands Priority Plan shall be transferred by the State Parks and Recreation Department into the Oregon Wetlands Mitigation Bank Revolving Fund Account pursuant to ORS 196.650.

(2) As provided in ORS 196.650 funds received pursuant to OAR 141-085-0650(1) of this rule shall be reserved for disbursement by the Department for acquisition of wetland parcels or interests therein identified by the Oregon Wetlands Priority Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-085-0660

### Plan Update

(1) The Department shall review the Oregon Wetlands Priority Plan annually and update the plan at least every five years under the process set out in OAR 141-085-0640.

(2) The Department shall report to the State Land Board annually on the status of wetland acquisitions taken under the plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0100

### Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department place or remove material within waters of the state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement as defined by OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085 except a single application, for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0105

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the sole purpose of improving habitat conditions for fish;

(b) Consist of fill or removal of material as:

(A) Randomly placed rock;

(B) Deflectors;

(C) Rock and log weirs;

(D) Gravel placement;

(E) Pool and pond construction;

(F) Back/side channel construction;

(G) Channel reconstruction;

(H) Barrier removal and placement of fishways;

(I) Woody material.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

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(b) The project is not for the sole purpose of improving habitat conditions for fish or other aquatic habitat restoration in wetlands; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085; except as provided for in OAR 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0110

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the *Oregon Aquatic Habitat Restoration and Enhancement Guide*.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed natural maximum scour depth.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage structures may be placed within the bed and banks of waters of the state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse impacts to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0115

### Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0120

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

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(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(13) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(14) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Department.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the

project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0130

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0135

### Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit, place or remove material within waters of the state, except estuaries and the Pacific Ocean, for streambank stabilization.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0140

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be an active erosion area.

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(b) Involve not more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or more than two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(2) A project is not eligible for this general authorization if:

(a) The project is not for streambank stabilization;

(b) The project area is not currently subject to active erosion;

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085;

(d) The project includes channel relocation and gravel bar alteration;

(e) The project consists entirely of structural streambank stabilization methods (e.g. riprap, bulkheads);

(f) The project involves fill in wetlands exceeding 0.2 (two-tenths) acres; or

(g) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0145

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) Where revetments, riprap and/or any other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches to streambank stabilization.

(2) Nonstructural approaches such as slope pull-back, willow mats, rock barbs, revegetation with native plant species, log and boulder deflectors, shall be used to the maximum extent possible and where technically feasible.

(3) Only clean, durable rock shall be used as riprap. Riprap used for the toe material shall be placed in an irregular pattern using large boulders or rock clusters.

(4) No material shall be removed in excess of the amount required to construct a toe trench, key material to the bank, or slope the bank.

(5) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(6) No material shall be placed in excess of the minimum needed to stabilize the area subject to active erosion.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0150

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0155

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place

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Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(13) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0165

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

## 141-089-0170

### Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without obtaining an individual removal-fill permit, may place or remove material from waters of the state (as described in OAR 141-085-0016), except within estuaries and the Pacific Ocean, for certain transportation-related structures including roads, railroads, culverts, bridges, bicycle lanes trails.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0175

### Eligibility Requirements; Ineligible Projects

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, may place or remove material from waters of the state (as described in OAR 141-085-0016), except within estuaries and the Pacific Ocean, for certain transportation related structures including roads, railroads, culverts, bridges, bicycle lanes trails.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and OAR 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the

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final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0180

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100; and

(2) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland impacts to areas less than 0.2 acres may use off-site compensatory wetland mitigation.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0185

### Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0190

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

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(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(13) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Department. Where, riprap and/or other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(14) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990 & ORS 390.805 - 390.925  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0200

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0205

### Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual permit from the Department, place or remove material within waters of the state for the purposes of wetland restoration or enhancement as defined in OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general

authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085, except a single application for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0210

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the specific purpose of restoring or enhancing a wetland such as a project developed and funded by the Wetland Reserve Program, the Oregon Conservation Reserve Enhancement Program, Coastal Wetlands Protection and Enhancement Program or the North American Waterfowl Conservation Act; and

(b) Restore wetland types historically found in the region; and

(c) Restore or enhance wetland functional attributes such as fish and wildlife habitat, water quality and quantity; or

(d) Support the purposes of waterfowl or wetland management within a state or federally designated management area as identified in a management plan for the area.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085 except as provided for in OAR 141-089-0100(6) Fish Habitat Enhancement.

(c) The project is proposed primarily for the purpose of storm or waste water management, stock ponds, or aquaculture; or

(d) The project is proposed for the purpose of complying with the requirements of compensatory wetland mitigation under OAR 141-085 unless the project is included in a Wetland Conservation Plan approved by the Department under ORS 196.678; or

(e) The project is for restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory wetland mitigation under OAR 141-085; or

(f) The project is proposed within a Wetland Conservation Plan area and is not in conformance with the approved plan; or

(g) The project is designed to restore or enhance wetlands used as amenities in golf courses, subdivisions or similar settings where their purpose is primarily aesthetic.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

# ADMINISTRATIVE RULES

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0215

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse impact to existing wetlands and result in a measurable increase in wetland functional attributes;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(4) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0225

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received within fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

## 141-089-0230

### Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

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(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(13) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Department.

(14) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Department on a Restoration Inventory Report form provided by the Department.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0240

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0245

### Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place (fill), remove (removal), alter material in waters of the state within areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for the purposes of recreational and small scale placer mining.

(2) "Prospecting" as defined by law and OAR 141-085-0010; "non-motorized methods" as defined in OAR 141-085-0010; and "Highbanking" as defined in OAR 141-085-0010, conducted beyond the jurisdiction of the removal-fill law, as described in OAR 141-085-0015 are all activities exempt from regulation under the removal-fill law, OAR 141-085 and this general authorization.

(3) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authoriza-

tion. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. This letter of authorization is not transferable to another person.

(4) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(5) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(6) This general authorization is exclusive to recreational and small scale placer mining.

(7) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(8) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(9) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(10) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0250

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the specific purpose of recreational or small scale placer mining;

(b) Be conducted within Essential Salmon Habitat; and

(c) Remove, fill or alter less than twenty-five (25) cubic yards of material annually from the bed of a stream designated as Essential Salmon Habitat; and

(2) A project is not eligible for this general authorization if:

(a) The project does not meet the eligibility and mandatory requirements;

(b) The project involves the construction of permanent dams; or

(c) The project involves excavation from the streambank.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & ORS 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0255

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(2) If the project is within a State Scenic Waterway, no dredge may be used having a motor exceeding sixteen (16) horsepower, or as otherwise established by statute.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0260

### Application Requirements; Review and Approval Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) Within ten (10) calendar days of receipt of an application, the Department will review the application for eligibility and compliance with the mandatory requirements and notify the applicant of approval, denial, or modification.

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(3) If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application meets all the requirements for this general authorization, it shall do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0265

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(b) Creates only the minimal area of impounded water necessary to operate the dredge; and

(c) Is removed upon completion of the mining activity unless otherwise instructed by the Department.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main channel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(9) The authorization holder shall not allow petroleum products, chemicals or deleterious materials to enter the water.

(10) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(11) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(12) For activities within State Scenic Waterways the authorization holder shall adhere to the following conditions:

(a) The activity shall not impede recreational boating.

(b) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or

within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(d) No dredge may be used having a motor exceeding sixteen (16) horsepower, or as otherwise established by statute.

(13) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

(14) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(15) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & ORS 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0275

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0280

### Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of the state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of the state (e.g. wetlands) removed as a result of ditch maintenance/cleaning in drainage ditches upstream of tidegates; and/or

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) below.

(3) Drainage ditches that have a free and open connection (as defined in OAR 141-085-0010) to other natural waterways (as defined in OAR 141-085-0010) and are presumed to contain food and game fish are waters of the state.

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(4) The regular maintenance of legally constructed or altered ditches upstream of tidegates is exempt from regulation under the removal-fill law, OAR 141-085-0020 and this general authorization if:

(a) The drainage ditch was serviceable within the past five (5) years; and

(b) The maintenance would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of the drainage ditches.

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the removal-fill law, OAR 141-085 and this general authorization.

(6) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(7) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(8) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(9) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(11) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(12) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0285

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of the state (e.g. wetlands) removed as a result of maintenance/cleaning of drainage ditches upstream of tidegates; and/or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) above; and

(c) Remove, fill or alter more than fifty (50) cubic yards of material from waters of the state unless the activity is within an Essential Salmon Habitat stream or State Scenic Waterway where the no amount of material is to be removed, filled or altered without prior authorization of the Department.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0290

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The removal of sediments from drainage ditches shall be kept to the minimum amount necessary to remove recently deposited materials.

Additional channel widening or deepening beyond that amount is not allowed under this general authorization.

(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the impacts are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi-permanent open water areas shall not be used for sediment disposal.

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0295

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0300

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning

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department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department.

(13) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0310

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0400

### Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove piling in waters of the state including areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for such purposes as over-water structure support or navigational aid.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

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(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0016 and 0021.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0011.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0405

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be placement of no more than five (5) piles or one (1) dolphin consisting of three (3) to five (5) piles;

(b) Be individual piles and piles placed for over-water structure support (e.g., pile associated with docks, piers), mooring and turning dolphins, or navigational aids not otherwise exempt from the removal-fill law as described in OAR 141-085-0015 and 0020);

(c) Be untreated wood, steel, fiberglass or plastic piles;

(d) Be piles fitted with devices to effectively prevent perching by piscivorous bird species;

(e) Be placed from a barge-mounted or above top-of-bank position. If barge-mounted, barge shall not at any time be grounded on the bed or banks.

(f) Be placed by means of impact or vibratory methods or removed (to the extent regulated as material pursuant to OAR 141-085-0010 (125)) by means of vibratory method only.

(2) A project is not eligible for this general authorization if:

(a) Piling is placed to construct headwalls or other bank treatment structure;

(b) Piling is placed to create new uplands;

(c) Piling is sheetpile;

(d) Piling is placed or removed by excavation (including hydraulic jet method) of streambed or banks;

(e) Piling is placed in wetlands;

(f) Piling is placed so as to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(g) Piling is placed so as to interfere with, or create hazard to, recreational or commercial navigation;

(h) Piling is placed as poured-in-place concrete;

(i) The project includes placement of footings or other support structure for piling;

(j) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085; or

(k) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0410

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(2) No pile shall be placed in excess of the minimum necessary to fulfill its essential purpose or function.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0415

### Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0420

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Department designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

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(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(11) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(12) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(13) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(14) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(15) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(16) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(17) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(18) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0430

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0077. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0500

### Purpose and Applicability

(1) These rules set forth the conditions under which an applicant may, without an individual removal-fill permit from the Director, place or remove very small quantities of material within designated essential indigenous anadromous salmonid habitat areas for projects that have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects. For purposes of this General Authorization "project" means the same as defined in OAR 141-085-0010(165).

(2) An authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. An applicant is authorized to commence an activity under this general authorization by submitting a complete application on a form provided by the Department and by agreeing to the eligibility requirements (OAR 141-089-0505), mandatory requirements (141-089-0510) and the conditions for issuance (131-089-0520). The term and conditions of issuance shall be stated in the authorization. The term shall not exceed the expiration date of this general authorization. The authorization is not transferable to another person.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0505

### Eligibility Requirements; Ineligible Projects

(1) In order to authorize an activity under this general authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects;

(b) Place or remove not more than two cubic yards of material at any individual site and, cumulatively, not more than ten cubic yards of material within a designated essential indigenous anadromous salmonid habitat stream in a single project year;

(c) Have no effect on any listed species; and

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(d) Have no effect on known archeological sites.

(2) Examples of eligible projects include, but are not limited to, the following:

(a) Investigative drilling to gather necessary technical data for designing building and/or road foundations;

(b) Installation of scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures;

(c) Limited surveys for historic resources.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0510

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements: If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0515

### Application Requirements; Review and Approval Process

(1) Any person proposing to conduct an activity covered by this general authorization shall submit an application to do so on a form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department will review the application for eligibility and compliance with the mandatory requirements.

(3) If the application is deemed incomplete or ineligible, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application does not meet all the requirements for this general authorization, it shall deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0520

### Conditions for Issuance of General Authorization

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Department as soon as possible.

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(13) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(14) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(15) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(16) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(17) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(18) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

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(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0530

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No activity will be authorized by this general authorization beyond January 1, 2007, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5).

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0550

### Purpose and Applicability

(1) This rule sets forth conditions under which the Oregon Department of Transportation (ODOT) may, with a letter of authorization from the Director, place or remove material from waters of the state for the purposes of replacing and repairing highway bridges. This rule is put forth to promote a bridge replacement program that is heavily influenced by sustainable development practices. A goal of the performance standards under this rule is to guide the design and construction of environmentally sound bridges that improve the condition and performance of natural systems.

(2) A letter of authorization from the Department verifying compliance with this general authorization is required prior to any person commencing an activity authorized by this general authorization. The terms and conditions of issuance shall be stated in the letter of authorization. A letter of authorization is transferable from ODOT to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0020.

(5) Unless otherwise specified below, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Bridge replacement and repair activities that qualify for this General Authorization are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0555

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization, the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must be a bridge replacement or repair and shall be limited to the following purposes:

- (a) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;
- (b) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;
- (c) Widening, realigning or removing existing railroad beds;
- (d) Widening, realigning or removing existing roads;
- (e) Widening, realigning, removing or replacing existing bridges or similar structures;
- (f) Widening, realigning or removing existing bicycle, pedestrian or other lanes or trails;
- (g) Constructing new bicycle, pedestrian or other lanes or trails;

(h) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

- (i) Construction of new culverts;
- (j) Extension of existing culverts beyond the existing road prism;
- (k) Streambank stabilization associated with projects listed in (a) through (j);

(l) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation;

- (m) Temporary structures;
- (n) Staging areas for equipment that will be restored at time of project completion;

(o) Test holes, boring and similar activities associated with planning and design of transportation structures; and

(p) Other activities that within the discretion of the Department are determined to be necessary to:

- (A) Provide fish passage;
- (B) Ensure the structural integrity of the project; or
- (C) Relocate utilities spanning the original bridge structure or similar activities that are integrally related to accomplishing the bridge repair or replacement.

(2) A project is not eligible for this general authorization if:

- (a) The project is not primarily a bridge replacement or repair;
- (b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

(3) Permanent fill in wetland is limited to 0.5 acres or less. In waters other than wetlands, no more than a total of five thousand (5,000) cubic yards of material may be filled, removed or altered in waters of the state for a single and complete project. Exceeding five thousand (5,000) cubic yards is authorized only where necessary to improve or restore fluvial processes on a project specific basis.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0560

### Mandatory Requirements

(1) ODOT must be a qualified applicant as defined in OAR 141-085-0010(3).

(2) If the activity is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085-0115 to 141-085-0176 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses.

(a) Prior to initiating construction, ODOT shall provide a project notification form that documents how compensatory wetland mitigation or compensatory mitigation for waters other than wetlands is to be achieved for the individual project;

(b) ODOT shall develop and implement a comprehensive compensatory mitigation site monitoring, reporting, and corrective action program as approved by the Department.

(4) Prior to expiration of this General Authorization, ODOT shall calculate total acres of permanent wetland impact for those projects authorized under this rule and determine if the functional attributes of the compensatory wetland mitigation has compensated for functions lost through project development in accordance with OAR 141-085-0136. If a deficit exists, the balance shall be achieved through additional on-site or off-site mitigation including payment-to-provide options in accordance with OAR 141-085-0131.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0565

### Application Requirements; Review Process

(1) To qualify for a General Authorization under this rule, ODOT shall, before beginning construction, submit to the Department an application, on a form provided by the Division that includes the following information:

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- (a) Location of project;
- (b) Map of project area with removal-fill impact area clearly identified;
- (c) Dates of expected work;
- (d) References to documents previously reviewed and approved by the Department (e.g., environmental assessments);
- (e) Project design information, including plan and section view of proposed new structures;
- (f) Locations of temporary access areas, staging areas, and other areas of disturbance;
  - (g) Wetland delineation concurrence letter, if applicable;
  - (h) Location of ordinary high water, if applicable;
  - (i) Jurisdictional impact acreage and volume (in cubic yards) of removal and/or fill;
  - (k) List of ODOT performance standards applicable to the project;
  - (l) Documentation demonstrating how and when compensatory mitigation will be achieved;
  - (m) Documentation demonstrating how project complies with applicable ODOT Performance Standards, and any other relevant information requested by the Department.
  - (n) Documentation of local government land use approval; and
  - (o) Documentation of coordination with adjacent property owners, Tribal governments (as applicable) and state and federal natural resource agencies.

(2) Within fifteen (15) calendar days of receipt of a completed application, the Division will review the application for compliance with the conditions in OAR 141-089-0570 of these rules and notify ODOT whether the project is eligible, eligible with new or modified conditions, or ineligible.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0570

### Conditions of Issuance of General Authorization

#### ODOT shall adhere to the conditions of the General Authorization.

- (1) ODOT shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project.
- (2) ODOT shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of construction activities for a project authorized under this general authorization.
- (3) ODOT shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.
- (4) When listed species are present, ODOT shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, ODOT shall contact the Department as soon as possible.
- (5) ODOT shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, ODOT shall immediately cease work at the discovery site and contact the Department.
- (6) ODOT shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.
- (7) ODOT shall implement and comply with all relevant ODOT Bridge Program Performance Standards.
- (8) ODOT shall flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands and other sensitive sites beyond the flagged boundary.
- (9) ODOT shall prepare and carry out a site restoration plan as necessary to ensure that all habitats (e.g., streambanks, soils and vegetation) disturbed by the project are cleaned up and restored. Site restoration shall be conducted using a diverse assemblage of species native to the project area or region, including grasses, forbs, shrubs and trees as appropriate. Grass and forb seed mixes containing exotic species are permitted, if they will hold the soil, not persist, and are certified to be free of noxious weeds.
- (10) ODOT shall locate vehicle staging, cleaning, maintenance, refueling, and fuel storage facilities (a) in areas that have been previously com-

pacted, disturbed, and cleared (if available) and (b) in areas where delivery of contaminants to the soil and waters can be prevented, contained, and cleaned rapidly.

(11) ODOT shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient < 2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

(12) ODOT shall eliminate direct discharge of stormwater from bridge decks to waters.

(13) ODOT shall prepare and carry out a pollution and erosion control plan to prevent pollution caused by surveying or construction operations. The pollution and erosion control plan will meet requirements of all applicable laws and regulations.

(14) ODOT shall ensure that other structures, uses or activities not associated with the application for the proposed project (i.e., vehicle maintenance, construction of storage buildings, parking lots) are not permitted.

(15) ODOT shall comply with the following bank stabilization guidelines:

(a) Unless precluded by flow conditions, channel and bank stabilization efforts should use a vegetative stabilization approach such as one of the following methods:

(A) Woody plantings and variations (e.g., live stakes, brush layering, fascines, brush mattresses), where appropriate.

(B) Herbaceous cover, where analysis of available records (e.g., historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times.

(C) Deformable soil reinforcement, consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile ('deformable') at approximately two- to five-year recurrence flows.

(D) Coir logs (long bundles of coconut fiber), straw bales and straw logs used individually or in stacks to trap sediment and provide growth medium for riparian plants.

(E) Bank reshaping and slope grading, when used to reduce a bank slope angle without changing the location of its toe, increase roughness and cross-section, and provide more favorable planting surfaces.

(F) Floodplain roughness, e.g., floodplain tree and large woody debris rows, live siltation fences, brush traverses, brush rows and live brush sills; used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been removed.

(G) Floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris used to spread flow across the floodplain.

(b) Flow-redirection structures known as barbs, vanes, or bendway weirs may be used for bank stabilization, when designed as follows or otherwise approved in writing by DSL:

(A) No part of the flow-redirection structure may exceed bank full elevation, including all rock buried in the bank key.

(B) The flow-redirection structure shall be composed primarily of wood or otherwise shall incorporate large wood at a suitable elevation in an exposed portion of the structure or the bank key. Placing the large woody debris near streambanks in the depositional area between flow direction structures to satisfy this requirement is not approved, unless those areas are likely to be greater than 1 meter in depth, sufficient for salmon rearing habitats.

(C) The trench excavated for the bank key above bankfull elevation shall be filled with soil and topped with native vegetation.

(D) The maximum flow-redirection structure length shall not exceed 1/4 of the bankfull channel width.

(E) Rock shall be placed individually, without end dumping.

(F) If two or more flow-redirection structures are built in a series, the flow-redirection structure farthest upstream shall be placed within 150 feet

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or 2.5 bankfull channel widths, from the flow-redirection structure farthest downstream.

(G) Woody riparian plantings shall be included as a project component where appropriate.

(c) When used for bank stabilization, rock will be class 350 metric, or larger, wherever feasible, but may not impair natural stream flows into or out of secondary channels or riparian wetlands. Whenever feasible, topsoil shall be placed over the rock and planted with woody vegetation. Rock may be used instead of wood for the following purposes and structures:

(A) As ballast to anchor or stabilize large woody debris components of an approved bank treatment.

(B) To fill scour holes, as necessary to protect the integrity of the project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.

(C) To construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or fill slope erosion or failure at, an existing flow control structure (e.g., a culvert, water intake), utility line, or bridge support.

(D) To construct a flow-redirection structure as described above.

(d) If flow conditions require the use of riprap to achieve bank stabilization, adequate fines and substrate materials must be incorporated to sustain the growth and survival of native herbaceous vegetation and shrubs.

(16) In the case of road removal, ODOT shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(17) If temporary roads are required through wetlands, ODOT shall install culverts to maintain connectivity between wetland areas.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long-term harm to water resources of the state.

(22) The Division may, at any time, by notice to ODOT revoke or modify any project approval granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental impacts.

(23) ODOT is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

(24) ODOT shall keep a copy of all relevant permits and approvals available at the work site whenever the activity is being conducted.

(25) The General Authorization applies only to the permit requirements of the Removal-Fill Law. Any activity on designated State Scenic Waterways must still obtain prior approval from the Director as required by the Oregon Scenic Waterway Law and Scenic Waterway Removal-Fill Rules (OAR 141-100).

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0575

### Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action that may result in revocation of the authorization. ODOT is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0580

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the

Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2009, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2010.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0585

### Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, place or remove material from certain freshwater wetlands within waters of the state (as described in OAR 141-085-0016), for all types of activities within designated Urban Growth Boundaries (UGB) or Urban Unincorporated Communities (UUC).

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0590

### Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must be for a removal-fill activity that:

- Is located in a freshwater wetland;
- The removal-fill is less than 0.1 (one-tenth) acre;
- Is within a designated Urban Growth Boundary (UGB) or Urban Unincorporated Community (UUC);
- Is not within an area that contains state or federal listed species;
- Is not in an area designated in the local comprehensive land use plan as a locally significant wetland;
- Is beyond the floodway or flood fringe area as designated on maps approved by the Federal Emergency Management Agency; and
- Is not located adjacent to an estuary or to designated Essential Indigenous Anadromous Salmon Habitat.

(2) A project is not eligible for this general authorization if:

- The project fails to meet any of the requirements of (1) above or the mandatory requirements;
- The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide fish passage or for the structural integrity of the project.

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Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0595

### Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(2) A wetland delineation report has been approved by the Department in accordance with OAR 141-090-0040.

(3) A compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland impacts to areas less than 0.1 (one-tenth) acre may use off-site compensatory wetland mitigation.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0600

### Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(3) The Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0605

### Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown state or federal listed species are encountered during the project, the authorization holder shall cease work immediately and contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(8) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(11) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

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(12) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(13) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(14) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(15) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(16) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(17) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(18) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0610

### Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-089-0615

### Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process described in OAR 141-085-0075. However, this is only an opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2007.

Stat. Auth.: ORS 196.850  
Stats. Implemented: ORS 196.800 - 196.990, 390.805- 390.925  
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0005

### Purpose

The purpose of these rules is to establish standards and procedures by which the Department of State Lands makes jurisdictional determinations of wetlands and other waters of the state. These rules also establish minimum standards for wetland determination and delineation reports submitted to the Department for review and the procedures for Department review and approval.

Stat. Auth.: ORS 196.845 & 196.692  
Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279  
Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0010

### Applicability

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

(2) These rules are supplemental to administrative rules for issuance and enforcement of removal and fill authorizations (OAR 141-085; 141-0102); rules pertaining to wetland conservation plans and local wetlands inventories (OAR 141-086; 141-120); rules pertaining to the identification of significant wetlands (OAR 141-086); rules pertaining to General Authorizations (OAR 141-098); and rules pertaining to Oregon Scenic Waterways (OAR 141-100).

(3) Agencies such as the U.S. Army Corps of Engineers (Corps of Engineers) and the Natural Resources Conservation Service have separate regulatory authority over waters of the United States and separate jurisdictional determination procedures.

Stat. Auth.: ORS 196.845 & 196.692  
Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279  
Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0015

### Policy

(1) It is the policy of the State of Oregon that the protection, conservation and best use of the water resources of this state are matters of the utmost public concern (ORS 196.805) and that the state use a single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS 196.672).

(2) In accord with these policies the Department shall, to the greatest extent possible:

(a) Provide a clear process for making, modifying or reissuing jurisdictional determinations, including wetland boundary delineations;

(b) Make jurisdictional determinations using the best available science, technical guidance and documents, including the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual;

(c) Use sound professional judgment in interpreting maps, aerial photographs, environmental data and other relevant documents;

(d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that fill or removal of material in waters of the state does not occur without a required removal or fill permit; and

(e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of site development planning in order to incorporate measures to avoid and minimize impacts to wetlands and other waters and thus prevent unnecessary regulatory delays.

(3) Because wetlands and other waters of the state can be affected over time by both natural changes and human activities, jurisdictional determinations are not valid for an indefinite period of time.

(4) The Director of the Department of State Lands shall designate employees responsible for making jurisdictional determinations as described in these rules.

(5) The Department shall give priority to the review of wetland delineation reports submitted with or in advance (i.e., within 90 (ninety) days) of an authorization application.

(6) Final authority for determining the adequacy of the procedures, methods, application of technical documents, interpretation and analysis of maps and data, and conclusions regarding the identification of waters of the state and jurisdictional determinations rests with the Department (ORS 196.815(1); 196.845).

Stat. Auth.: ORS 196.845 & ORS 196.692  
Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279  
Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0020

### Definitions

For the purpose of these rules:

(1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.

(2) "Applicant" means a person who has applied to the Department for a jurisdictional determination and/or a removal or fill authorization.

(3) "Atypical Situation" means a site or situation where the usual methods of making a jurisdictional determination cannot be employed due to human-caused activities or alterations of the "normal circumstances," or natural events, such as a flood, that have recently altered a site.

(4) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of the state as required by OAR 141-085, 141-089, 141-0100 and 141-0102.

(5) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Department's jurisdictional determination.

(6) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology and/or substrate to the extent that the "normal circumstances" of waters of the state are changed. The change in

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circumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

(7) "Consultant" means a private individual or firm whose business is to provide professional services to the public.

(8) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

(9) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of the state, including wetlands. A determination need not include the precise location or boundaries of any wetlands or waterways determined to be present.

(10) "Director" means the Director of the Department of State Lands or his or her designate.

(11) "Department" means the Oregon Department of State Lands, including the Director.

(12) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.

(13) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a receiver, their respective position in latitude, longitude, and altitude.

(14) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of the state.

(15) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of the state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present on a land parcel. The JD may include a determination of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the ordinary high water line of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in 141-090-0050.

(16) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.

(17) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.

(18) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual.

(19) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(20) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Department after the Department has issued a jurisdictional determination or issued an authorization.

(21) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(22) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Department may determine if the placement of fill material required a fill permit.

(23) "Offsite Determination" means a determination by the Department or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, and/or interviews with persons familiar with the site. An offsite determination is considered to be a Preliminary Jurisdictional Determination unless otherwise stated in writing by the Department.

(24) "Onsite Determination" means a determination by the Department or any other person that includes a site visit to collect relevant

data. An onsite determination may be either a Preliminary Jurisdictional Determination or a JD.

(25) "Other Waters" means waters of the state other than wetlands.

(26) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(27) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of the state are present or not present on a parcel of land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Department, and also include wetlands mapped on the NWI or on a LWI.

(28) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Department's contact for the purpose of the review and approval of a wetland determination or delineation report.

(29) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of the state.

(30) "Report" means a wetland determination or delineation report.

(31) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area.

(32) "Waters of the state" means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state (ORS 196.800(14) and 141-085-0010 and 0015).

(33) "Wetlands" means those areas that are inundated or saturated by surface or ground water 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 (ORS 196.800(16) and 141-085-0010).

(34) "Wetland Boundary" means a line marked on the ground and/or on a map that identifies the boundary line between wetlands and non-wetlands.

(35) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes and maps their location and geographic extent.

(36) "Wetland Determination Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes their approximate location and size.

(37) "Wetland Map" means a map included in a Wetland Determination or Delineation Report or provided by the Department that shows the parcel(s) and/or areas investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.845, 196.692

Stats. Implemented: ORS 196.800 - 196.990, 196.600 - 196.665, 196.668 - 196.692, 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0025

### Procedures for Determinations Conducted Entirely by the Department

(1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

(2) The Department may make a determination for a number of reasons, including but not limited to:

(a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a particular parcel or parcels;

(b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

(c) A site development notice from a local government;

(d) A request from a local government or other government entity acting in its capacity to conduct site assessments for project or planning purposes;

(e) A removal-fill authorization application, request for a pre-application meeting or a compliance investigation;

(f) A request to review and approve a wetland determination or delineation report (see additional requirements and procedures in 141-090-0030 and 141-090-0035); or

(g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, 196.800 to 196.990 and any applicable rules of the Department.

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(3) The Department may prioritize the completion of determinations based upon the availability of staff and budget resources.

(4) A request to the Department to provide a determination apart from an authorization application or local government notice shall include:

(a) A written request including landowner/agent permission to conduct a site visit;

(b) Landowner or agent name, company or agency, mailing address and phone number;

(c) A location map such as a city map showing the precise parcel location with respect to nearest streets and parcel address, if any;

(d) A detailed site map such as a tax map or hand drawn parcel map showing, as appropriate, such features as the location of streets, roads, buildings, streams, and area of any planned development or fill or excavation, if known; and

(e) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(5) A request for a determination may include additional helpful information, such as:

(a) A large scale topographic map of the site (e.g., 1 inch = 50 feet);

(b) A large scale aerial photograph of the site; or

(c) Photographs of the site.

(6) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.

(7) The Department may request additional information and/or conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.

(8) An Onsite JD conducted by the Department shall include at a minimum:

(a) A location map showing the location of the parcel(s) with respect to major roads;

(b) A parcel map showing property boundaries;

(c) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(d) The NWI map or, if available, the LWI map with the site located;

(e) The county soil survey map with site located and soil type(s) mapped on the site identified;

(f) A sketch map showing the approximate location of any waters of the state on the parcel(s);

(g) At least one data form (or equivalent notes) documenting any wetlands identified or possible wetlands determined not to meet wetland criteria; and

(h) Conclusions and recommendations regarding additional requirements (e.g., the need for a delineation or permit), as appropriate to the determination request and the situation.

(9) After review of the information and the site visit, if conducted, the Department may:

(a) Provide a written PJD or JD in accordance with Subsection (10) of this section; or

(b) Provide a written PJD and recommend that the landowner, agent or applicant obtain a wetland determination and/or delineation that meets the requirements in 141-090-0030 and 141-090-0035.

(10) A written PJD or JD by the Department shall include at a minimum:

(a) A letter or form addressed to the applicant, landowner or agent that includes the location of the parcel(s) investigated, a file number for future reference, and the expiration date of the JD, or a response on or attached to a wetland land use notice form or other site development notice submitted by a local government; and

(b) Comments regarding the precision or use of the PJD or JD, as appropriate;

(c) Additional requirements or recommendations, such as the need for a wetland delineation;

(d) A determination of the requirements or exemptions in accordance with OAR 141-085, 141-089, 141-0100 and 141-0102 that apply to any waters of the state identified on the parcel(s) and/or the proposed activity, if the information provided to or obtained by the Department is sufficient to make such determination; and

(e) A map or reference to a map showing the parcel(s) investigated and the approximate location and boundaries of any waters of the state identified on the parcel(s), unless the information provided to or obtained by the Department is not sufficient to make or refer to such a map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0030

### Technical Requirements

(1) Wetland determinations and delineations shall be conducted in accordance with the *1987 U.S. Army Corps of Engineers Wetlands Delineation Manual* ("the manual") along with any supporting technical or guidance documents issued by the Department and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.

(2) In addition to the requirements in this section, wetland determination and/or delineation reports submitted to the Department for review and approval shall meet the standards and requirements in 141-090-0035.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0035

### Standards and Requirements for Wetland Determination and Delineation Reports Submitted to the Department

(1) **General Requirements:** All wetland determination and/or delineation reports ("reports") submitted to the Department for review, approval and a JD shall meet the technical requirements in 141-090-0030 as well as the minimum standards and requirements in this section.

(2) All wetlands or other waters on the parcel or study area shall be included; the Department will determine whether or not they are "waters of the state" subject to jurisdiction under OAR 141-085, 141-089, 141-0100 and 141-0102.

(3) All reports shall include the following sections:

(a) A fully completed "Wetland Delineation/Determination Report Cover Form" (form provided by the Department);

(b) Text as described in subsection (8) of this section;

(c) Maps as described in subsections (9) through (14) of this section;

(d) Data forms as described in subsections (15) and (16) of this section; and

(e) Appendices, as needed.

(4) All report text, maps, aerial photographs and data forms must be legible and, with the exception of aerial photographs, must copy legibly on a black and white copier.

(5) If a wetland function and condition evaluation is conducted, the methods and results of that evaluation should be presented in a separate section of the report or in a separate document.

(6) All reports shall include:

(a) The name, address, phone number, fax number and e-mail (if any) of the landowner;

(b) The name, address, phone number, fax number and e-mail (if any) of the applicant, if different;

(c) The address or, if no address is assigned, the approximate location of the site investigated, including county and city if within a city limits;

(d) The tax map number including the Township, Range, Section(s), Quarter Quarter Section(s), and Tax Lot(s) of the parcel(s) covered by the report;

(e) The latitude and longitude of the centroid of the parcel(s) or the start and end points of a linear project;

(f) The name, address, phone number, fax number, and e-mail address of the person that prepared the report; and

(g) Permission in writing from the landowner or agent, or a duly authorized representative of the landowner or agent, for the Department or its authorized representative to conduct a site visit.

(7) Reports may include, or the Department may in some circumstances require:

(a) Aerial photographs;

(b) Photographs of the site;

(c) A detailed topographic survey of the site; and

(d) Additional information regarding site history or field indicators helpful to evaluating the site and making a JD.

(8) **Text Requirements:** The report text shall include, in addition to the elements in subsection (6) of this section:

(a) A detailed description of the site, its landscape setting, and previous and current land uses;

(b) A description of any wetlands, including whether or not they extend offsite, and the characteristics of the wetland/non-wetland boundaries on the site;

(c) A description, approximate year, and analysis of any site alterations that likely affected the presence, location or geographic boundaries of any waters of the state on the site (e.g., surface drainage ditches or fill material);

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(d) The site-specific methods used to conduct the field investigation, select sample plot locations, and make the PJDs;

(e) The methods and rationale used to determine the boundaries of any wetlands on the site;

(f) The wetland map accuracy (see subsection 12 of this section);

(g) The methods used to determine the geographic extent of other waters of the state (e.g., ordinary high water);

(h) The date(s) of the field investigation(s);

(i) The precipitation on the day of and immediately preceding (approximately 1 to 2 weeks) the date(s) of the field investigation(s) and percent of normal rainfall for the water year to date;

(j) The results and conclusions of the investigation; and

(k) The following statement: "This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055."

(9) **Map Requirements:** All reports shall include the following maps:

(a) A location map, such as city map, showing the precise site location;

(b) A tax lot map showing the entire parcel(s);

(c) The appropriate LWI map showing the site location and boundaries, or if no LWI has been completed, the NWI map(s), including map name(s), showing the site location and boundaries;

(d) The county soil survey map, if published, showing the site location and boundaries and including a legend identifying the sheet number and all soil series mapped on the site; and

(e) One or more wetland maps comprising the wetland determination and/or delineation that shows parcel and/or study area boundaries and tax lot number(s), includes all waters of the state on the site, and meets the additional requirements in subsections (10) through (14) of this section.

(10) The wetland map(s) shall be at a scale suitable for the site size and for legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large sites or projects, a scale of 1 inch = 200 feet or smaller is preferable. Minimum map scale for a JD and/or for permitting purposes is subject to Department approval.

(11) The wetland map(s) shall at a minimum include:

(a) The boundaries of the entire parcel(s) subject to investigation; or

(b) If only a portion of the parcel(s) was investigated, the study area boundary in relation to the parcel boundaries; and

(d) Existing structures (unless shown on a current aerial photo included in the report), areas of fill, water diversions, or other major alterations;

(d) All water features and their boundaries;

(e) Numbered sample plots corresponding to data forms (see subsections (15) and (16) of this section);

(f) North arrow and scale bar; and

(g) Photograph locations and direction of view, if photographs are included in the report.

(12) The wetland map(s) and the report text shall indicate whether the location of the parcel boundaries and waters of the state depicted on the map are approximated, measured from known points visible on the map or on an aerial photo included with the report, mapped using a GPS, or professionally land surveyed, and shall include the estimated accuracy of the mapping (in feet) relative to the actual location of the boundaries on the ground. The estimated map accuracy should reflect both the precision of the field work and the precision of the mapping (i.e., using the map, how accurately could a person relocate the wetland boundary?). If mapping was done using a GPS, provide the post-processing error estimate for the mapping precision.

(13) The appropriate or necessary degree of map accuracy is dependent upon a variety of factors including, but not limited to, the size and complexity of the site and whether the map is provided as part of a wetland determination (showing approximate wetland location) or a wetland delineation. A very precise wetland delineation map prepared by a registered professional land surveyor or by a trained person using a mapping or survey grade GPS is generally needed for such activities as subdivision planning and removal-fill permitting.

(a) The level of map detail and accuracy must be substantiated by a corresponding level of field investigation and data collection detail (See subsection 17 of this section).

(b) The appropriate level of map accuracy for removal-fill permitting is subject to the judgment of the Department.

(c) The Department may condition its approval of a report to reflect the Department's judgment of map accuracy and suitability (see Subsection 10).

(14) The wetland map may be hand drawn or computer assisted. For large sites, the wetlands and other waters identified may be mapped onto a large scale aerial photograph (to be included in the Report) but must also be accurately transferred to a drawn map (as described in subsections (11) and (12) of this section) unless otherwise authorized by the Department.

(15) **Data Form Requirements:** All reports shall include a wetland determination data form for each sample plot. The data form used must be that provided by the Department or, if a customized data form is used, it must include all of the information contained on the Department prescribed data form and be clearly laid out in a similar format.

(16) All wetland determination data forms must:

(a) Be fully completed;

(b) Include only data collected from a single sample plot on a single date (additional dates of hydrology data may be reported in the comments section);

(c) Include the Latin botanical name and percent cover of all plant species listed;

(d) Use the 50/20 method (as described in the on-line edition of the Manual) for determining dominant plant species;

(e) Use standard soils terminology and abbreviations as established by the U.S. Department of Agriculture, Natural Resources Conservation Service; and

(f) Include the depth range below ground surface (dug to at least 16 inches) of soils and hydrology features noted (e.g., 0-3 inches, 3-8 inches, 8-16 inches).

(17) **Field Methods:** The field investigation methods and level of detail required for making and documenting a PJD or JD and mapping waters of the state is dependent upon site size, complexity and disturbance history, and on whether atypical situations or problem areas are encountered. At a minimum:

(a) The entire parcel (tax lot) or project area must be investigated during a field investigation. If only a portion of a parcel or project area is investigated, that must be made clear in the report text and on the wetland maps.

(b) All waters of the state in addition to wetlands must be identified, described, supported by data as appropriate, and mapped.

(c) Sufficient data and additional information shall be collected for any waters of the state to enable the Department to make an JD and also to determine if removal-fill permit requirements apply or if the water identified may be specifically exempt from permit requirements.

(d) Wetland delineation data must include a sample plot that best represents the characteristics of each wetland present (minimum of one plot per wetland); a sample plot that best represents adjacent non-wetland(s); and paired sample plots located close enough to either side of the wetland boundary (e.g. 4 (four) feet apart) to substantiate the wetland boundary location.

(e) Wetland determination data must be provided for any site or portion of a site where there is significant deviation from wetlands mapped on the NWI or LWI. Note in the report text if the deviation is due to development of the area mapped as wetland on the NWI or LWI, thus precluding data collection.

(f) If the site does not contain wetlands, at least one sample plot must be placed in the lowest topographic area or other location most likely to contain wetlands to document site conditions.

(18) If a wetland boundary is long or irregular in shape, paired data points sufficient to accurately identify and substantiate the wetland boundary are required; for a very irregular wetland boundary, several pairs of plots may be required. If the wetland boundary can be determined based upon one set of paired data points and a defined break in slope or other clearly visible features, that information must be fully described in the report text.

(19) Parcel boundaries, wetland boundaries and sample plots shall be identified on the ground with numbered stakes, flags, spray paint or similar markers, and/or identified on an aerial photo and/or the wetland map, such that the boundaries and sample plots can be readily relocated in the field during a site visit by the Department.

(20) Because sites are highly variable and JD needs also vary, there are many potential situations where minimal field documentation may be acceptable (e.g., linear projects covering extremely large geographic areas), where non-standard field documentation and wetland mapping may be appropriate (e.g., intricate wetland/non-wetland mosaics), or where more intensive sampling may be required (e.g., an atypical site). In such situa-

# ADMINISTRATIVE RULES

tions, persons conducting wetland delineations are encouraged to consult with the Department regarding appropriate methods.

(21) Depending on site conditions and circumstances, additional information that may be required to establish state jurisdiction includes, but is not limited to:

(a) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff);

(b) Data sufficient to determine whether or not an identified water area is artificially created entirely from upland and/or the purpose for which it was created;

(c) Hydrology monitoring data;

(d) Historical aerial photographs;

(e) Extent and date of site alterations;

(f) Data or other information on pre-disturbance conditions, such as excavation to an original (unfilled) soil surface or identification of a former stream course;

(g) Data collected at a certain time of year;

(h) Additional plant species identification; or

(i) More rigorous field sampling methodologies.

(22) **Short Report Option:** An abbreviated wetland determination process and short report format may be used in lieu of the requirements in subsections (3) through (21) of this section for reporting the results of a PJD on very small parcels or study areas (one-quarter acre or smaller) according to the following conditions and requirements:

(a) There are no wetlands or other waters mapped on the NWI or LWI for the parcel, the parcel has not been farmed or recently disturbed in any way that would obscure wetland indicators, and in the judgment of the investigator the parcel is clearly non-wetland in its entirety and contains no other potential waters of the state.

(b) The report includes:

(A) A fully completed "Wetland Determination Form for Small Parcels With No Wetlands" (form provided by the Department) and all map attachments listed on the form; and

(B) At least one completed data form reporting data collected at the lowest topographic area on the site or other area most likely to meet wetland criteria based upon soils mapping, vegetation or other characteristics and indicators. The plot location must be shown on the parcel map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0040

### Procedures for Review and Approval of a Wetland Determination or Delineation Report Submitted to the Department for a Jurisdictional Determination

(1) When a wetland determination or delineation report is submitted to the Department for review, approval and a JD, the Department shall review the report (according to its established priorities) to ensure that:

(a) The work meets the technical requirements in 141-090-0030;

(b) The report meets the standards and requirements in 141-090-0035;

(c) There is sufficient information for the Department to make a JD, including the geographic extent of any waters identified, as appropriate; and

(d) There is sufficient information for the Department to determine the removal-fill authorization requirements or exemptions that apply to the wetlands or other waters identified and/or the activities proposed.

(2) During or upon completion of the Department's review, the Department may take any of the following actions:

(a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent or applicant and the consultant, if any, in accordance with 141-090-0025(9).

(b) Request missing information, clarification or additional data (see 141-090-0035(21)).

(A) The request will be made to the primary contact by telephone, e-mail or in writing.

(B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner and/or applicant, as appropriate.

(C) The primary contact shall be responsible for promptly informing the Department of any change in the primary contact during the Department's review process.

(c) Conduct a site visit to confirm the report findings or obtain additional information (See 141-090-0025(6));

(d) Revise the wetland map and/or the PJD based upon the report review, any additional information requested, and/or a site visit, and pro-

vide a JD accordingly after consulting with the primary contact and report author, if different; or

(e) Reject the report, along with a written explanation to the primary contact, without further review or approval, if:

(A) The work has not been completed according to the technical requirements in 141-090-0030;

(B) The report does not meet the standards and requirements in 141-090-0035;

(C) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD; or

(D) Additional or clarifying information, permission for a site visit, or requested revisions are not provided within 120 calendar days of the Department's written request.

Stat. Auth.: ORS 196.845, 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0045

### Duration, Expiration and Reissuance of Jurisdictional Determinations

(1) All JDs by the Department shall be in writing and shall remain valid for a period of not more than five years from the date of issuance unless:

(a) A field investigation or new information reveals that site conditions and/or the geographic extent of waters of the state are not consistent with the information in a report or permit application submitted to the Department;

(b) Additional site information or data is provided voluntarily by an applicant or landowner to the Department;

(c) Additional information is provided to or obtained by the Department in conjunction with a request for reconsideration (141-090-0050) or a contested case hearing associated with an authorization application (ORS 196.825(6) and 141-085-0075);

(d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S. Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331); or

(e) New information obtained by or provided to the Department shows a change in circumstances resulting in a change in the jurisdictional area.

(2) Upon expiration, a JD is no longer valid for purposes of the Removal-Fill Law.

(3) An expired JD may be reissued upon written request from the landowner or agent to the Department.

(4) Information required for reissuing a JD shall include at a minimum:

(a) Onsite re-inspection by Department staff and/or another person to determine if there has been any change in circumstances.

(b) If no change in circumstances is found, a short report noting or including:

(A) A fully completed Wetland Delineation/Determination Report Cover Form, unless the inspection is conducted by the Department;

(B) The date of the most recent field inspection;

(C) The name of the person conducting the field inspection;

(D) The precise area inspected (e.g., tax lot or portion of tax lot);

(E) Description of site conditions and any changes between the date of the original wetland determination or delineation and the date of the re-inspection;

(F) Any additional maps, aerial photographs or other documents consulted; and

(G) Conclusions regarding the accuracy of the original JD.

(c) If a change in circumstances is noted, the information in subsection (4)(b) of this section shall be provided along with:

(A) Additional field data, including wetland determination data in conformance with OAR 141-090-0035(15) and (16), needed to verify and document any change in the jurisdictional status or extent of waters of the state that were or were not identified and mapped as part of the original jurisdictional determination;

(B) A revised wetland map that meets the requirements in OAR 141-090-0035(9)(e); and

(C) Data, documentation, and other information as needed to establish the nature and timing of the activity or activities that resulted in the change in circumstances, particularly if fill or excavation has occurred.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

# ADMINISTRATIVE RULES

## 141-090-0050

### Request for Reconsideration

(1) A JD by the Department may be reconsidered upon written request to the Department by the applicant, landowner or agent within sixty (60) calendar days of the date of the JD (date the letter or form was signed by the Department). The request for reconsideration initiates an informal review process.

(2) New information may be provided by the applicant, landowner, agent or the Department, or may be requested by the Department.

(3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

(4) In the event that the applicant, landowner or agent disagrees with the reconsideration decision, he or she may initiate a contested case proceeding pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 196.845, 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-090-0055

### Effective Date

These rules become effective immediately upon filing with the Secretary of State.

Stat. Auth.: ORS 196.845 & ORS 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-102-0000

### Purpose

Pursuant to ORS 196.810(b), these rules:

(1) Designate "essential indigenous anadromous habitat" (hereafter referred to as "essential habitat") on maps that are made a part of this rule;

(2) Establish the process to amend the designation; and

(3) Require an authorization from the Department for activities involving the fill or removal of any amount of material in essential habitat, unless the activity is:

(a) Exempt under ORS 196.905;

(b) Non-motorized "prospecting" (defined in ORS 390.835(18)(b) and 141-089-0040(3)); or

(c) An activity customarily associated with agriculture (defined in OAR 141-102-0020(1)).

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-102-0010

### Policy

(1) It is the policy of the State of Oregon to protect the essential habitat of listed indigenous anadromous salmonid species.

(2) To achieve this policy, the Department shall:

(a) Consult with the Department of Fish and Wildlife (ODFW) concerning the status of Oregon's indigenous anadromous salmonid species;

(b) Identify essential habitat in consultation with ODFW and the public; and

(c) Review all projects proposed in essential habitat pursuant to the standards set forth in the state's Removal-Fill Law and rules (OAR 141-085-0005 to 141-085-0660).

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-102-0020

### Definitions

(1) "Activities customarily associated with agriculture" (ORS 196.810(b)) is a phrase that applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat. This subsection exempts other specified agricultural activities that are less than 50 cubic yards in addition to the activities that are already exempted under the Removal-Fill Law's agricultural exemptions contained in ORS 196.905(3), (4) and (6) and 141-085-0020 that apply to all projects regardless of size. "Activities customarily associated with agriculture" includes maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris.

(2) "Essential indigenous anadromous salmonid habitat" as defined in ORS 196.810(f)(B) is called "essential habitat" in these rules. "Essential habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing as designated in these rules and shown on the associated maps that are incorporated by reference into these rules. "Activities customarily associated with agriculture" (ORS 196.810(b)) is a phrase that applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat. This subsection exempts other specified agricultural activities that are less than 50 cubic yards in addition to the activities that are already exempted under the Removal-Fill Law's agricultural exemptions contained in ORS 196.905(3), (4) and (6) that apply to all projects regardless of size.

(3) "Essential" means those portions of a stream reach that fill all or part of the basic or indispensable spawning and rearing need of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include "spawning and rearing," and "rearing and migration" areas as defined below under subsections (3) and (4) of this section.

(4) "Indigenous anadromous salmonid" means Chum, Sockeye, Chinook and Coho Salmon, and Steelhead and Cutthroat Trout that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(5) "Spawning and rearing" areas are where eggs are deposited and fertilized, where gravel emergence occurs, and where at least some juvenile development occurs.

(6) "Rearing and migration" areas are outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and utilize the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning areas.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-102-0030

### Designation of Essential Salmon Habitat (ESH)

(1) Areas designated as essential habitat shall include the waters of the state as described in OAR 141-085-0015, including side channels and off-channel wetland areas that are hydrologically connected by surface water.

(2) The streams and stream segments designated as essential habitat are shown on maps which are made part of this rule.

(3) The Department shall make available detailed maps of essential habitat at cost as provided in OAR 141-091-0005.

(4) New designations (i.e., streams not previously designated) adopted by the Department on the effective day of this rule shall be effective sixty (60) days thereafter.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

## 141-102-0040

### Revisions to Essential Habitat

Revisions, additions to or deletions from the list and maps of essential habitat shall be made by amendment to these administrative rules according to the following procedure:

(1) Periodically, the Department shall request from the public and the Department of Fish and Wildlife all changes in the status or distribution of indigenous salmonid species under the state or federal Endangered Species Act or applicable rules.

(2) The Department, in consultation with Oregon Department of Fish and Wildlife and other affected parties, shall work to continuously improve the accuracy, detail, consistency and quality of the base data used for designating essential habitat. The Department shall revise the maps when new listings occur, or when de-listings occur by Oregon Department of Fish and Wildlife or the National Marine Fisheries Service. The Department may also revise the maps at any time when new or higher quality data become available that would substantially change the extent of designated habitat on one or more maps.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

# ADMINISTRATIVE RULES

## 141-102-0045

### Removal-Fill Law Requirements

(1) The standards at ORS 196.825 and the rules adopted to implement them shall apply to the authorizations issued under these rules.

(2) The standards at ORS 390.835(2) and 390.835(3)(a) - (b) and the rules adopted to implement them shall apply to removal/fill activities proposed for areas within designated Oregon State Scenic Waterways.

(3) Procedures to appeal a permit at ORS 196.835 and the rules adopted to implement them shall apply to the authorizations issued under these rules.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

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**Adm. Order No.:** DSL 2-2004

**Filed with Sec. of State:** 6-11-2004

**Certified to be Effective:** 6-11-04

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**Rules Adopted:** 141-088-0035, 141-088-0040, 141-088-0050, 141-088-0060, 141-088-0070, 141-088-0080, 141-088-0090, 141-088-0100, 141-088-0110, 141-088-0120, 141-088-0130, 141-088-0140, 141-088-0150, 141-088-0160, 141-088-0170, 141-088-0180

**Rules Amended:** 141-088-0000, 141-088-0010, 141-088-0020

**Rules Repealed:** 141-084-0010, 141-084-0020, 141-084-0030, 141-084-0040, 141-084-0050, 141-084-0060, 141-084-0070, 141-084-0080, 141-084-0090, 141-084-0100

**Subject:** Certain types of activities such as overnight camping, open fires during periods of wildfire danger, and the use of motor vehicles have been determined by the State Land Board (Board) and the Department of State Lands (Department) to have caused, or have the potential of causing damage to state-owned land and related natural and cultural resources under the jurisdiction of the Board. Additionally, such activities may also jeopardize public health and/or safety.

The Board has previously restricted the public use of a number of limited areas of state-owned lands that are under the Board's jurisdiction in order to protect the land and related natural and cultural resources or to protect public health and/or safety. OAR chapter 141, division 84, currently restricts public use of ten state-owned estuaries. OAR chapter 141, division 88, currently provides a general provision governing the public use of state owned lands and specifically restricts the public use of three limited areas of land.

The proposed amendments, repeals and adoptions would merge division 84 into division 88 so that the public could more easily locate a list of restrictions that apply to public use of state-owned lands that are under the jurisdiction of the Board. The restrictions that are currently provided in division 84 would be relocated to division 88, but not substantively changed. In addition, they would clarify the generally provision governing public use.

The proposed amendments, repeals, and adoptions would also specifically restrict the use of six additional areas of land: portions of the Sandy River, Columbia River, Chetco River, and Willamette River. The restrictions are being proposed to either address specific problems reported by users of, or persons living adjacent to the subject state-owned parcels, by Department staff or staff of other government agencies, or by law enforcement officials.

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3805, ext. 239

## 141-088-0000

### General Provisions

(1) Legally accessible land (including state-owned submerged and submersible land) under the jurisdiction of the State Land Board and the Department of State Lands (Department) shall remain available and open to public recreational use provided that such use:

(a) Is lawful under local, state and federal law and

(b) As determined by the Director:

(A) Does not substantially interfere with the use of land by persons holding a written authorization from the Department for the land area including leases, easements, and temporary use permits; and

(B) Does not pose a significant risk of danger to the natural and/or cultural resources of the land and/or public health and safety.

(2) For the purposes of this division:

(a) "Public Recreational Use" means casual recreational activities including hunting, fishing, sightseeing, wildlife observation, hiking, boating, swimming, camping and picnicking.

(b) "Person" means an individual, political subdivision, public agency, corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in Oregon.

(3) Closures or restrictions shall be:

(a) Based on a determination by the State Land Board that the action is necessary to protect the land, related natural or cultural resources, or public health or safety;

(b) For as specific an area or activity as possible;

(c) For as short a duration as possible;

(d) Commensurate with the identified problem;

(e) Promulgated in compliance with ORS 183.310 to 183.510 including that for permanent rulemaking at least one (1) public hearing will be held in the geographical area(s) of the subject land(s) at a place convenient to the residents in that area;

(f) Published following adoption by the State Land Board, at least one time in a newspaper of general circulation in the geographic area(s) of the subject land(s); and

(g) To the extent possible, noticed through signs describing the restriction or closure and placed on or near the subject land(s).

(4) In addition to any other liability or penalty provided by law, a person that violates any closure or restriction in this division may be subject to citation and conviction for criminal trespass.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 9-1998, f. & cert. ef. 10-15-98; DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0010

### Restrictions for the State-Owned Property at Dibblee Point (Columbia River)

All state-owned land that is under the jurisdiction of the Department in the area known as Dibblee Point or Slaughters Bar, between Columbia River Mile 64.0 and Columbia River Mile 66.0, lying between the Burlington Northern Railroad and the left bank of the Columbia River, west of the Longview Rainier Bridge, in Sections 1 and 12, Township 7 North, Range 3 West, and Sections 7 and 8, Township 7 North, Range 2 West, Willamette Meridian, in Columbia County, Oregon, is closed to all uses between 10 p.m. and 5 a.m.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: LB 4-1988(Temp), f. & cert. ef. 11-7-88; LB 3-1989, f. & cert. ef. 5-18-89; DSL 5-1998(Temp), f. & cert. ef. 5-4-98 thru 10-28-98; administrative correction 8-5-99; DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0020

### Restrictions for the State-Owned Banks of the McKenzie River Bar

All state-owned land that is under the jurisdiction of the Department between the line of ordinary high water and line of ordinary low water along the north bank of the McKenzie River across from Armitage State Park, between River Mile 6.5 and River Mile 7.2, located in Sections 9 and 10, Township 17 South, Range 3 West, Willamette Meridian, in Lane County, Oregon, is closed to overnight camping and motor vehicles, except watercraft, between 10 p.m. and 5 a.m.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: LB 9-1991(Temp), f. 9-13-91, cert. ef. 11-1-91; LB 1-1992, f. & cert. ef. 3-9-92; DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0035

### Restrictions for the State-Owned Banks of the Sandy River

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water and on river islands on the Sandy River from River Mile 0.0 to 37.5 is closed to:

(1) All uses between 10 p.m. and 5 a.m. throughout the year, and

(2) Open fires at any time beginning May 1 and ending November 1 of every year.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

# ADMINISTRATIVE RULES

## 141-088-0040

### Restrictions for the State-Owned Banks of the Columbia River in the Vicinity of Dodson and Warrendale

All state-owned land that is under the jurisdiction of the Department in the vicinity of Dodson to Warrendale that is between the line of ordinary high water and the line of ordinary low water on the Columbia River from River Mile 139.5 to 142.5 is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) Open fires at any time beginning May 1 and ending November 1 of every year.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0050

### Restrictions for the State-Owned Banks of the Chetco River

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the Chetco River from the Highway 101 Bridge to River Mile 11 (about one mile upstream from the mouth of Elk Creek) is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) Open fires at any time beginning May 1 and ending November 1 of every year, unless a longer period is ordered by the Coos Forest Protective Association.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0060

### Restrictions for the State-Owned Banks of the Willamette River in the Vicinity of Wheatland Bar Island and Willamette Mission State Park and Adjacent Upland

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the Willamette River, and all state-owned upland that is managed by the Department that is also in the vicinity of, or that comprises Wheatland Island or Willamette Mission State Park is closed to:

- (1) All uses between 10 PM and 5 AM throughout the year,
- (2) Open fires at any time beginning May 1 and ending November 1 of every year, and

(3) All-terrain vehicles or other motorized vehicle uses except for those involved in the loading or unloading of recreational watercraft and parking during allowable use periods (i.e. 5 A.M to 10 P.M.).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0070

### Restrictions for the State-Owned Bed and Banks of the Willamette River in the Vicinity of the Former McCormick-Baxter Plant

All state-owned land that is under the jurisdiction of the Department that is on the north side of the Willamette River at about River Mile 7 and fronting and abutting the site of the former McCormick-Baxter Plant, the Burlington Northern Bridge, and Willamette Cove as described in easement EA-31530 is temporarily closed to all public uses during the construction period while a sand cap is being placed over contaminated sediments.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-088-0080

### Restrictions for the State-Owned Banks of the Columbia River in the Vicinity of the Gary Island

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the south bank of the Columbia River in the vicinity of Gary Island between River Mile 123.5 and 124.5 is closed to any use without prior written authorization from the Department.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0090

### Closure of Sand Lake Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Sand Lake estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites,

public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of 7.5 feet (Mean Lower Low Water Datum). The Head of Tide in the Sand Lake estuary extends to the upper limit of the lake. (Sections 19, 20, 29, 30, 31 and 32 of Township 3 South, Range 10 West, Willamette Meridian.)

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0100

### Closure of Siltcoos River Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Siltcoos River estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide state of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Siltcoos River estuary is approximately River Mile 3, at the Siltcoos Lake Outlet (Sections 32, 33, and 34 of Township 19 South, Range 12 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-00110

### Closure of Tenmile Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Tenmile Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Tenmile Creek estuary is approximately River mile 1.1, at the Tenmile Lake Outlet (Sections 22, 23, and 14 of Township 23 South, Range 13 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0120

### Closure of Tahkenitch Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Tahkenitch Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Tahkenitch Creek estuary is approximately River Mile 1.2 at the Tahkenitch Creek Outlet (Sections 19 and 20, Township 20 South, Range 12 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

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## 141-084-0130

### Closure of Berry Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Berry Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of the Mean High Tide corresponds to a tide stage of about 6.3 feet (Mean Lower Low Water Datum). The location of Head of Tide on Berry Creek is approximately the same as the line of Mean High Tide on the beach.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0140

### Closure of Sutton Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Sutton Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Sutton Creek is approximately River mile 0.4 (Section 28, Township 17 South, Range 12 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0150

### Closure of Twomile Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Twomile Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Twomile Creek is approximately River Mile 0.6 (Section 13, Township 29 South, Range 14 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0160

### Closure of New River, Floras Creek and Fourmile Creek

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within New River and its tributaries, Fourmile Creek and Floras Creek, is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(a) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet (Mean Lower Low Water Datum).

(b) The Head of Tide in New River is approximately River Mile 3.1 (Section 15, Township 30 South, Range 15 West, Willamette Meridian).

(c) The location of Head of Tide in Fourmile Creek is approximately River Mile 0.7 (Section 2, Township 30 South, Range 15 West, Willamette Meridian).

(d) The location of Head of Tide in Floras Creek is approximately River Mile 0.2 (Section 5, Township 31 South, Range 15 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0170

### Closure of Euchre Creek Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Euchre Creek estuary is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of the Mean High Tide corresponds to a tide state of about 6.6 feet, (Mean Lower Low Water Datum). The location of Head of Tide of Euchre Creek is approximately the same as the line of Mean High Tide on the beach.

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## 141-084-0180

### Closure of Pistol River Estuary

(1) All submerged and submersible land under the jurisdiction of the Department below Head of Tide within the Pistol River estuary is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Pistol River is approximately River Mile 1.4 (Section 20, Township 38 South, Range 14 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274  
Stats. Implemented: ORS 273& 274  
Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

## Land Conservation and Development Department Chapter 660

**Adm. Order No.:** LCDD 4-2004

**Filed with Sec. of State:** 5-17-2004

**Certified to be Effective:** 5-17-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 660-014-0000, 660-014-0010, 660-014-0030, 660-014-0040

**Rules Repealed:** 660-014-0020

**Rules Ren. & Amended:** 660-001-0310 to 660-014-0060, 660-001-0315 to 660-014-0070

**Subject:** The amendments delete and amend rules in OAR 660, Division 014, in order to make this Division consistent with the Oregon Supreme Court decision in 1000 Friends of Oregon V. Wasco County Court, 299 Or 344, 703 P2d 207 (1985). The amendments also modify the title of Division 014 to indicate that some of the rules in the division, as amended, apply to planning and zoning of rural land with respect to urban uses regardless of whether the land is subject to a proposed incorporation, based on the Oregon Supreme Court

# ADMINISTRATIVE RULES

decision in 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986). Amendments to OAR 660, Division 014, add new rules regarding annexation of lands. The new rules added were under OAR 660, Division 001. Specifically, OAR 660-001-0310 and 660-001-0315 renumbered as OAR 660-014-0060 and 660-014-0070.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

## 660-014-0000

### Purpose

ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. This includes, but is not limited to, new or amended plans as a result of a city or special district boundary change including the incorporation or annexation of unincorporated territory. The purpose of this rule is to clarify the requirements of Goal 14 and to provide guidance to cities, counties and local government boundary commissions regarding planning and zoning of newly incorporated cities, annexation, and urban development on rural lands.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.040 & 197.175

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04

## 660-014-0010

### Application of the Statewide Planning Goals to Newly Incorporated Cities

(1) Incorporation of a new city within an acknowledged urban growth boundary does not require an exception to Goals 3, 4, 11, or 14. Incorporation of a new city within an acknowledged urban growth boundary must be consistent with relevant provisions of acknowledged city and county plans and land use regulations for the area to be incorporated.

(2) The following are land use decisions which must comply with applicable Statewide Planning Goals or the acknowledged comprehensive plan:

(a) A county order that authorizes an incorporation election pursuant to ORS 221.040;

(b) A resolution adopted by a city approving an incorporation within three miles of its city limits pursuant to ORS 221.031(4);

(c) An order adopted by a local government boundary commission authorizing incorporation of a new city pursuant to ORS 199.461. Incorporation decisions under this section include consolidations that include unincorporated lands.

(3) A city or county decision listed in subsection (2)(a) and (b) of this rule may also require a plan amendment. If the area proposed for incorporation is subject to an acknowledged comprehensive plan, the amendments shall be reviewed through the post acknowledgment plan amendment review process specified in ORS 197.610 to 197.650 and 197.757. If the area proposed for incorporation is not subject to an acknowledged plan, a plan amendment is subject to review upon appeal as a “land use decision” as defined in ORS 197.015(10).

(4) Comprehensive plans prepared and adopted by newly incorporated cities shall be reviewed either through the plan acknowledgment review process set forth in ORS 197.251 and OAR chapter 660, division 003, or the post acknowledgment plan amendment review process in ORS 197.610 to 197.650 and 197.757, as follows:

(a) Comprehensive plans for new cities outside of acknowledged urban growth boundaries shall be reviewed for compliance with all applicable statewide planning goals through the plan acknowledgment review process set forth in ORS 197.251 and OAR chapter 660, division 003.

(b) Comprehensive plans for new cities within acknowledged urban growth boundaries shall occur be reviewed for compliance with all applicable statewide planning goals through the post acknowledgment plan amendment review procedures established pursuant to ORS 197.610 to 197.650 and 197.757. The review shall be limited to portions of the city or county’s comprehensive plan policies, designations, and land use regulations that amend previously acknowledged provisions or add new provisions.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.040 & 197.757

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04

## 660-014-0030

### Rural Lands Irrevocably Committed to Urban Levels of Development

(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal

2 exceptions standard (e.g., that it is not appropriate to apply Goals 14’s requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

(b) Location, number and density of residential dwellings;

(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

(d) Parcel sizes and ownership patterns.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04

## 660-014-0040

### Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, “undeveloped rural land” includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development 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 undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

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(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

Stat. Auth.: ORS 197  
Stats. Implemented: ORS 197.040  
Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04

## 660-014-0060

### Annexations of Lands Subject to an Acknowledged Comprehensive Plan

A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation.

Stat. Auth.: ORS Ch. 196 & 197  
Stats. Implemented: ORS Ch. 195, 196, 197  
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90; Renumbered from 660-001-0310, LCDD 4-2004, f. & cert. ef. 5-17-04

## 660-014-0070

### Annexations of Lands not subject to an Acknowledged Comprehensive Plan

(1) All appropriate goals must be applied during annexation by the city. If the annexation is subject to the jurisdiction of a local government boundary commission, the boundary commission may utilize the findings of the city. The boundary commission, however, remains responsible for ensuring that the annexation is in conformance with the statewide goals.

(2) For the annexation of lands not subject to an acknowledged plan, the requirements of Goal 14 (Urbanization) shall be considered satisfied only if the city or local government boundary commission, after notice to the county and an opportunity for it to comment, finds that adequate public facilities and services can be reasonably made available; and:

(a) The lands are physically developed for urban uses or are within an area physically developed for urban uses; or

(b) The lands are clearly and demonstrably needed for an urban use prior to acknowledgment of the appropriate plan and circumstances exist which make it clear that the lands in question will be within an urban growth boundary when the boundary is adopted in accordance with the goals.

(3) Lands for which the findings in section (2) of this rule cannot be made shall not be annexed until acknowledgment of an urban growth boundary by the commission as part of the appropriate comprehensive plan.

Stat. Auth.: ORS Ch. 196 & 197  
Stats. Implemented: ORS Ch. 195, 196, 197  
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90 Renumbered from 660-001-0315, LCDD 4-2004, f. & cert. ef. 5-17-04

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### Landscape Contractors Board Chapter 808

**Adm. Order No.:** LCB 4-2004(Temp)

**Filed with Sec. of State:** 6-11-2004

**Certified to be Effective:** 6-11-04 thru 12-6-04

**Notice Publication Date:**

**Rules Amended:** 808-001-0020

**Subject:** 808-001-0020 - Adds charge for new brochure and DVD and allows charge for checks returned by bank.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 986-6570

## 808-001-0020

### Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, Visa or Mastercard unless billing to such agencies is authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts Visa and Mastercard submitted in person or by mail, e-mail or fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All

payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

(4) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

(b) \$20 for each certification that an entity has or has not been licensed with the Landscape Contractors Board.

(c) \$20 for certified copies of documents.

(d) \$100 for listing of individual landscape contractors or landscape businesses on CD or disk. Requests for searching or formatting the data will be billed as per subsection (e) of this rule. The Administrator may waive this charge for other public agencies.

(e) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time;

(f) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(g) \$20 for duplicate tape recording of Board meetings.

(h) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(i) "Avoiding Landscaping Problems" brochure:

(A) First ten (10) copies are free;

(B) \$4.25 per 25 copies ordered. They must be ordered in multiples of 25.

(j) "You Get What You Pay For" DVD:

(A) First copy is free; and

(B) Additional copies are \$5.00 each.

(5) Refunds: All requests for refunds must be in writing.

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$25 or less unless requested in writing within three years after the date payment is received by the agency, as provided by ORS 293.445(4).

(b) Except as set forth in subsection (c) of this section, licensing fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a landscape contractor license or renewal or fails to complete the licensing process the agency may retain an application-processing fee of \$20. When an applicant withdraws their application for a landscape business license or renewal or fails to complete the licensing process, the agency may retain an application-processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 183, 293.445 & 671  
Stats. Implemented: ORS 183, 192.430, 293.445, 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2004(Temp), f. & cert. ef. 6-11-04 thru 12-6-04

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### Occupational Therapy Licensing Board Chapter 339

**Adm. Order No.:** OTLB 1-2004

**Filed with Sec. of State:** 6-3-2004

**Certified to be Effective:** 6-3-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 339-005-0000, 339-010-0023, 339-020-0030, 339-020-0050

**Subject:** Changes language from one to the two-year license renewals; changes required continuing education credits to reflect change to two year licenses. Changes license renewal fees to reflect change to two year licenses; increases license fees for Occupational Therapists; increases license fees for applicants for occupational therapy and occupational therapy assistant license applications by reciprocity from out of state.

**Rules Coordinator:** Felicia Holgate—(503) 731-4048

# ADMINISTRATIVE RULES

## 339-005-0000

### Fees

Two-year licenses shall be issued to all licensees in even-numbered years at the fee schedule listed below. On a case-by-case basis the Board may approve the issuance of a one-year license.

- (1) The fee for the initial occupational therapy license is \$85.
- (2) The fee for an occupational therapy license by endorsement is \$120 (a reciprocal license from out of state).
- (3) The two-year renewal fee for the occupational therapy license is \$200.
- (4) The fee for the initial occupational therapy assistant license is \$60.
- (5) The fee for an initial occupational therapy assistant license by endorsement is \$80 (a reciprocal license from out of state).
- (6) The two-year renewal fee for the occupational therapy assistant license is \$140.
- (7) The fee for a limited permit is \$25 and may not be renewed.
- (8) The fee for delinquent payment is \$50 and is due on renewal applications not renewed before June 1.

Stat. Auth.: ORS 675.320(7)

Stats. Implemented:

Hist.: OTLB 1-1989(Temp), f. 9-14-89, cert. ef. 10-3-89; OTLB 1-1990, f. & cert. ef. 3-20-90; OTLB 1-1995, f. 2-15-95, cert. ef. 4-1-95; OTLB 1-2004, f. & cert. ef. 6-3-04

## 339-010-0023

### License Renewals

- (1) Each applicant for license renewal shall submit to the Board on or before May 1 of each even numbered year a completed license renewal application, CE log and appropriate renewal fee.
- (2) Failure to submit a renewal application, CE log and appropriate fee by May 1 may result in a civil penalty imposed on the applicant.

Stat. Auth.: ORS 675.320(10)(11)

Stats. Implemented: ORS 675.336 & 675.337

Hist.: OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2004, f. & cert. ef. 6-3-04

## 339-020-0030

### CE Requirements for Current Licensees

- (1) A current licensee is defined as a licensee whose license has not expired.
- (2) A current licensee shall obtain 30 points of CE from Board approved categories during the two-years immediately preceding the date of the license renewal.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2004, f. & cert. ef. 6-3-04

## 339-020-0050

### CE Requirements for Initial Licensees (Except New Graduates)

A person who applies for a license from another state or territory shall obtain 15 points of CE from Board approved categories during the year immediately preceding the date of the licensee's first license renewal. Thereafter the licensee must obtain CE from Board approved categories as defined in 339-020-0030.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 1-1995, f. 2-15-95, cert. ef. 4-1-95; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2004, f. & cert. ef. 6-3-04

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## Oregon Board of Dentistry

### Chapter 818

**Adm. Order No.:** OBD 1-2004

**Filed with Sec. of State:** 5-27-2004

**Certified to be Effective:** 6-1-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 818-012-0110

**Rules Amended:** 818-012-0040, 818-012-0075, 818-021-0010, 818-021-0011, 818-021-0020, 818-021-0025, 818-035-0030, 818-035-0080, 818-042-0010, 818-042-0020, 818-042-0070, 818-042-0080

**Subject:** 818-012-0110 Extension of Authority to Operate a Dental Practice is adopted to comply with Oregon Law (Senate Bill 390).

818-012-0040 Infection Control Guidelines is amended as a result of and to conform with the issuance by the United States Department of Health and Human Services Centers for Disease Control and Pre-

vention "Guideline for Infection Control in Dental Health-Care Settings - 2003."

818-012-0075 Administration of Local Anesthesia - Lip Color Procedures is amended to bring the rules into compliance with Oregon Law.

818-021-0010 Application for License to Practice Dentistry and 818-021-0020 Application for License to Practice Dental Hygiene, are amended to include the Canadian National Dental Examining Board Examination and the Canadian National Dental Hygiene Certificate Examination.

818-021-0011 Application for License to Practice Dentistry Without Further Examination is amended to allow an applicant who has completed a post doctoral General Residency Program to be eligible for a license.

818-035-0030 Additional Functions of Dental Hygienists is amended to eliminate a conflict in the Dental Hygiene rules regarding the administration of intravenous medication.

818-035-0080 Continuing Education is amended to bring the rules into compliance with Oregon Law.

With the passage of House Bill 2240, 818-042-0010 Definitions; 818-042-0020 Dentist Responsibility; 818-021-0010 Application for License to Practice Dentistry; 818-021-0011 Application for License to Practice Dentistry Without Further Examination; 818-021-0020 Application for License to Practice Dental Hygiene; and 818-021-0025 Application for License to Practice Dental Hygiene Without Further Examination are amended to bring the rules into compliance with Oregon Law.

818-042-0070 Expanded Functions Dental Assistants (EFDA) is amended to clarify redundant language.

818-042-0080 Certification-Expanded Function Dental Assistant is amended to add the words "or composite" to reflect the change in materials used in Dentistry today.

**Rules Coordinator:** Sharon Ingram—(503) 229-5520

## 818-012-0040

### Infection Control Guidelines

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Center for Disease Control and the American Dental Association. Additionally, licensees must comply with the following requirements:

(1) Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Hands shall be washed and regloved before performing procedures on another patient.

(2) Masks and protective eyewear or chin-length shields shall be worn by licensees and other dental care workers when spattering of blood or other body fluids is likely.

(3) Between each patient use, instruments or other equipment that come in contact with body fluids shall be sterilized.

(4) Heat sterilizing devices shall be tested for proper function on a weekly basis by means of a biological monitoring system that indicates micro-organisms kill.

(5) Environmental surfaces that are contaminated by blood or saliva shall be disinfected with a chemical germicide which is mycobactericidal at use.

(6) Impervious backed paper, aluminum foil, or plastic wrap may be used to cover surfaces that may be contaminated by blood or saliva and are difficult or impossible to disinfect. The cover shall be replaced between patients.

(7) All contaminated wastes and sharps shall be disposed of according to any governmental requirements.

Stat. Auth.: ORS 679.120, 679.250(7), 680.075 & 680.150

Stats. Implemented: ORS 679.140, 679.140(4) & 680.100

Hist.: DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; DE 2-1992, f. & cert. ef. 6-24-92; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-012-0075

### Administration of Local Anesthesia — Lip Color Procedures

A dentist licensed in Oregon may administer local anesthesia to a person who proposes to receive permanent lip color and/or permanent hair removal in the lip area from a permanent color technician/tattoo artist or an

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electrologist licensed under ORS 690.350 to 690.430. Prior to the administration of local anesthesia for this purpose, the licensed dentist shall:

- (1) Receive a written order from a licensed permanent color technician/tattoo artist or a licensed electrologist, which shall be maintained in the patient record;
- (2) Obtain a current health history;
- (3) Perform an oral examination; and
- (4) Create and maintain a patient record as required by OAR 818-012-0070.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.500

Hist.: OBD 6-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-012-0110

### Extension of Authority to Operate a Dental Practice

(1) Upon the death or disability of a shareholder dentist, the administrator, executor, personal representative, guardian, conservator or receiver of the former dentist shareholder shall notify the Board in writing of the management arrangement for the dental practice.

(2) At least 30 days prior to the expiration of an initial 12-month period following the creation of an ownership interest described in ORS 679.020(7), the administrator, executor, personal representative, guardian, conservator or receiver of the former dentist shareholder shall submit to the Board a written request for extension of authority to continue maintaining and operating a dental practice. One 12-month extension (for a total of 24 months) shall be automatically granted.

(3) Any request for extension beyond 24 months shall be submitted in writing to the Board at least 60 days prior to the expiration of the 24-month period. The Board on a case-by-case basis shall review such requests.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020

Hist.: OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-021-0010

### Application for License to Practice Dentistry

(1) An applicant to practice general dentistry, in addition to the requirements set forth in ORS 679.060 and 679.065, shall submit to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Certification of having passed the dental examination administered by the Joint Commission on National Dental Examinations or Canadian National Dental Examining Board Examination.

(2) An applicant who has not met the educational requirements for licensure may apply for examination if the Dean of an accredited school certifies the applicant will graduate.

(3) An applicant must pass a Board examination consisting of a clinical portion administered by the Board, Central Regional Dental Testing Service (CRDTS) or Western Regional Examining Board (WREB) and a jurisprudence portion administered by the Board. CRDTS and WREB examination results will be recognized by the Board for five years.

(4) An applicant who passes the clinical portion but not the jurisprudence portion of the examination may retake the jurisprudence examination without limit on the number of times. The applicant must pass the jurisprudence portion within five years of passing the clinical portion or must retake the clinical examination.

(5) A person who fails any Board approved clinical examination three times must successfully complete the remedial training recommended by the testing agency. Such remedial training must be conducted by a dental school accredited by the Commission on Dental Accreditation of the American Dental Association.

Stat. Auth.: ORS 670 & 679

Stats. Implemented: ORS 679.060, 679.065, 679.070 & 679.080

Hist.: DE 10-1984, f. & ef. 5-17-84; DE 7-1985, f. & ef. 11-1-85; 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 818-20-053 & 818-20-055; DE 1-1997, f. & cert. ef. 1-2-97; DE 5-1997, f. & cert. ef. 12-31-97; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-021-0011

### Application for License to Practice Dentistry Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dentist who holds a license to practice dentistry in another state or states if the dentist meets the requirements set forth in ORS 679.060 and 679.065 and submits to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or completion of a postdoctoral General Dentistry Residency program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Having passed the dental clinical examination conducted by a regional testing agency or by a state dental licensing authority; and

(d) Holding an active license to practice dentistry, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dentistry, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 40 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A background check will be conducted by the Board or its designee.

(4) A dental license granted under this rule will be the same as the license held in another state; i.e., if the dentist holds a general dentistry license, the Oregon Board will issue a general (unlimited) dentistry license. If the dentist holds a license limited to the practice of a specialty, the Oregon Board will issue a license limited to the practice of that specialty. If the dentist holds more than one license, the Oregon Board will issue a dental license which is least restrictive.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.060, 679.065, 679.070, 679.080 & 679.090

Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-021-0020

### Application for License to Practice Dental Hygiene

(1) An applicant to practice dental hygiene, in addition to the requirements set forth in ORS 680.040 and 680.050, shall submit to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language, and

(c) Certification of having passed the dental hygiene examination administered by the Joint Commission on National Dental Examinations or the Canadian National Dental Hygiene Certificate Examination.

(2) An applicant who has not met the educational requirements for licensure may apply if the Director of an accredited program certifies the applicant will graduate.

(3) An applicant must pass a Board examination consisting of a clinical portion administered by the Board, Central Regional Dental Testing Service (CRDTS) or Western Regional Examining Board (WREB) and a jurisprudence portion administered by the Board. CRDTS and WREB examination results will be recognized by the Board for five years.

(4) An applicant who passes the clinical portion but not the jurisprudence portion of the examination may retake the jurisprudence examination without limit on the number of times. The applicant must pass the jurispru-

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dence portion within five years of passing the clinical portion or must retake the clinical examination.

(5) A person who fails any Board approved clinical examination three times must successfully complete the remedial training recommended by the testing agency. Such remedial training must be conducted by a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.010, 679.040, 679.050 & 680.060  
Hist.: DE 15, f. 1-20-72, ef. 2-10-72; DE 29, f. & ef. 3-2-77; DE 7-1985, f. & ef. 11-1-85; 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 818-20-053 & 818-20-055; DE 5-1997, f. & cert. ef. 12-31-97; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-021-0025

### Application for License to Practice Dental Hygiene Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dental hygienist who holds a license to practice dental hygiene in another state or states if the dental hygienist meets the requirements set forth in ORS 680.040 and 680.050 and submits to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Evidence of having passed the dental hygiene examination conducted by a regional testing agency or by a state dental or dental hygiene licensing authority; and

(d) Holding an active license to practice dental hygiene, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dental hygiene, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 24 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A background check will be conducted by the Board or its designee.

Stat. Auth.: ORS 680  
Stats. Implemented: ORS 680.040, 680.050, 680.060, 680.070 & 680.072  
Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-035-0030

### Additional Functions of Dental Hygienists

In addition to functions set forth in ORS 679.010, a dental hygienist may perform the following functions under the general supervision of a licensed dentist:

(1) Make preliminary intra-oral and extra-oral examinations and record findings;

(2) Place periodontal dressings;

(3) Remove periodontal dressings or direct a dental assistant to remove periodontal dressings;

(4) Perform all functions delegable to dental assistants and expanded function dental assistants providing that the dental hygienist is appropriately trained;

(5) Administer and dispense antimicrobial solutions or resorbable antimicrobial agents in the performance of dental hygiene functions. Administration of resorbable antimicrobial agents requires written orders that are tooth and site specific.

Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 679.025(2)(j)  
Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-035-0080

### Continuing Education

A Limited Access Permit Dental Hygienist shall complete a total of 36 hours of continuing education every two years. In addition to the 24 hours of continuing education required by OAR 818-021-0070, Limited Access Permit holders shall complete 12 hours of continuing education in at least two of the following areas:

(1) General medicine and physical diagnosis;

(2) Pharmacology;

(3) Oral Pathology;

(4) Patient management and psychology; and

(5) Jurisprudence relating to unsupervised practice with limited access patients.

Stat. Auth.: ORS 680

Stats. Implemented: ORS 680.200(1)(d)

Hist.: OBD 1-1998, f. & cert. ef. 6-8-98; Administrative correction 9-6-01; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-042-0010

### Definitions

(1) "Dental Assistant" means a person who, under the supervision of a dentist, renders assistance to a dentist, dental hygienist, dental technician or another dental assistant or renders assistance under the supervision of a dental hygienist providing dental hygiene services.

(2) "Expanded Function Dental Assistant" means a dental assistant certified by the Board to perform expanded function duties.

(3) "Expanded Function Orthodontic Assistant" means a dental assistant certified by the Board to perform expanded orthodontic function duties.

(4) "Direct Supervision" means supervision requiring that a dentist diagnose the condition to be treated, that a dentist authorize the procedure to be performed, and that a dentist remain in the dental treatment room while the procedures are performed.

(5) "Indirect Supervision" means supervision requiring that a dentist authorize the procedures and that a dentist be on the premises while the procedures are performed.

(6) "General Supervision" means supervision requiring that a dentist authorize the procedures, but not requiring that a dentist be present when the authorized procedures are performed. The authorized procedures may also be performed at a place other than the usual place of practice of the dentist.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-042-0020

### Dentist and Dental Hygienist Responsibility

(1) A dentist is responsible for assuring that a dental assistant has been properly trained, has demonstrated proficiency, and is supervised in all the duties the assistant performs in the dental office. Unless otherwise specified, dental assistants shall work under indirect supervision in the dental office.

(2) A dental hygienist who works under general supervision may supervise a dental assistant in the dental office if the dental assistant is rendering assistance to the dental hygienist in providing dental hygiene services and the dentist is not in the office to provide indirect supervision. A Limited Access Permit (LAP) dental hygienist may hire and supervise a dental assistant who will render assistance to the dental hygienist in providing dental hygiene services.

(3) The supervising dentist or dental hygienist is responsible for assuring that all required licenses, permits or certificates are current and posted in a conspicuous place.

(4) Dental assistants who are in compliance with written training and screening protocols adopted by the Board may perform oral health screenings under general supervision.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-042-0070

### Expanded Function Dental Assistants (EFDA)

The following duties are considered Expanded Function Duties and may be performed only after the dental assistant complies with the requirements of 818-042-0080:

(1) Polish the coronal surfaces of teeth with a brush or rubber cup as part of oral prophylaxis to remove stains if a licensed dentist or dental hygienist has determined the teeth are free of calculus;

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- (2) Remove temporary crowns for final cementation and clean teeth for final cementation;
- (3) Preliminarily fit crowns to check contacts or to adjust occlusion outside the mouth;
- (4) Place temporary restorative material (i.e., zinc oxide eugenol based material) in teeth providing that the patient is checked by a dentist before and after the procedure is performed;
- (5) Place and remove matrix retainers for alloy and composite restorations;
- (6) Polish amalgam restorations with a slow speed handpiece;
- (7) Remove excess supragingival cement from crowns, bridges, bands or brackets with hand instruments providing that the patient is checked by a dentist after the procedure is performed;
- (8) Fabricate temporary crowns, and temporarily cement the temporary crown. The cemented crown must be examined and approved by the dentist prior to the patient being released; and
- (9) Under general supervision, when the dentist is not available and the patient is in discomfort, an EFDA may recement a temporary crown or recement a permanent crown with temporary cement for a patient of record providing that the patient is rescheduled for follow-up care by a licensed dentist as soon as is reasonably appropriate.

Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)  
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

## 818-042-0080

### Certification — Expanded Function Dental Assistant (EFDA)

The Board may certify a dental assistant as an expanded function assistant:

- (1) By credential in accordance with OAR 818-042-0120, or
- (2) If the assistant submits a completed application, pays the fee and provides evidence of:
  - (a) Certification of Radiologic Proficiency (OAR 818-042-0060); and satisfactory completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association; or
  - (b) Certification of Radiologic Proficiency (OAR 818-042-0060); and passage of the Basic or CDA examination, and the Expanded Function Dental Assistant examination, or equivalent successor examinations, administered by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board; and certification by a licensed dentist that the applicant has successfully polished 12 amalgam or composite surfaces, removed supra-gingival excess cement from six (6) crowns or bridges with hand instruments; placed temporary restorative material (i.e., zinc oxide eugenol based material) in six (6) teeth; preliminarily fitted six (6) crowns to check contacts or to adjust occlusion outside the mouth; removed six (6) temporary crowns for final cementation and cleaned teeth for final cementation; fabricated six (6) temporary crowns and temporarily cemented the crowns; polished the coronal surfaces of teeth with a brush or rubber cup as part of oral prophylaxis in six (6) patients, and placed two matrix bands in each quadrant on teeth prepared for Class II restorations.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.250(7)  
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 10-1999(Temp), f. 12-2-99, cert. ef. 1-1-00 thru 6-28-00; OBD 8-2000, f. 6-22-00, cert. ef. 6-29-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04

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## Oregon Department of Aviation Chapter 738

**Adm. Order No.:** AVIA 2-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 738-125-0010, 738-125-0015, 738-125-0020, 738-125-0025, 738-125-0030, 738-125-0035, 738-125-0040, 738-125-0045, 738-125-0050, 738-125-0055

**Subject:** This rule establishes fair, reasonable and nondiscriminatory processes and criteria to govern the Department's Financial Aid to Municipalities (FAM) Grant Program. The FAM Grant Program fosters a statewide system of airports through discretionary award of financial assistance for airport planning, development and capital improvement projects. Businesses will experience a positive economic impact from the program because of the additional funding of projects on airports.

**Rules Coordinator:** Carolyn R. Bolton—(503) 378-4880, ext. 223

## 738-125-0010

### Purpose

The purpose of this rule is to establish fair, reasonable and nondiscriminatory processes and criteria to govern the Department's Financial Aid to Municipalities (FAM) Grant Program. The FAM Grant Program fosters a statewide system of airports through discretionary award of financial assistance for airport planning, development and capital improvement projects.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0015

### General Provisions

The FAM Grant Program is a discretionary grant program of the Department. Program funding depends upon:

- (1) The dedicated FAM Grant Program line item amount(s) in the Department's biennial budget, as approved by the Oregon Legislature; and
- (2) Department policies and priorities, as described in these rules.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0020

### Applicant Eligibility

(1) Only Oregon municipalities, as defined by ORS 836.005, may apply for FAM Grant Program assistance. In these rules a municipality is called "applicant" or "airport sponsor".

(2) To qualify to apply for a FAM grant, a municipality must:

- (a) Own or operate a public-use airport included in the current Oregon Aviation Plan (OAP), or be building or purchasing a public-use airport;
- (b) Unless the application is for developing airport zoning, have enacted, or begun the process of enacting, airport zoning for the airport in accordance with OAR 660-013; and
- (c) Unless the application is for developing an Airport Layout Plan (ALP), have a current ALP for the airport, consistent with Federal Aviation Administration (FAA) requirements, that meets these criteria:

- (A) The ALP was completed within the last 10 years;
- (B) The ALP has been accepted by the FAA or the Department; and
- (C) The ALP has been adopted or is pending adoption by the municipality's governing body. Adoption shall be by ordinance or by inclusion in the municipality's comprehensive plan. More specifically:

- (i) Adoption may occur after notification that the municipality has received a tentative award of FAM grant funds; however,
- (ii) Adoption must occur before detailed project planning and engineering; and
- (iii) Adoption must occur prior to disbursement of FAM grant funding to the municipality.

(3) Applicant must warrant that any grant award will be spent or obligated within the fiscal year for which the grant is made.

(4) Applicant must warrant availability of required dollar match for any potential grant, as described in OAR 738-125-0030.

(5) Any municipality that is past due on any outstanding financial obligation to ODA cannot receive a FAM grant.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0025

### FAM Grant Application Criteria

(1) To be eligible for FAM grant funds, the applicant's project must meet at least one of the following criteria:

- (a) Prevent future deficiencies and preserve existing facilities;
- (b) Eliminate existing deficiencies as described in the current OAP;
- (c) Modernize the airport by exceeding state or federal minimum standards as stated in the current OAP and identified by FAA Advisory Circulars (AC's) or other regulations;
- (d) Leverage available state and federal funds for airport planning and capital improvements; or
- (e) Contribute to the airport's financial self-sufficiency.

(2) Capital construction projects at airports included in the National Plan of Integrated Airport Systems (NPIAS) must meet current FAA design criteria;

(3) Applicant shall include a project narrative which:

- (a) Describes benefits of proposed improvements;
- (b) Describes and confirms existence of local airport zoning;
- (c) Provides details of future maintenance commitments;
- (d) Describes potential for on-airport expansion; and

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(e) Shows availability of adequate surface access to the airport.  
(4) The applicant shall address the potential environmental impacts of the project by providing:

(a) A written "Negative Environmental Declaration" or a FAA Environmental Checklist to confirm there will be no significant environmental impact.

(b) If an FAA Environmental Checklist is not required for the project, applicant shall certify it will satisfy all federal National Environmental Protection Act (NEPA) requirements.

(c) If an Environmental Impact Statement (EIS) is required by the FAA, it shall satisfy the requirements of sections (4)(a) and (b).

(d) If an EIS is required to complete a project, it shall conform to the NEPA requirements.

(e) Airport planning projects are exempt from the requirements of this section, (Section 738-125-0025(4)).

(5) If the application requests funding to develop an ALP or to establish airport zoning, the applicant need not meet the requirements of (1) through (4) of this rule, but must comply with all other application requirements of these rules.

(6) An application must include a formal certification asserting that all rules and regulations of federal, state and local regulatory agencies pertaining to the airport and the proposed project are known and will be complied with, including particularly those of the following agencies:

- (a) Oregon Department of Aviation;
- (b) Oregon Department of Land Conservation and Development;
- (c) Oregon Department of Environmental Quality;
- (d) Corps of Engineers;
- (e) Oregon Department of Fish & Wildlife;
- (f) Local planning commissions;
- (g) Federal Aviation Administration; and
- (h) Any other state, local or federal agencies having jurisdiction over the use or environmental regulation of land potentially affected by the application.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0030

### Matching Requirements

(1) All applicants must show the ability to provide a dollar match if awarded a FAM grant. This match can be either in cash or in-kind services.

(2) FAM grants may be made to the applicant up to a maximum of \$25,000 per fiscal year per airport.

(3) FAM grant funds may be used as:

(a) Local match for a federally funded Airport Improvement Program (AIP) grant or planning grant to develop or update an airport ALP or Master Plan;

(b) Local match for a project eligible under the AIP but not funded by that program; and

(c) Local match for other federal grants.

(4) FAM grant match requirements are based on the airport's category as listed in the current OAP. This match will be:

(a) Category 1a — Commercial Primary: 50%

(b) Category 1b — Other Commercial Non-Primary (less than 10,000 enplanements): 35%

(c) Category 2 — Business: 25%

(d) Category 3 — Regional: 10%

(e) Category 4 — Community: 10%

(f) Category 5 — Low Activity: 5%

(5) Labor costs and equipment rental related to the project may be submitted as in-kind contributions; however, a list of all proposed hourly labor costs or equipment rental fees must be submitted with the grant application. If proposed rates and fees are not approved by the Department, the applicant may substitute cash. Labor hourly rates may not include overhead.

(6) The following are not eligible as in-kind resources:

(a) Land values for previously acquired land;

(b) Value of buildings or other improvements; and

(c) Non-capital expenditures or expenditures that may be properly designated as "operations and maintenance," including but not limited to:

(A) Wages or salaries;

(B) Utilities;

(C) Service vehicles;

(D) Professional services, except for engineering services for the proposed capital improvements under the program;

(E) Supplies;

(F) Value of construction equipment; or

(G) Upkeep and landscaping.

(7) FAM grant funds will not be used as a match for any other Department funded program, such as the Pavement Maintenance Program.

Stat. Auth.: ORS 835.035, 835.040, 835.112

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0035

### Project Eligibility and Prioritization

(1) Department will review all grant applications received by the grant deadline date established by Department to ensure that both the municipality and the proposed project meet all program requirements.

(2) First priority will be given to those projects which address airport minimum standard deficiencies listed in the current OAP. These will be further prioritized according to the extent to which they:

(a) Ensure geographic coverage;

(b) Leverage federal funds;

(c) Consider the costs and benefits of improvements;

(d) Demonstrate local support by:

(A) Existence of airport zoning;

(B) Availability of local match;

(C) Maintenance commitment;

(e) Show the potential for expansion, both on and off airport, as defined by applicant's current ALP;

(f) Support economic development;

(g) Provide adequate surface access to airport;

(h) Environmentally impact the airport; and

(i) Enhance any emergency role of the airport.

(3) Second priority will be given to projects which do not address airport minimum standard deficiencies. These will also be further prioritized according to the extent to which they meet the criteria listed in (2)(a) - (i) above.

(4) Consistent with sections (2) and (3) above, the following are examples of projects eligible for FAM grants:

(a) Developing an airport business plan;

(b) Developing or updating an ALP;

(c) Developing or updating a Master Plan;

(d) Developing or updating a Land Use Plan;

(e) Acquiring land to develop or improve aircraft landing facilities, including protecting against encroachment or environmental problems and acquiring "runway protection zones". (A FAM grant for land acquisition shall be limited to the appraised value, unless a different value is judicially established following condemnation proceedings.);

(f) Acquiring easements or other interests in airspace, as may be reasonably required to safeguard aircraft operations in the vicinity of an aircraft landing facility as published in Federal Aviation Regulations (FAR) Part 77;

(g) Grading and drainage needed to construct or reconstruct runways, taxiways or aprons;

(h) Constructing or reconstructing runways, taxiways or aircraft parking aprons;

(i) Removing obstructions from runway protection zones or other safety areas affecting the airport;

(j) Installing or replacing "segmented circle airport marker systems" and "lighted wind cones" as defined in current FAA directives;

(k) Installing or replacing runway, taxiway, boundary, obstruction, beacon or apron security lights, together with directly related electrical equipment;

(l) Installing or replacing security or game deterrent fencing;

(m) Marking runways, taxiways and aprons for safety purposes;

(n) Air navigational facilities;

(o) Constructing terminal or maintenance buildings or hangars;

(p) Constructing air cargo facilities at airports;

(q) Seal-coating runways, taxiways and aprons;

(r) Constructing or purchasing aviation-related, income-producing facilities that will be owned by the municipality, including but not necessarily limited to cardlock or retail self-service aviation fuel facilities;

(s) Purchasing aircraft rescue and firefighting equipment;

(t) Purchasing snow removal equipment, tractors or mowers subject to subsection (8) below; and

(u) Improving infrastructure for aviation related development.

(5) Minimum dimensional standards for non-AIP projects at general aviation airports shall conform to those included in OAR 738-020-0020, as depicted for general aviation community airports.

# ADMINISTRATIVE RULES

(6) All airport projects shall be designed consistent with projected needs as shown on the airport's current ALP.

(7) Projects for improvements to facilities under exclusive lease or monopoly control of private persons or entities are not eligible.

(8) In the case of projects listed in (4)(t), the applicant shall identify in the FAM grant application the percentage of anticipated on-airport and off-airport use of the equipment. The funding participation for the equipment shall not exceed the percentage estimated for on-airport use, not to exceed \$25,000.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0040

### Application Process

(1) The Department shall provide potential applicants with an application package for the FAM Grant Program, to include:

(a) A copy of OAR 738-125 "Financial Aid to Municipalities (FAM) Grant Program."

(b) An application form requiring full disclosure of all information needed to fairly evaluate the applicant's need for a grant;

(c) Clear instructions for completing the grant application;

(d) A list and samples of mandatory supporting documents and addenda, including instructions for their preparation; and

(e) A sample grant agreement.

(2) The Department shall, on an annual basis, inform all Oregon municipalities that are public-use airport sponsors that FAM grants are available, and how to obtain an application packet. The notice shall include a list of all application deadlines.

(3) To be considered for a FAM grant, a completed application package, including all required information, materials, attachments and addenda must be submitted to the Department by the application deadline.

(4) If additional FAM grant funds become available between annual grant cycle deadlines, the Department will:

(a) Award grants to applicants who submitted an eligible grant application but did not receive a first-round grant.

(b) If all applicants received funding in the first-round, inform all eligible municipalities, and establish a supplemental application cycle. The supplemental application process shall conform to this rule.

(c) If an applicant received a first-round grant, the applicant is not eligible to receive a grant in a supplemental application cycle. No applicant shall receive more than \$25,000 per fiscal year per airport.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0045

### Project Selection and Fund Allocation

(1) The Department shall consider the following factors in its review of all eligible projects:

(a) Funds budgeted for the FAM Grant Program;

(b) Demand for program assistance by Oregon municipalities; and

(c) Total available funds compared to total numbers of applicant projects.

(2) The Department shall develop a list of recommended projects for submittal to the Board for review and approval.

(3) Applications must be formally approved by the Board before the Department may commit to any grant or enter into a grant agreement with the airport sponsor.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0050

### Grant Agreements

(1) The Department shall enter into a Grant Agreement with municipality selected to receive a FAM grant prior to distributing program funds.

(2) FAM Grant Agreements shall include the following elements:

(a) General terms of agreement, including but not limited to:

(A) The specific airport project receiving grant funding;

(B) Maximum dollar allocation;

(C) Effective dates of the grant;

(D) Rights to terminate the grant agreement;

(E) Inspection and reporting requirements to verify project work and expenditures before distribution of grant program funds; and

(F) Other terms and conditions as specified in the Sample Grant Agreement provided with the application packet.

(b) Municipality obligations, including but not limited to:

(A) The cash or in-kind match required from the municipality;

(B) A requirement that grant recipients must maintain and operate the airport as an airport in a usable, safe, and orderly manner at all times for a period of at least 20 years from the date of the agreement;

(C) A financial requirement that grant recipients must deposit all income derived from the airport into an airport account for a period of at least 20 years from the date of the agreement, with those funds used only for the operation, maintenance or capital improvement of the airport;

(D) A prohibition against the applicant and its contractors and lessees or any successor thereto granting any exclusive right to use the airport or airport improvements, or to provide services at the airport during the life of the agreement, or for 20 years, whichever is longer; and

(E) A requirement that applicant will insert provisions in future lease agreements or contracts requiring all aircraft based at the airport to be registered with Department in accordance with ORS 837.040. Based aircraft is defined as those aircraft based at an airport for more than 30 days.

(c) Department's obligations, including but not limited to:

(A) Conditions of disbursement of grant funds; and

(B) Other Department obligations as specified in the Sample Grant Agreement provided with the application packet.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## 738-125-0055

### Waivers and Exceptions

The Board may, in its discretion and upon the recommendation of the Department, waive any provision of this rule upon a finding that there is an imminent and likely loss of a facility, or of funds available to a facility, or that a condition exists causing imminent danger to pilots or aircraft using an airport, and that an immediate FAM grant is reasonably likely to alleviate the loss or danger. In making such a finding the Board must find:

(1) The project proposed meets the overall purpose of the FAM program, and is consistent with the provisions and policies of the OAP;

(2) There is in the Board's reasonable judgment evidence showing that any of the following would be adversely affected unless FAM funds were not made available:

(a) Aviation safety;

(b) Community safety;

(c) Airport viability;

(d) Availability of federal funds; and

(3) Alternate funding sources are inadequate to meet the need addressed by the proposed exception.

Stat. Auth.: ORS 835.035, 835.040, 835.112  
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070  
Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

## Oregon Economic and Community Development Department Chapter 123

**Adm. Order No.:** EDD 10-2004

**Filed with Sec. of State:** 5-24-2004

**Certified to be Effective:** 5-24-04

**Notice Publication Date:** 5-1-04

**Rules Adopted:** 123-023-1300, 123-023-1500, 123-023-1700, 123-023-1900

**Rules Repealed:** 123-023-0251

**Rules Ren. & Amended:** 123-023-0201 to 123-023-1000, 123-023-0301 to 123-023-1100, 123-023-0351 to 123-023-1200, 123-023-0401 to 123-023-1400, 123-023-0451 to 123-023-1600, 123-023-0501 to 123-023-1800, 123-023-0551 to 123-023-2000

**Subject:** Generally amend and enhance the administrative rules governing the department's processes, modalities and so forth for the Strategic Investment Program (SIP), so that these rules are up-to-date and conform to current statutes, as revised by 2003 Oregon Laws.

**Rules Coordinator:** Philip A. Johnson, II—(503) 986-0159

### 123-023-1000

#### Purpose

The purpose of this division of administrative rules is to clarify and establish procedures, standards and criteria for operation of the Strategic Investment Program (SIP) under ORS 285C.600 to 285C.620.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & ORS 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0201

# ADMINISTRATIVE RULES

## 123-023-1100

### Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) **Applicant** means a business firm, including but not limited to a publicly or privately held corporation, for which the governing body of the County has officially requested approval for the Exemption, and that submits an Application to the Department.

(2) **Application** means the form, prescribed by the Department, and all supplemental attachments, exhibits and so forth that the Applicant completes or furnishes for the Strategic Investment Program.

(3) **Approved Project** means an investment or investments in taxable property that:

(a) The Applicant owns or leases;

(b) Is authorized to receive Exemption by determination of the Finance Committee;

(c) Conforms with the project definition established with the Finance Committee's determination; and

(d) Complies with all requirements and conditions set forth in the Application or its approval, as well as applicable laws, administrative rules and local agreements.

(4) **Commission** means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(5) **County** means the Oregon county in which the Approved Project is located, except when the location is inside the reservation of a federally recognized Oregon Indian tribe, in which case "County" refers to the tribe/tribal.

(6) **Department** means the State of Oregon Economic and Community Development Department created under ORS 285A.070.

(7) **Exemption** means that property of an Approved Project is subject to taxation and assessment under ORS 307.123.

(8) **Existing Property** means property:

(a) Comprising any part of another Approved Project, unless the property was never actually subject to Exemption; or

(b) Owned or leased by the Applicant (regardless of location) prior to the Department's receipt of the Application.

(9) **Finance Committee** means the Finance Committee for the Commission as described in OAR 123-001-0520.

(10) **Urban Project** means an Approved Project located entirely outside a "rural area," as defined under ORS 285C.600, and hence, at least partially inside the urban growth boundary, as acknowledged and in effect on December 1, 2002, for:

(a) The Portland metropolitan region; or

(b) Any city, for which the most recently available population figure at the time of Application equals or exceeds 30,000.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & ORS 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 12-2002(Temp), f. & cert. ef. 6-5-02 thru 11-29-02; Administrative correction 4-15-03; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0301

## 123-023-1200

### Commission Powers & Delegation to Finance Committee

For the purposes of this division of administrative rules:

(1) The Commission delegates day-to-day operation of the Strategic Investment Program to the Finance Committee, including but not limited to the determination of eligibility for Exemption.

(2) The Finance Committee may adopt:

(a) Standards and procedures for the operation of the Strategic Investment Program, consistent with this division of administrative rules; and

(b) Criteria for a project to be eligible for Exemption, including circumstances under which certain types of projects are ineligible.

(3) The Department shall send to each member of the Commission a summary of each Application to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment orally or in writing, and to attend each Finance Committee meeting, at which the Application is considered, as each individual Commissioner may in his or her sole discretion determine.

(4) The Commission shall review and evaluate the operation or project eligibility criteria of the Strategic Investment Program with such frequency as it may from time to time determine, and the Finance Committee shall adopt any change that the Commission formally deems necessary or desirable.

(5) The Commission retains final authority over policies and procedures governing operation of the Strategic Investment Program.

(6) If at any time the Commission elects to take any action or make any decision in accordance with ORS 285C.600 to 285C.620, it may do so at any regular or special meeting or through any telephone conference call as the Commission in its sole discretion may determine, including but not limited to denying the Exemption to an Applicant for an otherwise eligible project.

(7) In addition to authority otherwise reserved in this rule, the Commission retains any and all rights and powers delegated to the Finance Committee, such that:

(a) Upon written notice to the Finance Committee, the Commission may elect to exercise directly, either in a specific instance or generally, any right or power otherwise delegated to the Finance Committee; and

(b) The Finance Committee shall not have authority to exercise any right or power identified in the notice under the circumstances so described.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & ORS 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0351

## 123-023-1300

### Local Hiring

For purposes of ORS 285C.603:

(1) Prospective Applicants and County/local governments are urged in negotiating an agreement, to consider creative and cooperative means to promote gainful work for persons already residing in the proximate area or region of the Approved Project for:

(a) Jobs at the operations or facility in which investment is made; and

(b) Persons employed in the construction or installation of property or by other types of contractors, vendors or suppliers to the project.

(2) Such means shall not create any:

(a) Undue burden on the Applicant, relative to the nature, needs or competitiveness of the Approved Project; or

(b) Explicit bias against anyone's rights or access to the privilege of employment, such as specifying residency-based hiring criteria as prescribed by OP-8236, Oregon Attorney General (April 20, 1995).

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.603 & ORS 285C.609

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

## 123-023-1400

### Making Application

(1) An Applicant desiring approval for the Exemption must submit an Application to the Department.

(2) In addition to what is required by the Application or in this division of administrative rules, the Applicant shall submit any information requested by the Department for purposes of evaluating the Application.

(3) Not less than 21 days after having received a complete Application as described in OAR 123-023-1500, the Department shall arrange for the Finance Committee to initially consider it at a regular or special meeting. Under extenuating circumstances, the Department may waive this minimum period.

(4) The application form may be obtained from, and shall be submitted to: Manager of Business Finance, Oregon Economic & Community Development, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0401

## 123-023-1500

### Contents of Application

A complete Application must include all of the following:

(1) With respect to the local official action requesting Exemption on the Applicant's proposed investment(s):

(a) Copy of the official action by the governing body of the County; and

(b) Evidence that action was taken by affirmative vote of a majority of the governing body (not merely the members present) at a regular or duly called special meeting.

(2) A copy of the agreement:

(a) Between the Applicant and the County in partnership with any city in which the site is located;

(b) Duly executed before the official action in section (1) of this rule;

(c) Fully adhering to ORS 285C.609(4); and

(d) Specifying requirements, if any, under ORS 285C.609(5).

# ADMINISTRATIVE RULES

(3) Evidence that the County held a public hearing, regarding the Applicant's proposal, before executing the agreement in section (2) of this rule.

(4) The latest version of any document submitted to County/local governments for purposes of or pursuant to sections (1) to (3) of this rule.

(5) A copy of a first-source hiring agreement, according to division 70 of this chapter of administrative rules, that is in effect beginning no later than when hiring for the Approved Project commences, and ending no sooner than June 30 of the final tax year of Exemption.

(6) Any other information required with the Application as stated in the form, including but not limited to full company identification, proof of basic credit-worthiness, hiring/payroll projections, detailed description of proposed investment(s), and estimated impacts on public services.

(7) Commitment to provide timely notification or evidence to the county assessor or the Department of Revenue, as requested or otherwise necessary under ORS 307.123 or other applicable laws, including but not limited to the date when any taxable property is initially occupied, used or operated commercially.

(8) Commitment that the ultimate lessee will be responsible for the payment of property taxes levied on leased property that comprises any part of an Approved Project.

(9) As described in OAR 123-023-1800:

(a) Full amount of the nonrefundable application fee; and

(b) Commitment to pay additional fee, if approved.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & ORS 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

## 123-023-1600

### Consideration and Approval

(1) The Department shall review the Application.

(2) The Department shall make a recommendation to the Finance Committee to either approve or deny the Application.

(3) In evaluating an Application the Finance Committee shall:

(a) Hold one or more meetings open to the public, at which the matter is an agenda item for discussion, and for which appropriate and customary public notice is made;

(b) Invite from the public oral statements or written comments; and

(c) Have the Applicant appear in order to give a statement and to answer questions submitted in advance or posed by Department staff or by members of the Finance Committee or the Commission, exclusively.

(4) Upon giving the Commission notice and opportunity to comment, the Finance Committee may in light of extenuating circumstances dispense with some or all of the elements in section (3) of this rule as otherwise permitted under ORS Chapter 192.

(5) Pursuant to evaluation of the Application, the Applicant's investment(s) qualifies for the Exemption if the Finance Committee finds that:

(a) The project will satisfy the criteria for eligibility (if any), as established by the Commission or the Finance Committee;

(b) The project will directly benefit a traded sector industry under ORS 285B.280;

(c) The total cost of the project will equal or exceed:

(A) \$25 million, except for paragraph (B) of this subsection; or

(B) \$100 million for a proposed Urban Project;

(d) The project will not consist of any Existing Property or any property formerly or currently exempt under ORS 285C.175 and the Applicant is not authorized for any investment at the same location in an enterprise zone;

(e) Information described in OAR 123-023-1500 is completely and accurately provided; and

(f) The Applicant has agreed to comply with any additional reasonable conditions imposed by the Finance Committee related to the Strategic Investment Program, including requirements that continue for the term of the Exemption.

(6) Once the Finance Committee has taken formal action to authorize the Exemption, that determination is final and may be reversed, revoked or withdrawn only by a formal finding of the Commission that there was a material error or omission among submitted Application information, or that there is effectively a noncompliance.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & ORS 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 12-2002(Temp), f. & cert. ef. 6-5-02 thru 11-29-02; Administrative correction 4-15-03; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0451

## 123-023-1700

### Establishment of Exempt Property

(1) The Finance Committee's determination pursuant to OAR 123-023-1600 needs to adequately define the Approved Project for purposes of the Exemption, consistent with the Application and County/local approval of the Applicant.

(2) The following are examples of defining an Approved Project as described in section (1) of this rule:

(a) Describing the site(s) and overall facilities/operation, in/at which applicable property must be located, used and occupied for commercial purposes;

(b) Delimiting what may be covered by Exemption in terms of:

(A) Property's maximum cost or value; or

(B) Specific time period in which property must be completed or placed in service;

(c) Generally identifying all real and personal property to be acquired, constructed, reconstructed, improved, added to, modified or installed, by referencing the description of investment(s) in the Application or further information from the Applicant (whether requested or not by the Department or Finance Committee), including but not limited to:

(A) List of structures or property items (or representative examples or descriptors thereof) with the location, function and cost;

(B) Timelines for completion of construction, installations and so forth, in order for later property to be covered by the Exemption starting at a future point for the remainder of 15-year period; and

(C) Indication of property that replaces existing property to be retired, or for which the Exemption covers only a portion — or only an increase in the assessed value — of the property, as a result of additions to or the modification, remodeling, renovation, refurbishment, retrofitting or upgrading of existing building, structure, machinery or equipment; or

(d) Using comparable methods as necessary and appropriate.

(3) Property or an investment in property is not disqualified from the Exemption if built on, installed in or done to Existing Property, insofar as the Existing Property (or its existing assessed value) is simply excluded from the Exemption.

(4) In the event that another business firm acquires the Applicant or the Approved Project:

(a) The ongoing Exemption shall continue as authorized and continuously exempt property is not Existing Property, subject to subsections (b) and (c) of this section;

(b) The acquiring firm must comply with all terms and conditions under the Application, its approval or the local agreement included with it (see OAR 123-023-1500(2)), as well as applicable requirements of law and this division of administrative rules, as if the acquiring firm were the Applicant; and

(c) The owner or chief executive officer of the acquiring firm must provide and authorize a formal statement to the Department and the parties to the agreement, attesting to the firm's full assumption of relevant obligations and requirements formerly incumbent on the Applicant in order to retain the Exemption.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.600 & ORS 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

## 123-023-1800

### State Application and Approval Fees

With respect to ORS 285C.612 and the fees payable to and collected by the Department:

(1) Irrespective of subsequent approval, the following amount must accompany the Application:

(a) \$5,000; or

(b) \$10,000 for a proposed Urban Project.

(2) After the Finance Committee decides to approve the Application, but pending formal authorization, the Applicant must pay the following amount (of which the Department shall transfer 50 percent to the Department of Revenue to administer ORS 307.123):

(a) \$10,000; or

(b) \$50,000 for a proposed Urban Project.

(3) The Commission will allocate payments collected and retained by the Department, as described in sections (1) and (2) of this rule, consistent with relevant provisions in division 9 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.612

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0501

# ADMINISTRATIVE RULES

## 123-023-1900

### Community Service Fee

(1) The local agreement that is included with the Application (see OAR 123-023-1500(2)) shall specify:

(a) Matters related to the community service fee under ORS 285C.609(4); and

(b) How the Applicant annually makes payment of the fee to the County government, beginning not earlier than December 1 of the first tax year for which Exemption is claimed under ORS 307.123(1)(b), including arrangements for invoicing or issuance of a receipt to the Applicant.

(2) Depositing of community service fee moneys (under ORS Chapter 294) and their allocation, distribution and transfer do not affect the Approved Project's eligibility.

(3) The County government shall see to the entire annual distribution of community service fee funds, among some or all of the following:

(a) County government;

(b) City government(s) if any part of Approved Project is located within incorporated territory;

(c) Any (other) local taxing district that levies taxes on property located in a tax code area containing any part of the Approved Project; or

(d) Potentially, other local organizations or programs recognized as providing a relevant and significant community service, even without direct tax levy authority.

(4) A distribution formula shall determine the exact percentage of the community service fee received or retained by an entity listed in section (3) of this rule. A schedule of distribution formulae for each year is allowable.

(5) The annual formula must be established in only one of the following two ways:

(a) By official action of the Finance Committee, if an agreement consistent with subsection (b) of this section is not executed on or before the same date of the third month following the Finance Committee's formal action authorizing the Approved Project; or

(b) By an agreement to which at least all of the following are parties:

(A) County government;

(B) City government as described in subsection (3)(b) of this rule; and

(C) Local taxing districts listed in ORS 198.010 or 198.180 and described in subsection (3)(c) of this rule, to the extent that the sum of effective tax rates for such participating districts equals or exceeds 75 percent (0.75) of the total for all such districts (prorated by the expected proportion of the Approved Project among tax code areas).

(6) In the case where an agreement as described in subsection (5)(b) of this rule is not executed within the requisite three-month period, the Finance Committee:

(a) Shall take necessary steps as soon as reasonably possible for purposes of subsection (5)(a), as described in section (7), of this rule; or

(b) May delay official action, at its sole discretion, if informed that a sufficient set of parties as described in subsection (5)(b) of this rule are having productive negotiations, with which they wish to continue. (Under such circumstances, the Finance Committee may simply act to officially sanction an agreement reached when negotiations successfully conclude.)

(7) In determining a distribution formula the Finance Committee shall:

(a) Adjust proportions according to the Approved Project's demand or direct impact on the public service(s) provided by each entity, taking account of expected new property tax revenues even with the Exemption, as well as consideration of the goals and purposes of applicable state policies;

(b) Set an annual distribution percentage for each included entity; and

(c) In the process of issuing the distribution formula to the County government, notify all entities of this official, final action.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.609

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

## 123-023-2000

### Confidential Records

As provided under ORS 192.502, 285A.090 and 285C.620:

(1) Prior to the County governing body holding the public hearing under ORS 285C.609(4) (or a public notice for the hearing naming an expected Applicant), the Department shall not release any information identifying or pertaining to the expected Applicant or to discussions among it, local governments, or the Department and members of the Commission or Finance Committee.

(2) Prior to the official action requesting approval for Exemption by the County governing body and the Department's receipt of a complete Application, the Department shall not release any Application materials,

preliminarily submitted by an expected Applicant that specifically describe investment plans.

(3) As otherwise allowable under ORS 192.410 to 192.595, the department shall seek to keep confidential certain sensitive records or communications, as may be obtained with an Application, including but not limited to the following:

(a) Reports and analyses of reports bearing on the Applicant's character, finances, management ability and reliability, as obtained in confidence from persons or firms not required by law to submit them, including but not limited to the Applicant, and for which the Department obliged itself in good faith to not disclose;

(b) Financial statements, tax returns, business records, employment history, personnel files and comparable data submitted by or for an Applicant, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision and draft Application information;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or that the Applicant shows is reasonably likely to occur if the complaint has not been filed (This exemption does not apply to litigation that has been concluded, and nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation);

(g) Production, sales or cost data, customer lists, or detailed descriptions or identifications of business property; or

(h) Marketing strategy information that relates to an Applicant's plan to address specific markets and the Applicant's strategy regarding specific competitors.

(4) Subject to sections (1), (2) and (3) of this rule, the Department shall provide records pertaining to the Strategic Investment Program upon written request, as described in division 5 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285C.620

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0551

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**Adm. Order No.:** EDD 11-2004(Temp)

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04 thru 8-5-04

**Notice Publication Date:**

**Rules Amended:** 123-006-0005, 123-006-0015, 123-006-0020, 123-006-0025

**Rules Suspended:** 123-006-0010

**Subject:** This rule sets forth the Department's personal services contracts screening and selection procedures. This filing is intended to:

1) Clean up the text of the rules and correct the statutory references.

2) Make this division easier to understand and apply.

3) Provide for alternative procedures for work order contracts.

**Rules Coordinator:** Philip A. Johnson, II—(503) 986-0159

## 123-006-0005

### Introduction

Pursuant to ORS 285A.075(7), the department may enter into personal services contracts as required or appropriate to carry out its authorized mission. This rule sets forth the Department's personal services screening and selection procedures.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04

## 123-006-0010

### Basic Policy

(1) This procedure will be used in all cases except when the Director or Deputy Director determines that an emergency exists which requires immediate action. Action taken as a result of an emergency will be confirmed later with written findings setting out the emergency with specificity.

(2) The Economic Development Department will contract for consultant services when the specialized skills, knowledge, and resources are not available within the Department; when the work cannot be done in a

# ADMINISTRATIVE RULES

reasonable time with the Department's own work force; when an independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature in a field; or when it will be less expensive to contract for the work. Such contracts will be let only after approval by the Director or Deputy Director.

(3) Agreements for the services of a consultant who is a member of the Public Employees' Retirement System and who is employed in another department will normally be in the form of an interagency agreement. Exceptions may be granted by the Director or Deputy Director when it is shown that such an agreement is impractical and that the work will be done strictly on the consultant's own time. Such exceptions will be processed as a regular personal services contract.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291  
Stats. Implemented: ORS 279.051  
Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; Suspended by EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04

## 123-006-0015

### Definitions

(1) "Director" means the Director of the Economic & Community Development Department.

(2) "Department" means the Economic & Community Development Department.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075 & 279.051  
Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04

## 123-006-0020

### Standard Procedures and Exemptions

The Department will comply with the Department of Administrative Services rules for Personal Services Contracts, OAR chapter 125, division 020, for all its personal services contracts, with the following exceptions:

(1) For Architect, Engineering and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR chapter 125, division 025, the Department of Administrative Services rules for Architect, Engineering and Related Professional Services, as if it were a Contracting Agency subject to those rules.

(2) For personal services contracts exempt from ORS Chapter 279, the Department may enter into direct contract negotiations with a vendor.

(3) For personal services contracts relating to the Department's foreign trade offices operating outside the state, the Department will comply with OAR chapter 123, division 125.

(4) For personal services contracts, other than those identified in (1) to (3) of this rule, that are best implemented as multiple work order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0025.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075 & 279.051  
Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04

## 123-006-0025

### Alternative Procedures for Work Order Contracts

(1) Personal services contracts are best implemented as multiple work order contracts under an agreement for services if that implementation will provide substantial savings in time or cost, or both, by using an agreement for services instead of a single contract implementation.

(2) The screening and selection procedures for Agreements for Services other than for Architectural, Engineering or Related Services, are as follows:

(a) If Department reasonably anticipates that the total of any and all work order contract(s) under a single Agreement-for Services will provide for payments to the vendor in excess of \$75,000, the Department will select the vendor through the formal selection process described in OAR 125-020-0310 and 125-020-0320.

(b) For all other Agreements for Services, the Department will select the vendor through the informal selection process described in OAR 125-020-0330, with the exception of 125-020-0330(5) and (6).

(c) Notwithstanding subsection (2)(a) and (b), the Department may also enter into Agreements for Services that follow the procedures for emergency contracts in 125-020-0340 with the exception of 125-020-0340(5), or for sole source contracts in 125-020-0350 with the exception of 125-020-0350(2).

(3) The screening and selection procedures for Agreements for Services for Architectural, Engineering or Related Services will follow the procedures in 125-025-0087, or the procedures for sole source contracts in 125-020-0350 with the exception of 125-020-0350(2).

(4) The Department and the selected vendor will sign a non-binding Agreement for Services, in which the vendor acknowledges its readiness to enter into separate work order contracts with the Department that will describe, among other things, the specific services to be performed, the timeline for delivery of the services, and the compensation for the services. Each work order contract subsequently executed with the vendor pursuant to the non-binding Agreement-for Services must be within the scope of the solicitation, if any, and will constitute a separate legally-binding contract between the Department and the vendor.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075 & 279.051  
Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04

## Oregon Housing and Community Services Chapter 813

**Adm. Order No.:** OHCS 2-2004(Temp)

**Filed with Sec. of State:** 5-20-2004

**Certified to be Effective:** 5-20-04 thru 11-14-04

**Notice Publication Date:**

**Rules Adopted:** 813-003-0005, 813-003-0010, 813-003-0020, 813-003-0030, 813-003-0040, 813-003-0050, 813-003-0060, 813-003-0070

**Subject:** This rule carries out the provisions of ORS 291.055© and ORS 456.562 which relates to the Department's authority to license, share or otherwise provide for the use by a Person of Intellectual Property acquired or developed by the Department.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-003-0005

### Purpose and Objectives

OAR chapter 813, division 003, is promulgated to carry out the provisions of ORS 291.055(c) and 456.562, which relate generally to the Department's authority to license, share or otherwise provide for the use by a Person of intellectual property acquired or developed by the Department.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0010

### Definitions

(1) "Intellectual Property" as defined in ORS 456.562, means computer programs, software, software tools and data.

(2) "Person" means a person as defined in ORS 174.100, including individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. "Person" also means a federal, state or local government body, a Native American tribe or an agent or representative of a tribe.

(3) "Licensing Agreement" means the binding contractual instrument between the Department and a Person identifying the terms and conditions by which such Person may use Department Intellectual Property.

(4) "Copyright" means a comprehensive privilege to exclusively print, reprint, publish, copy, translate, dramatize, convert, arrange, adapt, complete, execute, finish, deliver in public, perform and transcribe an original work pursuant to federal law, i.e., 17 USC §§ 1-215; 61 Stat., as amended.

(5) "Department" means the State of Oregon, acting by and through the Housing and Community Services Department established pursuant to ORS 456.555.

(6) "Patent" means an instrument from the federal government granting to original inventors, the exclusive right for a period of time to manufacture, sell and use the invention described therein.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0020

### Authority to Acquire, Develop, Use, and Share Intellectual Property

The Department may take actions that it deems necessary and appropriate to acquire, develop, use, and allow other Persons to use Intellectual Property. Such actions may include, but are not limited to applying for Patents or Copyright registrations to perfect or preserve its rights with respect to Intellectual Property, employing Intellectual Property for its own use, and requiring other Persons to execute Licensing Agreements and/or other documents satisfactory to the Department as a condition for licensing,

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sharing or otherwise obtaining use of Intellectual Property from the Department.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0030

### Guidelines Concerning Acquisition and Use of Intellectual Property

(1) Subject to any superior Patent or Copyright limitations, the Department may, at its reasonable discretion, license, share with, or otherwise provide for the use by a Person of Intellectual Property acquired or developed by the Department. In determining whether or not to allow use of its Intellectual Property, the Department may consider factors including, but not limited to the public interest served in allowing its use, the cost and administrative burden of allowing its use, the furtherance of Department purposes through allowing its use, the potential liability from allowing its use, the Department's experience with the Person, the reputation in the community of the Person, the ability of the Person to pay an appropriate fee for the use of the Intellectual Property, the Person's execution of a Licensing Agreement and/or other documents satisfactory to the Department, and the impact of allowing its use on the ability of the Department to acquire or develop additional Intellectual Property.

(2) Unless specified otherwise in these rules, the Department may charge reasonable fees for the licensing, sharing or other use of its Intellectual Property. Payment of fees may be required on any schedule established by the Department.

(3) When the Department determines to license, share with or otherwise allow the use of any Intellectual Property by a federal, state, or local government body, it will do so without charging a fee.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0040

### Guidelines for Training and Technical Assistance

(1) The Department may provide training and other technical assistance to Persons who license, share or otherwise use Department Intellectual Property. In determining whether or not to provide training and other technical assistance, the Department may consider factors including, but not limited to its own staffing needs and capabilities, the public interest to be served, the advancement of Department programs, the needs of the Person for whom training and other technical assistance would be provided, the ability of the Person to apply such training and assistance, the ability of the Person to pay for such training and assistance, the Department's experience with the Person, the reputation in the community of the Person, and the Person's execution of a Licensing Agreement and/or other documents satisfactory to the Department.

(2) The Department may charge reasonable fees for providing training and technical assistance with respect to the use of its Intellectual Property. Payment of fees may be required on any schedule established by the Department.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0050

### Fees

(1) As permitted by ORS 456.562 and these rules, the Department may charge reasonable fees for the licensing, sharing or other use of Intellectual Property. The Department also may charge reasonable fees for providing training and other technical support with respect to the use of Intellectual Property.

(2) In establishing reasonable fees, the Department may consider factors including, but not limited to its costs in acquiring, developing, protecting, maintaining, marketing, licensing (or otherwise allowing the use), and monitoring the use of Intellectual Property generally and of the particular Intellectual Property specifically, the demand for Intellectual Property, market rates for similar or comparable products, Department program needs, the nature and resources of the Person to use the Intellectual Property, the purposes for which the Intellectual Property will be used, and the public interest in its use. Considered costs may include, but are not limited to the relevant time, personnel and materials employed, the allocable portion of indirect costs, and reserves for updating, acquiring, developing, and administering the use of Intellectual Property, as well as for contingencies.

(3) Payment of fees shall be made in the amount and at such time, place and manner as the Department may require.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0060

### Warranties; Limitation of Liability

(1) The Department shall make no warranty of any kind, express or implied, with respect to any Intellectual Property — including, but not limited to any warranties of merchantability and fitness for a particular purpose. Any provision in a Licensing Agreement or any other document, or in any statement by an employee or other agent of the Department, purporting to convey any such warranties from the Department is, and shall be deemed, void as an ultra vires act, being made without authority and in contravention of these rules.

(2) The Department's liability arising out of or based upon the licensing, sharing or otherwise provided use of Intellectual Property, regardless of the form in which any legal or equitable action may be brought, including without limitation any action in tort, contract, or pursuant to statute, shall not exceed any fee paid to the Department for the licensing, sharing or use of the Intellectual Property.

(3) The department shall have no liability for indirect, incidental, consequential, special or punitive damages, lost profits, or loss of goodwill (even if it has been advised of the possibility of such damages), arising out of or relating to the licensing, sharing, other use of its intellectual property, including without limitation such matters as interruptions, delays, loss of data, loss of profit, interruption of service, loss of business or anticipatory profits. The foregoing warranty and limitations are in lieu of all other warranties, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose. Any provision in any licensing agreement or other document, or any statement by an employee or other agent of the department purporting to establish any such liability is, and shall be deemed, void as an ultra vires act, being made without authority and in contravention of these rules.

(4) Any Person who licenses, shares or otherwise uses Intellectual Property from the Department, in doing so, agrees to defend, indemnify and hold harmless the Department (consistent with ORS chapter 180) from and against any and all claims, demands, causes of action and liabilities with respect to such license, sharing or other use of the Intellectual Property and/OR any related training or other assistance from the Department with respect to the Intellectual Property.

(5) Any Licensing Agreement or other document providing for the licensing, sharing or other use by a Person of Department Intellectual Property or for training and/or other technical assistance relating to such Intellectual Property, in order to be valid and enforceable against the Department, shall contain language substantially similar to that contained in subparagraphs (1) through (4) of this Section.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## 813-003-0070

### Waiver

The Department may waive or modify any requirements of OAR chapter 813, division 003, unless such waiver or modification would violate applicable federal or state statutes.

Stat. Auth.: ORS 183, 456.555  
Statutes Implemented: ORS 291.055, 456.562  
Hist.: OHCS 2-2004(Temp), f. & cert. ef. 5-20-04 thru 11-14-04

## Oregon Liquor Control Commission Chapter 845

**Adm. Order No.:** OLCC 6-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 6-29-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 845-005-0445

**Subject:** This rule describes the Temporary Authority and sets standards for its issuance.

Senate Bill 724 allows the agency Administrator to extend a temporary authority to operate (normally issued for 90 days) by an extra 30 days if the Commission has not granted or denied the application at the end of the 90-day period. We added language to the rule which describes conditions under which a Temporary Authority may be extended.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

# ADMINISTRATIVE RULES

## 845-005-0445

### Temporary Authority

(1) ORS 471.302 and 471.297 allow the Commission to give certain applicants the authority to sell and serve alcoholic beverages while the Commission determines the applicant's eligibility. Temporary authorities to operate are not to exceed 90 days, unless an extension of up to an additional 30 days is granted under section (2) of this rule. The Commission may refuse to grant this temporary authority to operate when the Commission has reasonable basis to believe that the applicant may not be eligible for a license under ORS Chapter 471 and the Commission's Administrative Rules, OAR chapter 845.

(2) ORS 471.297 and 471.302 allow the agency Administrator to extend a temporary authority to operate for a period not to exceed 30 days if the Commission has not granted or denied the application at the end of the 90-day period. An extension of not more than 30 days may be granted by the agency Administrator under the following circumstances:

(a) The agency has not received a written recommendation from the local governing body as required by ORS 471.166 and OAR 845-005-0304; or

(b) An extension of time is necessary for the agency to complete its investigation or processing of the application. An extension of the temporary authority will not be granted if the sole basis is the applicant's failure to provide timely documentation which was requested pursuant to OAR 845-005-0315.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.302 & 471.297

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2003(Temp), f. 12-16-03, cert. ef. 1-1-04 thru 6-28-04; OLCC 6-2004, f. 5-19-04, cert. ef. 6-29-04

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**Adm. Order No.:** OLCC 7-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:**

**Rules Amended:** 845-006-0347

**Subject:** We need to correct a statutory reference which is incorrect. This filing is made under the process requirements of ORS 183.335(7).

**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-006-0347

### Noisy, Lewd, Disorderly or Unlawful Activity, Restrictions on Entertainers and Drinking Alcohol Outside the Premises

(1) Definitions. As used in this rule:

(a) "Disorderly activities" are those that harass, threaten or physically harm another person;

(b) "Lewd activities" are those that contain lustful, lascivious or lecherous behavior, including but not limited to sexual intercourse, masturbation, or the rubbing, stimulating or touching of genitals whether covered or uncovered;

(c) "Noisy activities" are those that a reasonable person would conclude interfere with normal living or business activities. The Commission may consider a violation of Department of Environmental Quality or local noise pollution standards as prima facie evidence of noisy activities;

(d) "Nude entertainment" is entertainment that has:

(A) A male entertainer whose genitals or buttocks are uncovered or less than opaquely covered or whose genitals are in a discernibly turgid state;

(B) A female entertainer whose genitals, buttocks or breasts are uncovered or less than opaquely covered. A female breast is uncovered even if only the nipple and areola are covered.

(2) Noisy, Lewd or Disorderly Activity:

(a) No licensee or permittee will permit noisy, lewd or disorderly activities on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises;

(b) Violation of this section is a Category III violation. In addition to a fine or suspension for permitting lewd activities between patrons and entertainers, the Commission may restrict the license of a licensee who allows or provides live, nude entertainment. The restriction would require the licensee to have a spatial separation or a physical barrier between patrons and entertainers for a specified period of time.

(3) Unlawful Activity:

(a) No licensee or permittee will permit any unlawful activity on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises;

(b) Violation of this section is a Category III violation. The Commission does not require a conviction to establish a violation of this section except as ORS 471.700 requires.

(4) Restrictions on Entertainers to Prevent Lewd Behavior:

(a) No licensee or permittee who allows or provides live, nude entertainment will permit a person to touch another person's covered or uncovered genitals, pubic area, buttocks or female breasts or to reach beneath another person's clothing to touch the person's genitals, pubic area, buttocks or female breasts;

(b) A licensee or permittee who allows or provides live, nude entertainment must post a notice stating that patrons and entertainers must not touch another's genitals, pubic area, buttocks or female breasts or participate in lewd activities. The licensee must post this notice in a place that customers can easily see and read, and in all dressing rooms that entertainers use;

(c) Violation of this section is a Category IV violation. If, however, the violation involves lewd touching, it is a Category III violation. In addition to a fine or suspension, the Commission may restrict the license of a licensee who permits any touching that subsection (a) of this section prohibits. The restriction would require the licensee to have a spatial separation or a physical barrier between patrons and entertainers for a specified period of time.

(5) Eviction of Patrons:

(a) A licensee or permittee who knows that a patron has engaged in noisy, lewd, disorderly or unlawful activities or any touching that subsection (4)(a) of this rule prohibits must evict that patron from the premises for at least a 24-hour period. The 24-hour period begins at the time the licensee evicts the patron;

(b) Failure to evict the patron is a Category IV violation.

(6) Drinking Alcohol Outside the Premises:

(a) No licensee or permittee will permit anyone to drink alcohol in any parking lot that the licensee controls that is associated with the licensed business unless the Commission has approved the sale or service of alcoholic beverages in the area;

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.425(2)

Hist.: OLCC 1-1990, f. 1-4-90, cert. ef. 4-1-90; OLCC 14-1990(Temp), f. & cert. ef. 6-5-90; OLCC 12-1991, f. 9-9-91, cert. ef. 10-1-91; Sections (1)(a) & (c), (2) & (3) Renumbered from 845-006-0045(2) & (3); OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0047; OLCC 10-2002, f. 6-12-02 cert. ef. 8-1-02; OLCC 7-2004, f. & cert. ef. 5-19-04

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## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 11-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 459-070-0900

**Subject:** A new administrative rule is needed to implement and clarify provisions of ORS 238A, which establishes the Oregon Public Service Retirement Plan (OPSRP). As staff has continued to identify transactions that may occur now that OPSRP is in operation, several issues have arisen that require immediate attention to administer the new plan. Temporary rules are needed to administer the OPSRP until permanent rules and associated application forms and information can be developed to administer the following areas of the OPSRP Pension Program and Individual Account Program (IAP): beneficiary designation under the IAP, withdrawals under both the Pension Program and the IAP, retirements under the IAP, and disabilities under the Pension Program.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

### 459-070-0900

#### PERS/OPSRP Transitional Rules

(1) **Purpose.** The purpose of this rule is to implement ORS 238A.120 (Withdrawal), 238A.235 (Disability Benefit), 238A.375 (Withdrawal), 238A.400 (Defined Contribution Benefit), and 238A.410 (Death Benefit).

(2) **Limitation of scope of rule.** Benefits provided under this rule shall not exceed the benefits provided in ORS 238A.

(3) **Definitions.** For the purposes of this rule:

# ADMINISTRATIVE RULES

(a) "Current spouse" means a married member's spouse as of the later of January 1, 2004, or (as appropriate) the date of the member's death or the date a retirement benefit or withdrawal is to be paid under the IAP.

(b) "Earliest retirement age" means the retirement age as defined in ORS 238A.165.

(c) "IAP" means the Individual Account program as set forth in ORS 238A.300 to 238A.415.

(d) "Married member" means a member who is married as of the later of January 1, 2004, or (as appropriate) the date of the member's death or the date a retirement benefit or withdrawal is to be paid under the IAP.

(e) "OPSRP" means the Oregon Public Service Retirement Plan.

(f) "Pension program" means the pension program as set forth in ORS 238A.100 to 238A.245.

(g) "Retirement credit" means the credit for service a member receives pursuant to ORS 238A.140.

(4) **Beneficiary designation.** (a) For the purposes of distributing the death benefit provided in ORS 238A.410, the beneficiary or beneficiaries will be considered the same beneficiary or beneficiaries named on a member's Designation of Beneficiary previously filed with PERS pursuant to OAR 459-014-0030, except:

(A) Where a court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation provides otherwise;

(B) Where the member has filed a new Designation of Beneficiary form specifically approved by the Public Employees Retirement Board for the purposes of ORS 238A.410; or

(C) Where a married member has named a beneficiary other than his or her current spouse.

(i) In order for a member to name someone other than his or her current spouse, a spousal consent is required as set forth under ORS 238A.410(2), to distribute the death benefit to anyone other than the current spouse.

(ii) A spouse may revoke the above consent by filing a revocation with PERS, with notarized signatures of both the member and the spouse. Upon the filing of such revocation, the member's current spouse shall be the beneficiary.

(b) In the case where no Designation of Beneficiary form has been filed with PERS pursuant to OAR 459-014-0030, or someone other than the current spouse is named the beneficiary and no spousal consent form has been filed with PERS, or the named beneficiary predeceases the member, the death benefit will be distributed in the following order:

(A) To the member's surviving spouse;

(B) To the member's surviving children, in equal shares; or

(C) To the member's estate.

(5) **Withdrawals.** (a) If a member requests a withdrawal pursuant to ORS 238.265, this request will also be considered a request to withdraw from the OPSRP pension program under ORS 238A.120, and the IAP under ORS 238A.375, to the extent the member's interest under those programs is vested, unless the member affirmatively elects, on a form acceptable to and filed with PERS, not to withdraw his or her OPSRP IAP account(s).

(b) A request by a member to withdraw only his or her vested IAP accounts under ORS 238A.375, will not be considered a simultaneous request to withdraw from the ORS chapter 238 plan.

(6) **Defined contribution benefit.** (a) If a member applies and is eligible for service retirement under ORS chapter 238, and has reached the earliest retirement age as defined in ORS 238A.165, the application for service retirement will also be considered an application for payment of the defined contribution benefit provided under ORS 238A.400.

(b) The member may make any payment election provided for in ORS 238A.400.

(c) If a member retires under ORS chapter 238, and has not reached the OPSRP earliest retirement age, the member's IAP account(s) will remain in the IAP until the member is eligible for retirement under OPSRP and applies for payment of his or her IAP account(s) or withdraws his or her IAP account(s) under ORS 238A.375.

(d) If a member retires under ORS chapter 238, and the member is reemployed by a participating public employer as defined in ORS 238A.005(11), the IAP account(s) will be retained until the member qualifies for and requests withdrawal of the account under ORS 238A.375 or retirement under ORS 238A.400.

(7) **Disability Benefit.** The disability benefits under ORS 238A.235, will be provided in the following manner:

(a) Duty disability. For the purposes of applying and qualifying for a duty-disability benefit under the OPSRP pension plan, the provisions of

ORS chapter 238 and OAR 459-007-0070 and chapter 459, division 15, will apply.

(b) Non-duty disability. For the purposes of applying and qualifying for a non-duty disability benefit under the OPSRP pension plan, in addition to the provisions of ORS chapter 238 and OAR 459-007-0070 and chapter 459, division 15, the member must have accrued 10 years or more of retirement credit before becoming disabled.

(8) The provisions of this rule are effective on January 1, 2004.

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

Stats. Implemented: ORS 238 & 238A

Hist.: PERS 7-2004(Temp), f. & cert. ef. 2-18-04 thru 6-30-04; PERS 11-2004, f. & cert. ef. 5-19-04

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**Adm. Order No.:** PERS 12-2004

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 5-19-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 459-080-0200

**Subject:** This new rule implements and clarifies provisions of ORS 238A, which establishes the Oregon Public Service Retirement Plan (OPSRP). The proposed new rule specifies that contributions to the OPSRP Individual Account Program (IAP) will not be posted to an individual's account nor adjusted for investment earnings or losses until both the funds and the attendant records (name, pay period, etc.) are received by PERS from the individual's employer. Thereafter, the account will be adjusted monthly to reflect any net earnings or losses and to pay reasonable administrative expenses. Upon withdrawal, the account value will be determined as of the first of the next month after the withdrawal request is received.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

**459-080-0200**

**IAP Account Adjustments for Earnings or Losses**

(1) Employee, employer, and rollover contributions under the OPSRP Individual Account Program ("IAP") will be posted to the applicable individual accounts only when funds are actually received by PERS and have been successfully matched to the corresponding wage and contribution record. The effective date for posting these contributions shall be the first of the calendar month following the month funds are received and matched as described above. Accounts will be adjusted monthly thereafter to reflect any net earnings or losses and to pay reasonable administrative expenses. This effective date applies to all contributions, whether for a current period or those sent as adjustments for prior periods.

(2) When a member requests a withdrawal of the member's employee, rollover and employer accounts under ORS 238A.375, those accounts will be adjusted to reflect any net earnings or losses and to pay reasonable administrative expenses only through the end of the month in which the request for withdrawal is received, regardless of when the payment is issued.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.350

Hist.: PERS 19-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-25-04; PERS 12-2004, f. & cert. ef. 5-19-04

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**Adm. Order No.:** PERS 13-2004(Temp)

**Filed with Sec. of State:** 5-19-2004

**Certified to be Effective:** 6-21-04 thru 12-1-04

**Notice Publication Date:**

**Rules Adopted:** 459-080-0150

**Subject:** This rule clarifies which employees contribute into the Individual Account Program (IAP) and when contributions begin.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

**459-080-0150**

**Employee Contributions into the IAP Account**

(1) Definition. For the purposes of this rule: "Forfeiture account" means the account set up by PERS to administer overpayments of employee contributions.

(2) Employee contributions under the OPSRP Individual Account Program ("IAP") are required from all members, as established under OAR 459-080-0010, who:

(a) Are working in a qualifying position or positions as defined in OAR 459-070 0001(13); or

# ADMINISTRATIVE RULES

(b) Perform a total of 600 or more hours in a calendar year with one or more participating employers.

(3) Contributions for current members.

(a) For a member who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(b) Once a member meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted following the member's reaching 600 hours in the calendar year.

(4) Contributions for new employees.

(a) For an employee who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(b) Once an employee meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted from the date of membership in the IAP, as established under OAR 459-080-0010.

(5)(a) If contributions are submitted on behalf of an employee who does not meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of those ineligible contributions will be returned.

(b) Any net earnings from the returned ineligible contributions would be credited to the forfeiture account.

(c) Any net losses and administrative fees on the returned ineligible contributions will be paid out of the forfeiture account.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A

Hist.: PERS 13-2004(Temp), f. 5-19-04, cert. ef. 6-21-04 thru 12-1-04

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**Adm. Order No.:** PERS 14-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 459-001-0000

**Subject:** OAR 459-001-0000 sets forth the rules of procedure for noticing the adoption, amendment, and repeal of administrative rules. The current rule, however, does not allow for the adoption of temporary rules in accordance with the Attorney General's Model Rules of Procedure (Model Rules). Amending the current rule to clarify that its provisions apply only to permanent rulemaking would allow PERS to adopt temporary rules in accordance with the Model Rules.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

**459-001-0000**

**Notice of Proposed Rule**

Prior to adoption, amendment or repeal of any permanent rule, the Public Employees Retirement System (PERS) shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least 21 days prior to the effective date.

(2) By mailing, or transmitting by email if the recipient has elected that option, notice to persons on the PERS mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By mailing, or transmitting by email if the recipient has elected that option, or furnishing notice to the following publications:

- (a) Associated Press;
- (b) Daily Journal of Commerce;
- (c) Northwest Labor Press;
- (d) Capitol Press Room.

(4) By mailing, or transmitting by email if the recipient has elected that option, or furnishing notice to the following persons, organizations and publications at least 28 days before the effective date of the rule:

- (a) Oregon Public Employees Union;
- (b) Oregon Education Association;
- (c) Association of Oregon Counties;
- (d) League of Oregon Cities;
- (e) Oregon School Board Association;
- (f) Confederation of Oregon School Administrators;
- (g) Association of Engineering Employees of Oregon;
- (h) Local Government Personnel Institute;
- (i) American Federation of State, County and Municipal Employees;
- (j) Oregon State Firefighters Council;

(k) Department of Public Safety Standards and Training;

(l) Oregon Association of Chiefs of Police;

(m) Oregon Federation of Teachers, Education and Health Professionals;

(n) Oregon School Employees Association;

(o) Oregon Community College Association;

(p) Oregon State Sheriffs Association;

(q) Oregon State System of Higher Education;

(r) Oregon Council of Police Associations;

(s) Special District Association of Oregon;

(5) By mailing a Notice of Rulemaking and a copy of the proposed rule(s) to the Director of the Department of Administrative Services and, to the extent identified, affected participating public employers in the System.

(6) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183.335 & 238.650

Stats. Implemented:

Hist.: PER 13, f. & ef. 10-26-76; PER 4-1981, f. & ef. 1-15-81; PER 1-1982, f. 11-22-82, ef. 1-1-83; PERS 3-1994, f. & cert. ef. 5-10-94; PERS 14-2004, f. & cert. ef. 6-15-04

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**Adm. Order No.:** PERS 15-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 459-005-0001

**Subject:** This rule modification clarifies that a casual, emergency, or seasonal worker is not an eligible employee. To be considered an eligible employee, a person must be performing service in a position other than as a casual, emergency, or seasonal worker, as defined in OAR 459-005-0001, and be employed for more than 599 hours in a calendar year. This rule modification is necessary to clarify current statute and will resolve the issue facing those retirees who selected the total lump sum retirement option, which first became available for retirements on January 1, 2003, and who returned to PERS-covered employment. This amendment clarifies who is a 'non-eligible employee' and would allow more retirees to qualify to return to work on a limited basis.

**Rules Coordinator:** Yvette S. Elledge—(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.

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(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "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 459-015-0015.

(9) "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(6).

(10) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) 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:

(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(7).

(12) "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.

(13) "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.

(14) "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))

(15) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

(c) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) "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.

(18) "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.

(19) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(6) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(22) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(23) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(24) "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.

(25) "Salary," "remuneration" and "compensation" have the same meanings as provided in ORS 238.005(20).

(a) For a Tier One member, the 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.

(b) For a Tier Two member, the 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.

(26) "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.

(27) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(28) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(29) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(30) "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 shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(31) "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.

(32) "Variable Annuity Account" means the account established in ORS 238.260(2).

(33)(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.

(34) "Year" means any period of 12 consecutive calendar months.

(35) The provisions of this rule are effective January 1, 2003.

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

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**Adm. Order No.:** PERS 16-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 459-007-0050

**Subject:** This rule modification clarifies the method for crediting earnings to the accounts of members who died prior to the imple-

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mentation of Tier Two in 1996 and expands the “window of opportunity” for beneficiaries to receive crediting under the old rules from those of members who died before January 1, 2000, to those of members who died before July 1, 2003. The deadline for this opportunity is also extended to December 31, 2004. The rule modification is effective July 1, 2003, to override the version of this rule in effect since that time.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-007-0050

### Crediting Earnings for a Deceased Tier One Active or Inactive Member

Upon the death of an active or inactive Tier One member, earnings from the date of death to the date of distribution shall be credited as specified in this rule.

(1) Definitions. For purposes of this rule:

(a) “Death benefit amount” means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) “Effective date of request” means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For a member whose date of death is on or after January 1, 2000:

(a) If the member’s death is prior to July 1, 2003, earnings shall be credited to the member’s regular account as follows:

(A) If earnings for the calendar year prior to the date of the member’s death have not yet been credited, earnings for that year shall be credited based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member’s death shall be credited based on the greater of the assumed rate, prorated from January 1 to the first of the month of the member’s death, or the latest year-to-date calculation as of the first of the month of the member’s death.

(b) If the member’s death is on or after July 1, 2003, earnings shall be credited to the member’s regular account as follows:

(A) If earnings for the calendar year prior to the date of the member’s death have not yet been credited, earnings for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member’s death shall be credited based on the latest year-to-date calculation as of the first of the month of the member’s death.

(c) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member’s variable account as follows:

(A) If earnings or losses for the calendar year prior to the calendar year of the member’s death have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings or losses for the calendar year of the member’s death shall be credited based on the latest year-to-date calculation as of the first of the month of the member’s death.

(d) After earnings have been credited in accordance with subsections (a), (b) and (c) of this rule, the value of the member’s variable account shall be added to the value of the member’s regular account and the sum shall constitute the death benefit amount as of the first of the month of the member’s death.

(e) If the effective date of request occurs within the same year as the date of death, earnings from the first of the month of the member’s death to the effective date of request shall be credited based on the latest year-to-date calculation for Tier Two regular accounts as of the effective date of request less the latest year-to-date calculation for Tier Two regular accounts as of the first of the month of the member’s death, and subsections (f) through (h) of this section do not apply.

(f) Earnings on the death benefit amount from the first of the month of the member’s death to the end of the calendar year shall be credited based on the Tier Two annual rate less the latest year-to-date calculation for Tier Two as of the first of the month of the member’s death.

(g) Earnings on the death benefit amount for calendar years following the year of the member’s death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(h) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the latest year-to-date calculation for Tier Two regular accounts.

(i) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate.

(3) If a member’s date of death is prior to July 1, 2003, and the effective date of request is prior to December 31, 2004, earnings shall be credited as follows:

(a) Earnings from the date of death through December 31, 1999, shall be credited to the member’s regular account as of December 31, 1999, in accordance with the provisions of this rule in effect from the date of death through December 31, 1999.

(b) Earnings from January 1, 2000, to the date of distribution shall be credited in accordance with ORS 238.390 as simple interest prorated for that period based on the assumed rate.

(4) If a member’s date of death is prior to January 1, 2000, but the effective date of request is on or after December 31, 2004:

(a) Earnings shall be credited in accordance with the version(s) of OAR 459-007-0050 in effect up to January 1, 2000.

(b) As of January 1, 2000, the deceased member’s account(s) shall be converted to a death benefit amount under subsection (2)(d) of this rule.

(c) Earnings on the death benefit amount from January 1, 2000, to the date of distribution shall be credited in accordance with subsections (2)(e) through (2)(h) of this rule.

(5) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 38.430 & 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PER 1-1995, f. 9-12-95, cert. ef. 1-1-96; PER 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(6); PER 9-1998, f. 5-22-98, cert. ef. 1-1-00; PER 1-2000, f. & cert. ef. 1-7-00; PER 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PER 24-2003, f. & cert. ef. 12-15-03; PER 16-2004, f. & cert. ef. 6-15-04

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**Notice Publication Date:** 5-1-04

**Rules Amended:** 459-010-0055, 459-045-0030

**Subject:** These rule modifications implement chapter 276, Oregon Laws 2003 and section 23 of chapter 625, Oregon Laws 2003. The former provides a bonus amount of 50 percent of the account balance to certain inactive members who withdraw their accounts from PERS between July 1, 2004, and June 30, 2006. The latter extends this provision to alternate payees of certain inactive members.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-010-0055

### Withdrawal of Contributions

(1) Definition. A “controlled group” is a group of employers treated as a single employer for purposes of maintaining qualified status under federal law.

(2) An inactive member may withdraw the member account balance under ORS 238.265 if:

(a) The member has separated from employment with all participating employers and all employers in a controlled group with a participating employer, and

(b) PERS receives the member’s request for withdrawal of the member account before the member reaches earliest service retirement age; and

(c) The member has been absent from service with a participating employer for at least a full calendar month following the month of separation.

(3) Under no circumstance may a member withdraw less than the entire balance in the member account.

(4) An inactive member shall receive an additional 50 percent of the balance of the member account as of the effective date of withdrawal, including earnings credited under OAR 459-007-0040, to be paid from employer contributions, if:

(a) As of the effective date of withdrawal, the member has been an inactive member since on or before January 1, 2000;

(b) Employee contributions were made during each of five calendar years or more;

(c) Membership has not terminated under ORS 238.095 or 238.265; and

(d) The member’s effective date of withdrawal is on or after July 1, 2004, and before June 30, 2006.

(5) If a member withdraws the member account and receives an additional 50 percent of the member account under section (3) of this rule, the member may not subsequently restore the creditable service forfeited by the withdrawal under ORS 238.105 or 238.115.

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(6) The member may revoke the request for withdrawal of the member account if PERS receives a written request to revoke prior to the earlier of:

(a) The date of distribution; or

(b) The date PERS receives a valid court order requiring PERS to pay the distribution to someone other than the withdrawing member.

(7) If a member withdraws the member account under this rule, membership shall be terminated as of the effective date of withdrawal.

(8) If a member who has withdrawn the member account under this rule returns to employment with any participating employer prior to the first day of the second calendar month following the month in which the member had previously separated from a qualifying position, PERS shall notify the employer that the employer shall be obligated to the Fund for the full amount of the member's withdrawal not repaid, unless:

(a) The participating employer immediately terminates the employment upon discovering or being notified of the member's failure to repay the withdrawn contributions, and does not reemploy the member until the requirements of section (2) of this rule are satisfied;

(b) The member repays the withdrawn amount in full within 30 days following the effective date of such employment; or

(c) The full amount of the withdrawal is repaid by the participating employer from payroll deductions from the member's monthly salary. Such payroll deductions shall be in amounts necessary to effect the repayment within one calendar year, unless a longer period is required so that monthly payroll deductions for this purpose do not exceed 25 percent of the member's net salary.

(9) If a participating employer employs a member after the member's effective date of withdrawal and fails to notify the system of the employment the employer shall hold PERS harmless for any actual or perceived loss of benefits as a result of the withdrawal.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.265 & OL 2003 Ch. 276 § 2

Hist.: PER 8, f. 12-15-55; PER 4-1979(Temp), f. & ef. 11-21-79; PER 7-1979(Temp), f. & ef. 12-11-79; PER 3-1980, f. & ef. 5-8-80; PER 2-1981, f. & ef. 1-15-81; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04

### 459-045-0030

#### General Administration

(1) An alternate payee's award is payable to the alternate payee based on the member's eligibility for benefits. For this purpose, a member shall be considered eligible for benefits before separating from service only if he or she would be eligible to receive benefits if he or she separated from service.

(a) If the member or the member's beneficiary is not eligible for retirement, withdrawal, or death benefits, the alternate payee may not apply for or receive payment of his or her award.

(b) A court order may restrict an alternate payee's award to be payable only when the member applies for and receives benefits.

(2) An alternate payee may request to withdraw his or her award if:

(a) The member ceases to be an active member of PERS, and remains an inactive member for a full calendar month following the month in which the member ceased active membership.

(b) The member ceases to be a member of PERS by reason of:

(A) The member electing to withdraw the member account under ORS 238.095(1), or

(B) The member losing membership in PERS under ORS 238.095(2).

(3) Unless prohibited by court order, an alternate payee who requests a withdrawal shall receive an additional 50 percent of the alternate payee award as of the effective date of withdrawal if:

(a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and before June 30, 2006; and

(b) As of the alternate payee's effective date of withdrawal, the member has met the requirements of OAR 459-010-0055(4), or would meet them except that he or she has not withdrawn that portion of the member account that may be withdrawn by the member.

(4) Under no circumstance may an alternate payee withdraw less than the entire alternate payee award.

(5) The alternate payee may revoke the request for withdrawal if PERS receives a written request to revoke prior to the date of distribution.

(6) The separate account in the name of the alternate payee shall be credited with interest in accordance with OAR 459, division 007 as follows:

(a) To the date of distribution from that separate account provided the member is a vested active or inactive member as provided in ORS 238.425 on the date the member is first eligible for a benefit.

(b) For a 60-month period from the date a member who is not vested under provision of ORS 238.425 ceases to be an active member of PERS.

(c) To the date a non-vested member ceases to be a member as provided in ORS 238.095(2).

(7) An alternate payee who is awarded a separate account in the Fund in his or her own name shall not be allowed to participate in the Variable Annuity Account in the Fund, as described in ORS 238.260, regardless of whether the member participated in the Variable Annuity Account in the Fund.

(8) Separate alternate payee accounts will be administered pursuant to ORS 238.250 and 238.255 if:

(a) The member established membership in PERS or performed any period of service for a participating public employer that is credited to the six month period of employment required of an employee under ORS 238.015 prior to January 1, 1996, or

(b) The member ceased to be a member of PERS under the provisions of ORS 238.095, 238.105, or 238.545, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January 1, 1996.

(c) All alternate payee separate accounts will be administered pursuant to ORS 238.250 and 238.435, if the provisions of sections (8)(a) and (b) are not applicable to a member.

(9) An alternate payee who elects to begin receiving his or her award pursuant to a court order that uses the Division Methods described in OAR 459-045-0010 Sections (1) and (2), may select any retirement payment option available to the member, other than a joint and survivor annuity, but only if a court order allows the alternate payee to make any elections. The retirement payment to an alternate payee shall be:

(a) Contingent on the member's eligibility for retirement benefits, regardless of whether the member actually retires,

(b) Shall be separate and independent from the member's payment date and payment option, and

(c) Shall be actuarially computed based on the age and life expectancy of the alternate payee.

(10) The alternate payee shall elect to convert the award to one of the following optional forms:

(a) Refund Annuity Option, as described in ORS 238.300,

(b) Option 1, as described in ORS 238.305(1),

(c) Option 4, as described in ORS 238.305(1), or

(d) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and 238.305(3).

(11) An alternate payee whose total award is less than \$200 per month under Option 1, defined at ORS 238.305(1), shall receive in lieu of any and all allowances or other benefits or form of payment described in section (10) of this rule, a one time lump-sum payment equal to the actuarial value as of the effective date of the alternate payee's retirement, as is the case for a member under ORS 238.315.

(12) An alternate payee shall not receive any cost of living increase under ORS 238.360, or special ad-hoc increase that may be granted by the Legislature under 238.365 or 238.385, or any other type of increase that may be granted to PERS retirees until benefits are first paid by PERS to or on behalf of the member.

(13) An alternate payee shall not be entitled to health insurance benefits under ORS 238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits to an alternate payee.

(14) An alternate payee shall not be entitled to any benefits derived from the optional purchase of police officer and fire fighter benefit units under 238.440 regardless of whether a court order awards these benefits to an alternate payee.

(15) If an alternate payee begins receiving a payment prior to the member, the alternate payee is not entitled to any further increases in retirement credit that the member may earn or become entitled to prior to the member's actual retirement due to continued employment for an employer participating in PERS.

(16) Death benefits payable under a division of PERS benefits pursuant to a court order are as follows:

(a) Alternate payee awards are payable to the alternate payee's beneficiary or estate as provided by ORS 238.390 and 238.395. No benefits shall be payable under ORS 238.395 with respect to an alternate payee unless the member would have been eligible for death benefits under ORS 238.395 had the member died on the same date as the alternate payee.

(b) If the member predeceases the alternate payee, the alternate payee's payment becomes due and payable unless the alternate payee was awarded a separate account in the Fund at the time of the divorce, or at the time the member becomes eligible for benefits, the alternate payee elects to establish a separate account.

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(c) If the alternate payee was awarded a separate account in a final court order, whether at the time of divorce or at a later date, the alternate payee may elect to receive his or her account in the form of a death benefit under ORS 238.390 and/or 238.395 if the member predeceases the alternate payee before the alternate payee commences receiving benefits, provided that all other applicable conditions for the death benefit are satisfied. If the alternate payee elects a death benefit under ORS 238.390 and/or 238.395, the death benefit shall be in lieu of any withdrawal, retirement, or other benefit. If the alternate payee does not elect a death benefit, he or she shall be eligible to withdraw the separate account, or to leave the account in the Fund and elect to draw payments under one of the optional forms described in section (10) of this rule, any time on or after the date the member would have reached the earliest retirement age.

(17) Benefit payments to either the member or the alternate payee, or to both simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal Revenue (IRC) shall be deducted from the benefit payment(s) to the member and/or the alternate payee. Unless a final court order specifies the allocation of the deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the amount that exceed those limits in the same proportions that benefits were awarded to the member and the alternate payee as specified in a final court order.

Stat. Auth: ORS 238.465(3) & ORS 238.650  
Stats. Implemented: ORS 238.465 & OL 2003 Ch. 276 § 2  
Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04

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**Adm. Order No.:** PERS 18-2004  
**Filed with Sec. of State:** 6-15-2004  
**Certified to be Effective:** 7-1-04  
**Notice Publication Date:** 5-1-04  
**Rules Adopted:** 459-013-0280

**Subject:** The PERS Board approved the settlement agreement in the *City of Eugene v. PERS* case. One of the provisions of that agreement requires the Board to adopt a rule governing the calculation of money match retirement benefits for members with accounts in the variable account program (paragraph 1.1 of the settlement agreement). The rule provides that the member's annuity and pension will be calculated first as if the member's variable contributions had been invested in the regular account. Then, that allowance (pension and annuity) will be adjusted up or down depending on whether the member's variable account out- or under-performed the regular. The terms of the settlement agreement require the agency to adopt this new methodology to be effective no later than July 1, 2004.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-013-0280

### Calculation of Variable Match

This rule will be used to determine the member's retirement allowance under the Money Match method provided for in ORS 238.300(2)(b)(A) for members that are subject to the variable annuity adjustment provided under ORS 238.260(12). To calculate these members' retirement allowance, the following process will be used:

(1) **Annuity Calculation.** The balance in the member's regular account will be combined with a projected balance based on what the member's variable account balance would have been had the member's contributions to the variable account been made to the regular account instead. If the member chooses a retirement allowance that includes an annuity, this combined balance will be converted to an annuity using the appropriate actuarial equivalency factor to determine that annuity.

(2) **Pension Calculation.** The pension provided for in ORS 238.300(2)(b)(A) will be determined by applying an actuarial equivalency factor to the combined balance determined in accordance with section (1).

(3) **Variable Adjustment.** The retirement allowance calculated under sections (1) and (2), as applicable, will be increased or decreased by applying an actuarial equivalency factor to the difference between the actual balance in the member's variable account on their effective retirement date and the projected balance determined under section (1) above.

(4) The provisions of this rule only apply to members who participated in the variable account program by making contributions to their variable account on or after January 1, 1982. The adjustment provided for by ORS 238.260(12) and this rule will apply only to those contributions and associated earnings after that date.

(5) In determining "the portion of the annuity payable from the Variable Annuity Account" as required by ORS 238.260(10) and (11), all of the member's variable account will be included, including the portion that

is included in calculating the variable adjustment at retirement specified in ORS 238.260(12).

(6) The method described in this rule to calculate a member's allowance will also be followed to calculate the "look-back" benefit as described in section 4 of chapter 68, Oregon Laws 2003 (HB 2004). The difference in value between the member's variable and what those contributions would have earned in the regular account as of June 30, 2003 will be used as the basis for the "look-back" comparison.

(7) If a member who has a variable account elects to transfer that account balance to the regular account under ORS 238.260(14), the difference between the amount in the variable account (subject to the limitations in section (4) of this rule) and what that portion of the variable account would have been had the member instead invested solely in the regular account shall be determined as of the date of the transfer. That difference will be applied to the member's regular account as described in section (1) of this rule and also pursuant to ORS 238.260(12)(b) or (c) to increase or decrease the member's retirement allowance.

(8) The provisions of this rule are effective July 1, 2004.

[ED. NOTE: Example referenced is available from the agency.]

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.260(12); 238.300(1) & (2)

Hist.: PERS 10-2004(Temp), f. 4-15-04 cert. ef. 7-1-04 thru 10-31-04; PERS 18-2004, f. 6-15-04, cert. ef. 7-1-04

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**Adm. Order No.:** PERS 19-2004  
**Filed with Sec. of State:** 6-15-2004  
**Certified to be Effective:** 6-15-04  
**Notice Publication Date:** 5-1-04  
**Rules Amended:** 459-017-0060

**Subject:** This rule is being amended because chapter 625, Oregon Laws 2003 §34 and chapter 311, Oregon Laws 2003 expand the list of retired members that can exceed 1,039 hours without jeopardizing their retirement benefits. The rule is also being amended to list the Social Security earnings limits for 2004 and to clarify the rule's applicability to total lump sum retirees and those who choose early retirement.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-017-0060

### Reemployment of Retired Members

(1) Reemployment under ORS 238.082(2). A retired member of the system receiving a service retirement allowance, who has elected an option other than the total lump sum option under ORS 238.305(3), including those who have retired at a reduced benefit under ORS 238.280(1), may be employed under ORS 238.082(2) by a participating employer without loss of retirement benefits provided:

(a) The period or periods of employment by one or more public employers participating in the system do not exceed 1039 hours in a calendar year; or

(b) If a retired member is receiving old age, survivors or disability benefits under the federal Social Security Act, employment is limited to the greater of 1039 hours in a calendar year or the total number of hours at a specified hourly rate of pay, so that the annual compensation of the retiree does not exceed the following:

(A) For retired members who have not reached the full retirement age under Social Security, the limit is \$11,640 for the calendar year 2004; or

(B) For the calendar year in which the retired member reaches the full retirement age under Social Security and only for the months prior to reaching the full retirement age, the limit is \$31,080 for the calendar year 2004.

(c) Retired members who reach the full retirement age under Social Security may work an unlimited number of hours.

(2) Limitations on employment in section (1) of this rule will be based on the number of hours employed on and after the retired member's effective retirement date.

(3) The limitations on employment in section (1) of this rule do not apply if:

(a) The retired member meets the requirements under ORS 238.082(3), (4), (5) or (6), and did not retire under the provisions of ORS 238.280(1); or

(b) The retired member meets the requirements under ORS 399.075(8).

(4) Except as provided under section (3) of this rule, limitations on employment in section (1) of this rule shall also apply to retired members who, upon reemployment, elect to participate in an Optional Retirement

# ADMINISTRATIVE RULES

Plan under ORS 243.800, or an Alternative Retirement Plan under ORS 353.250(2).

(5) A participating employer may be required to certify to PERS that a retired member has not exceeded the number of hours allowed in ORS 238.082(2) and this rule. In addition, the participating employer may be required to provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.

(6) Exceeding the hourly limitation. If a retired member is reemployed within the limitations of ORS 238.082(2) and section (1) of this rule, but the period or periods of employment subsequently exceeds those limits, the following will occur if employment continues into the month following the date the limits are exceeded:

(a) PERS will terminate the retired member's benefits. The last monthly service retirement allowance the member is entitled to will be for the month in which the limits were exceeded.

(b) The member will reestablish active membership in accordance with ORS 238.078 the first of the calendar month following the date the limits were exceeded. If the member has incurred a break in service as defined in OAR 459-070-0001(1), then the employee will become a member of the Oregon Public Service Retirement Plan (OPSRP) pension program.

(c) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(7) Reemployment under ORS 238.078. If a retired member is reemployed in a qualifying position by a participating employer under the provisions of ORS 238.078, the following will occur and will be effective on the date of reemployment:

(a) PERS will terminate the retired member's benefits. The last monthly service retirement allowance to which the member is entitled will be for the month prior to the calendar month the member is reemployed. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS; and

(b) The member will reestablish active membership. If the member has incurred a break in service, as defined in OAR 459-070-0001(1), then the employee will become a member of the OPSRP pension program.

(c) If the member has been retired less than six months as of the effective date of reemployment, all retirement benefits received by the member must be repaid to PERS in a lump sum payment before the member can be reemployed.

(8) Reporting requirement. The employer shall notify PERS under which statute the retiree is reemployed in a format acceptable to PERS.

(9) The provisions of this rule are not applicable to a reemployed retired member who is not defined as an employee under OAR 459-005-0001.

(10) Sick leave. Accumulated unused sick leave reported by the employer to PERS upon retirement, as provided for in ORS 238.350, will not be made available to a retired employee returning to work under the provision of sections (1) or (7) of this rule.

(11) The provisions of this rule are effective January 1, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078 & 238.082

Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04; PERS 19-2004, f. & cert. ef. 6-15-04

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## Oregon State Lottery Chapter 177

**Adm. Order No.:** LOTT 6-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 5-26-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 177-010-0003, 177-040-0000, 177-040-0003, 177-040-0025, 177-040-0050, 177-040-0052

**Subject:** The amendments define the terms "Business Day," "Business Week," "Business Year," and "Traditional Lottery Games"; revise the definition for "Premises"; delete the specific reference to the time that the Lottery business week ends; revise the title and explanations for compensation for Traditional Lottery retailers, add a provision for an existing one percent bonus paid to retailers for validating and paying a prize of \$600 or less for a winning Scratch-it or On-Line ticket; retain current traditional lottery compensation rates; reduce the number of non-sufficient funds transactions from four to three per year per retailer; relieve the retailer from responsi-

bility for bank errors that cause an NSF as long as the bank verifies and corrects the error; address temporary bank closures and allow a grace period for funds to be deposited. The remaining amendments are grammar and housekeeping.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-010-0003

#### Definitions

(1) "Business day" means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) "Business week" means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) "Business year" means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) "Commissioner" has that definition as defined in ORS 461.010(2).

(5) "Director" has that definition as defined in ORS 461.010(3).

(6) "Drawing coordinator" means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) "Immediate family" and "family member" mean a natural person's spouse, child, brother, sister, or parent by blood or adoption.

(8) "Lottery" or "State Lottery" has that definition as defined in ORS 461.010(1).

(9) "Lottery Commission" or "Commission" has that definition as defined in ORS 461.010(4).

(10) "Lottery contract" means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) "Lottery contractor" or "contractor" has that definition as defined in ORS 461.010(9).

(12) "Lottery game" or "game" has that definition as defined in ORS 461.010(5).

(13) "Lottery game retailer" or "retailer" has that definition as defined in ORS 461.010(7).

(14) "Lottery vendor" or "vendor" has that definition as defined in ORS 461.010(8).

(15) "Person" has that definition as defined in ORS 461.010(6).

(16) "Prize" means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(17) "Retailer contract" means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(18) "Share" means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in video lottery games.

(19) "Ticket" means a certificate or token of the opportunity to win a prize in a Lottery game.

(20) "Traditional lottery games" means all lottery games offered by the Oregon Lottery, other than video lottery games, and includes Breakopen, Scratch-it, and On-Line games.

(21) "Unclaimed prize" means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(22) "Video lottery terminal" means an electrical, electronic, or electro-mechanical device, component, or terminal, which may display a game or other graphics through the use of a video display screen, which is available for consumer play upon payment of the necessary or appropriate consideration, with winners determined by the application of the element of chance and the possible prizes displayed on the device.

(23) "Winner claim form" means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 192.440, 461.020, 461.100, 461.120, 461.170, 461.213, 461.215, 461.230, 461.240, 461.250, 461.260, 461.300, 461.310, 461.500 & 461.510

Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

### 177-040-0000

#### Definitions

For purposes of OAR chapter 177 division 40, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Age-controlled area" means an area where natural persons who are under 21 years of age are prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

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(2) "Applicant" means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) "Application" means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) "Business" includes:

- (a) A commercial activity engaged in for profit or gain; or
- (b) The activity engaged in by a nonprofit organization; or
- (c) The activity engaged in by a private club as defined in ORS 471.175(8).

(5) "Complete application" means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) "Premises" means the building and grounds occupied by a business (including those areas not normally open to the public), where traditional lottery game tickets and shares, video lottery game shares, or both, are sold. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon video lottery terminals.

(7) "Key person" means:

(a) All officers, directors and stockholders of a privately held corporation including the officers, directors and stockholders of any parent company;

(b) All officers, directors and those stockholders who own 5% or more of a publicly traded corporation including the officers, directors and those stockholders who own five percent or more of any parent company;

(c) For a private club as defined in ORS 471.175(8), the president or equivalent position, the treasurer or equivalent position, and officers, directors, trustees, and managers who oversee or direct the operation of the food, beverage, lottery, or other gambling related activities of the private club. The definitions in subsection (7)(a) and (b) do not apply to private clubs.

(d) In a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(e) In an association, the members, officers, and directors;

(f) In a partnership or joint venture, the general partners, limited partners, or joint venturers;

(g) In a limited liability company all the members and managers;

(h) If any parent company, partner, member, manager of a limited liability company, shareholder or joint venturer is itself a corporation, association, trust, limited liability company, partnership, or joint venture, then the applicant shall provide disclosure for such entity as if it were a key person;

(i) Immediate family members as required in ORS 461.300;

(j) The sole proprietor, if the retailer is a sole proprietor;

(k) Any person who acts or who has the authority to act on behalf of the owner in all matters concerning the operation of the owner's business during all business hours. This definition does not include a "shift manager" or a "store manager" unless qualified under this rule. The following are examples of managers who are key persons under this definition:

(A) A person who operates the business for a corporation or absentee owner, such as a general manager;

(B) A person who operates multiple locations or supervises multiple store managers, such as an area manager; or

(C) Any person who, acting on behalf of the owner, performs duties that amount to full responsibility for the daily operation of the business. Full responsibility means the person has the authority to perform and routinely performs all of the following duties: the hiring and firing of employees, making purchasing decisions relating to the buying of supplies and inventory; and conducting banking functions for the business;

(l) A landlord who receives 40% or more of the retailer's Lottery commissions as a part of lease payments and/or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer's business;

(m) Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a video lottery retailer's premises other than as an employee.

(n) Notwithstanding the information each person is required to disclose described in ORS chapter 461, the Director may waive disclosure requirements for the persons in (a) through (m) of this section when the Director concludes it is reasonable and prudent to do so and will not jeopardize the fairness, integrity, security, or honesty of the Lottery.

(o) Any reference to a "control person" of a retailer in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on the

effective date of this rule shall be deemed to refer to a "key person" as defined in this section.

(8) "Personal disclosure" means that part of the application which relates to a natural person's personal, criminal, and financial background.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.300

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 11-1987, f. 6-22-87, ef. 7-1-87; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

## 177-040-0003

### Application for Temporary Lottery Retailer Contract

(1) For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2)(a) To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) When an applicant intends to apply for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant may submit to the Lottery a complete application with a copy of the purchase agreement and other relevant sales documents prior to the date the applicant takes possession of the premises pursuant to the purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The "Criteria Precluding Entering Into A Contract" described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in the "Personal Criteria Which May Be Grounds for Denial", OAR 177-040-0010 sections (3), (6), and (7);

(e) The applicant has no Class "A" misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that their location is in compliance with the "Retailer Wheelchair Accessibility Program" criteria described in OAR 177-040-0070;

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as defined in ORS Chapter 461, if applying for a contract to offer video Lottery games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) the applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) the applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

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- (a) Receive training from the Lottery;
- (b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;
- (c) Pay all necessary fees associated with the installation of telephone lines and telephone service;
- (d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and
- (e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) The applicant and the applicant's business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer video Lottery games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery's requirements. The business must have been open to the public and operating as required in OAR 177-040-0017, and the applicant must submit sales figures showing that Lottery revenue will be less than 60 percent of the business's total revenue as defined herein.

(7) If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a key person may be required to personally guarantee all monies owed to the Lottery.

(8) The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) If the Lottery enters into a temporary retailer contract with the applicant, the terms of that contract will require that the applicant agree to pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant shall establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) The Director, at the Director's sole discretion, may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided material false or misleading information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

(12) A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 5-2000, f. 7-26-00, cert. ef. 11-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

## 177-040-0025

### Retailer Compensation — Traditional Lottery Games

(1)(a) **Traditional Sales Compensation:** The Lottery shall pay a retailer the following compensation rates for the weekly sales of traditional lottery game tickets or shares offered by the Lottery and sold by the retailer as set forth below:

Amount Sold Per Week	Compensation - % of Gross Sales
Below \$1,000	— 5.00%
\$1,000 to \$1,999.99	— 7.00%
\$2,000 to \$2,999.99	— 7.50%
\$3,000 to \$3,999.99	— 8.00%

\$4,000 to \$4,999.99 — 8.50%

\$5,000 to \$5,999.99 — 9.00%

\$6,000 to \$6,999.99 — 9.50%

\$7,000 and up — 10.00%

(b) **Calculation of Sales:** A retailer's weekly sales shall be calculated on the combined weekly gross sales of On-Line tickets, Scratch-it tickets, and Breakopen shares made from the retailer's premises during a business week, less Scratch-it ticket and Breakopen share returns recorded by the Lottery and other sales related adjustments made during the week. For the purpose of calculating weekly sales, Breakopen shares are sold when the Breakopen shares are shipped by the Lottery to a retailer, Scratch-it tickets are sold when the tickets are activated by the retailer, and On-Line tickets or shares are sold when the request for the On-Line ticket or share is electronically received and verified by the Lottery's central computer system.

(2) **Breakopen Compensation:** Notwithstanding the compensation structure established in section (1) of this rule, the minimum compensation rate paid to a Lottery retailer for the sale of Breakopen shares shall be eight percent (8.00%). For example: If a retailer's weekly sales of traditional Lottery game tickets and shares equals \$2,620, with \$1,620 representing Breakopen sales, then the compensation rate for On-Line and Scratch-it sales of \$1,000 is 7.50% and the compensation rate for Breakopen sales of \$1,620 is 8.00%. If a retailer's total weekly sales of traditional Lottery game tickets and shares total \$5,500, with Breakopen sales of \$1,620, then the compensation rate for On-Line ticket and Scratch-it ticket sales, and for Breakopen sales, is 9.00%.

(3)(a) **One Percent Selling Bonus:** For selling any winning and validated Scratch-it or On-Line ticket or share with a prize of \$10,000 or more, a Lottery retailer shall receive a bonus equal to one percent (1.00%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-it prize of \$25,000, the selling Lottery retailer shall receive \$250.

(b) **Bonus for Variable Prizes:** Prior to the implementation of a traditional lottery game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.

(4) **One Percent Prize Payment Bonus:** For paying a winning and validated Scratch-it or On-Line ticket or share with a prize of \$600 or less, a Lottery retailer shall receive a bonus from the Lottery equal to one percent (1.00%) of the prize won by the player.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 12-1996, f. & cert. ef. 12-27-96; LOTT 9-1999, f. 5-27-99, cert. ef. 6-27-99; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

## 177-040-0050

### Retailer Duties

(1) This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in the OAR division 177, ORS chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) All Lottery retailers shall:

(a) Replace ribbons, ticket stock and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(b) Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(c) Be required to arrange for and obtain all necessary permits required by state and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(d) Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each the Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT col-

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lection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) A traditional game Lottery retailer shall:

(a) Validate a Scratch-It ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any traditional Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) Validate On-Line game prizes through the On-Line terminal before paying an On-Line prize.

(4) A Breakopen game Lottery retailer shall, after validation and payment of the prize, destroy the Breakopen share.

(5) A video Lottery game retailer shall:

(a) Validate cash slips through the video management terminal (VMT) before paying a prize.

(b) Restrict video lottery terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) Maintain video lottery terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon Lottery or the Oregon Liquor Control Commission. This restriction against minors shall not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(6) The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share including, but not limited to, imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR chapter 177.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99; Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

## 177-040-0052

### Non-Sufficient Funds

(1) **Definitions:** For purposes of this rule: "Working day" means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when the Lottery Headquarters in Salem is open for business.

(2) **Retailers with Temporary Contract or Letter of Authority:** If an electronic funds transfer (EFT) from a retailer with a temporary contract or a letter of authority issued under ORS 461.335, is not made due to non-sufficient funds (NSF) in the retailer's EFT account, and non-payment is not excused under this rule, the Lottery shall terminate the retailer's temporary contract or letter of authority, and disable or remove Lottery equipment from the retailer's premises. Processing of the retailer's application for a retailer contract otherwise may proceed.

(3) **First NSF:** The first time that a Lottery retailer's EFT payment to the Lottery is not made due to non-sufficient funds in the retailer's EFT account, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** Terminate the retailer's contract and remove the Lottery's equipment if the retailer fails to pay by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled.

(4) **Second NSF:** When a retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a second time within one year of the retailer's first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay by certified funds, the EFT transfer amount plus an additional \$50

fee for the Lottery's administrative expenses in processing the NSF and post a bond or make a cash deposit if allowed by the Director under paragraph (A) of subsection (d) of this section.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** The Lottery shall terminate the retailer's contract and remove the Lottery's equipment:

(A) Unless the Director allows the retailer to post a bond, or make a cash deposit by certified funds with the Lottery. The Director shall determine the amount, the term, and any other applicable conditions. The amount of the bond or cash deposit will be no less than twice the retailer's weekly average EFT transfers, calculated using the immediately preceding three calendar months; or

(B) If the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled, or fails to post a bond or make a cash deposit within five working days of the date the equipment was disabled when allowed under paragraph (A) of this subsection.

(5) **Third NSF:** When a Lottery retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a third time within one year of the retailer's first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises until the contract is terminated and the equipment is removed.

(c) **Payment:** Require the retailer to pay, by certified funds, the amount of money that was to be paid by EFT plus the \$50 fee within five working days of the date the Lottery equipment on the retailer's premises was disabled.

(d) **Forfeit Bonus:** Require the retailer to forfeit any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs.

(e) **Terminate Contract:** Terminate the retailer's lottery contract and remove the Lottery's equipment.

(6) **NSF Due to Financial Institution Error:** Any NSF that is due to an error committed by the retailer's financial institution does not count toward the three NSF limit in this rule as long as the error is corrected and Lottery receives documentation from the retailer's financial institution. The financial institution must substantiate to the Director's satisfaction the financial institution's responsibility for causing the NSF, and that but for the financial institution's error, sufficient funds would have been available in the retailer's account to cover the EFT payment.

(7) **Financial Institution Closures:** Any NSF that is due to an unexpected temporary closure of the retailer's financial institution does not count toward the three NSF limit in this rule as long as the NSF is corrected and Lottery receives documentation from the retailer's financial institution that substantiates to the Director's satisfaction the reason for the financial institution's unexpected closure. The retailer shall make the deposit before 5 p.m. of the next day the financial institution is open or available for deposits to be made. If the deposit is not made as described, the Lottery shall treat it as an NSF under these rules.

(8) **Retailer's Obligations Survive Contract Termination:** Termination of the retailer's contract does not release the retailer from any obligation to pay all amounts due the Lottery under this rule and the retailer's Lottery contract. The Lottery may make a claim upon any bond, or cash deposit posted under this rule, and apply the money to any of the retailer's obligations owed to the Lottery. The Lottery may initiate collection action on behalf of the State to collect all amounts due.

(9) **Director's Discretion:** The Director may make exceptions to these requirements based upon the facts and circumstances of any particular payment by a retailer which is rejected for non-sufficient funds.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

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**Adm. Order No.:** LOTT 7-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 6-27-04

**Notice Publication Date:** 5-1-04

**Rules Repealed:** 177-040-0190

# ADMINISTRATIVE RULES

**Subject:** OAR 177-040-0190 is being repealed for redundancy effective June 27, 2004.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

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**Adm. Order No.:** LOTT 8-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 6-27-04

**Notice Publication Date:** 5-1-04

**Rules Adopted:** 177-040-0026

**Subject:** The rule sets forth the new compensation system and new compensation rates for video lottery retailers effective June 27, 2004 which were approved for rulemaking by the Lottery Commission at the March 31, 2004 Commission meeting.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0026

### Retailer Compensation — Video Lottery Games

(1) The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (a) or subsection (b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (a) of this section for the first business year the contract is in effect. For each subsequent business year the contract is in effect, no less than 60 days before the beginning of the upcoming business year, the retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

#### (a) 3-Tier Option:

##### Net Receipts per Year — Compensation - Percent of Net Receipts

up to \$175,000 — 32.5%  
\$175,000 to \$475,000 — 26%  
\$475,000 and up — 17%

For example, if a retailer's annual net receipts are \$600,000, the retailer would receive over the course of the business year: 32.5 % of the first \$175,000, (\$56,875) and 26% of the next \$300,000 (\$78,000) and 17 % of the remaining \$125,000, (\$21,250) for a total of \$156,125.

#### (b) 2-Tier Option:

##### Net Receipts per Year — Compensation - Percent of Net Receipts

up to \$650,000 — 26%  
\$650,000 and up — 19%

For example, if a retailer's annual net receipts are \$1,000,000, the retailer would receive over the course of the business year: 26% of the first \$650,000 (\$169,000) and 19% of the remaining \$350,000 (\$66,500) for a total of \$235,500.

(2) The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares for video poker games as described in OAR 177-200-0070.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 6-27-04

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**Adm. Order No.:** LOTT 9-2004

**Filed with Sec. of State:** 5-26-2004

**Certified to be Effective:** 5-26-04

**Notice Publication Date:** 5-1-04

**Rules Adopted:** 177-045-0060, 177-045-0080

**Rules Amended:** 177-045-0000, 177-045-0010, 177-045-0030, 177-045-0040

**Rules Repealed:** 177-045-0020

**Subject:** These rules update definitions, add new provisions regarding video lottery terminals and allocation to retailers, revise terminal placement requirements, add new provisions regarding equipment loss and liability, define the retailer's responsibilities for loss or damage to Lottery equipment and distinguish liability between losses \$2,500 and over, and under \$2,500, and make general housekeeping and grammar changes. OAR 177-045-0020 is being repealed

as it has been moved to Division 200 - General Video Lottery Game Rules.

(Claims for loss or damages under \$2,500 will be processed by the Oregon Lottery. Claims for losses of \$2,500 or more will be reported to the Department of Administrative Services Risk Management Division in accordance with Oregon Revised Statutes Chapter 278.)  
**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-045-0000

### Definitions

For purposes of OAR chapter 177, division 45, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) "Equipment" means all equipment placed by the Lottery or a Lottery vendor on a retailer's premises including, but not limited to, video lottery terminals and all equipment necessary for their operation, instant ticket vending machines, validation terminals, on-line sales terminals, display equipment, and interior and exterior signage.

(2) "Instant ticket vending machine" or "ITVM" means an electrical, electronic, or electro-mechanical device that dispenses Scratch-it or Breakopen tickets directly to a consumer upon payment of the appropriate purchase price.

(3) "Occurrence" means an accident, incident, or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant losses. Each loss by earthquake, flood, freeze, or windstorm will constitute a single occurrence. If more than one earthquake or flood occurs within any 72-hour period, the State of Oregon will determine the moment when the time period began.

(4) "Premises" has that definition as used in OAR 177-040-0000(6).

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

## 177-045-0010

### Equipment Management Generally

(1) General Equipment Management: The Director of the Lottery shall manage Lottery equipment pursuant to ORS 461.200. The Lottery may discontinue or remove existing equipment, or may implement new or replacement equipment at any time.

(2) Retailer's Sales: A retailer's sales, or in the case of an applicant, estimated sales, of Lottery tickets and shares are the prime factor considered by the Director in managing Lottery equipment.

(3) Equipment Inspection: The Lottery may access, inspect, furnish, repair, place, replace, upgrade, modify, add, or remove Lottery equipment at a retailer's premises at any time during regular business hours.

(4) Obsolete and Defective Equipment: The Lottery may replace obsolete or defective equipment with new, used, or refurbished replacement equipment.

(5) Test Equipment: With the consent of the retailer, the Lottery may deploy test equipment on a retailer's premises.

(6) Other Laws: This rule does not preclude the Lottery from removing any or all of its equipment pursuant to any other applicable law, rule, or contract provision.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

## 177-045-0030

### Video Lottery Terminals

(1) Allocation of Terminals: In the exercise of the Director's discretion and subject to all other requirements, the Director may allocate and reallocate the Lottery's video lottery terminals among Lottery video retailers at any time and in any manner. The Director shall consider:

(a) Availability: The availability of the terminals and related equipment.

(b) Public Access: Adequate and convenient public access to video lottery games statewide.

(c) Retailer Sales: The actual or projected net video sales generated from the play of video lottery games at each video lottery retail location.

(A) Minimum Sales Requirement: A new or existing video lottery retailer shall generate a minimum of \$200 in average net video sales per week per terminal. The Lottery shall calculate the average using any 90-day or greater time period determined by the Lottery. Net video sales are cal-

# ADMINISTRATIVE RULES

culated by subtracting prizes awarded on a video lottery terminal from wagers placed on the terminal. The Director may remove one or more terminals from a retail location when the retailer is unable to meet the minimum sales requirement.

(B) Comparative Sales Analysis: Based on a per terminal average, the Director may give higher priority for the placement of video lottery terminals to a retailer that has higher actual or projected net video sales, and may remove video lottery terminals from a retailer that has lower actual net video sales.

(d) Floor Space: The Lottery requires each video lottery retailer to have a minimum amount of floor space per each video lottery terminal. A retailer with less than 360 square feet of retail floor space is not eligible to receive any video lottery terminals for that business. A retailer with 360 square feet of retail floor space may receive up to three video lottery terminals. For each 120 square feet of retail floor space over the required minimum square footage of 360 square feet, a retailer may be eligible for one additional video lottery terminal up to the maximum number of terminals permitted under Oregon law.

(A) Retail Floor Space: Total retail floor space includes all areas open to the public in the business including, but not limited to, restrooms and hallways, but does not include offices, kitchens, storage rooms, and any other areas not generally open to the public. Total retail floor space does not include any space or portion of the business that is a common area or is shared with other businesses, or that is not contiguous with the areas where the video lottery terminals are located or proposed to be located.

(B) Removal of Terminals: The Director may remove or limit the number of terminals in a business to bring it into compliance with the floor space standards.

(C) Existing Retailers: This section, unless otherwise provided, does not apply to existing video lottery retailers whose space requirements were determined under a previous version of this rule.

## (2) Miscellaneous Requirements:

(a) Restricted Visibility: The Lottery will only place video lottery terminals in those areas of a business with restricted visibility from areas outside of the business, and from the view of dining or other areas where minors are permitted to linger. Under certain circumstances, Oregon Liquor Control Commission rules may permit minors in the same areas as properly placed video lottery terminals. This rule is not intended to override any OLCC exception.

(b) Adjacent Businesses: When two or more adjacent businesses appear to the Director to be a single business, or are operated by the same or commingled ownership, then the Lottery may limit such businesses to the maximum number of video lottery terminals permitted under Oregon law for one business as the total number of terminals authorized for both or more such businesses.

(3) Reconsideration: Upon written request by a video lottery retailer, the Director may reconsider any video lottery terminal allocation decision made under this rule pertaining to that retailer.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

## 177-045-0040

### Instant Ticket Vending Machines (ITVMs) Placement and Sales Requirements

(1) Location Specifications: The Director of the Lottery may give preference for placement of an ITVM on a retailer's premises if the retailer has:

(a) A minimum of 5,000 square feet of retail space and a minimum of four operating check-out lanes that accommodate shopping carts; or

(b) An arrival or departure waiting area for customers of commercial transportation; or

(c) A minimum of twelve operating bowling lanes; or

(d) A minimum of four operating diesel fuel pumps; or

(e) A location on an interstate highway interchange, a state highway, or on a direct access road to an interstate or state highway; or

(f) An interior location in a shopping mall with a minimum average traffic count of 50,000 people per week through the mall, and

(g) Average Scratch-it sales in excess of \$200 per week for one ITVM or \$400 for a maximum of two. A retailer's average Scratch-it sales shall be measured over a twelve-month period as determined by the Lottery

(2) Director's Discretion Regarding Other Locations: The Director may place an ITVM at any other location identified by the Director as serving the best interests of the Lottery.

(3) Test Placement: With the consent of the retailer, the Director may place an ITVM at any retail location as a test. The Director or the Director's designee shall determine the length and conditions of the test.

(4) Stocking Machine: A retailer must keep any ITVM on its premises fully stocked with a variety of Oregon Lottery games. If a retailer fails to replenish the ITVM as games are sold out, the Lottery may remove the machine. The Lottery may exempt a test machine from these stocking and replenishment requirements.

(5) Removal of Machine: At the discretion of the Director, an ITVM may be removed from a retailer's premises.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

## 177-045-0060

### Equipment Loss or Damage

#### (1) Loss Claim Under \$2,500:

(a) A retailer is responsible for the actual cost of replacing, repairing, or removing lost, damaged, or destroyed Lottery equipment when the loss per occurrence is under \$2,500 and the retailer:

(A) Failed to exercise reasonable care to protect the equipment from damage, destruction, or theft;

(B) Intentionally damaged, destroyed, or stole the equipment, or allowed others to damage, destroy, or steal Lottery equipment; or

(C) Unless waived by the Director, previously had a loss claim (whether charged to the retailer or not) within the preceding twelve months.

(b) The Lottery will investigate whether a retailer failed to exercise reasonable care to prevent loss, damage, or destruction of Lottery equipment in the possession of the retailer, or whether the retailer intentionally damaged, destroyed, or stole, or allowed others to damage, destroy, or steal Lottery equipment. The Lottery Director shall determine if the retailer is responsible for the actual costs of replacing, repairing, or removing the Lottery equipment under subsection (a) of this section. If the retailer is determined to be responsible, the Lottery will bill the retailer and may electronically debit the retailer's account for the amount billed.

(2) **Ordinary Wear and Tear Excepted:** A retailer is not responsible for costs of replacing, repairing, or removing Lottery equipment resulting from ordinary wear and tear due to normal use of the equipment.

(3) **Loss Claim of \$2,500 or More:** Notwithstanding section (1) of this rule, a Lottery retailer is responsible for any loss, damage, or destruction to Lottery equipment when the loss is \$2,500 or more per occurrence. In the event of such loss, damage, or destruction, the Lottery will report it to the State of Oregon Department of Administrative Services Risk Management Division in accordance with ORS Chapter 278. Any claim that the Lottery may have against a retailer arising from the loss, damage, or destruction of such property is subrogated to the Risk Management Division upon payment of the claim by Risk Management to the Lottery. When requested, the retailer must reimburse Risk Management the amount paid to the Lottery for replacement or repair of the lost, damaged, or destroyed equipment.

(4) **Loss Management:** At its option, the Lottery may repair, replace, or remove any lost, damaged, or destroyed Lottery equipment, none of which has any effect on a retailer's liability to the State of Oregon, if any, for the loss, damage, or destruction of such equipment.

(5) **Contract Termination:** In addition to requiring payment for the loss, damage, or destruction of Lottery equipment, the Director may terminate the retailer contract of any Lottery retailer who failed to exercise reasonable care to protect Lottery's equipment. The Director shall terminate the retailer contract of any Lottery retailer who intentionally damages, destroys, or steals, or allows others to damage, destroy, or steal Lottery equipment.

(6) **Threats:** The Director may terminate the retailer contract of any Lottery retailer who threatens to damage or destroy Lottery equipment.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200, 461.217 & 461.300

Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

## 177-045-0080

### Finality of Decisions

The decisions and determinations of the Director under this Division are final.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200, 461.217, 461.300

Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04

# ADMINISTRATIVE RULES

**Adm. Order No.:** LOTT 10-2004  
**Filed with Sec. of State:** 5-26-2004  
**Certified to be Effective:** 5-26-04  
**Notice Publication Date:** 4-1-04  
**Rules Amended:** 177-099-0050

**Subject:** The amendment revises the Keno drawing interval from five to four minutes.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-099-0050

### Drawings

(1) General: Drawings shall take place at such times and upon such intervals as determined by the Director. Drawings shall normally take place at four minute intervals. The last drawing shall take place just prior to the deactivation of the On-Line game system for the day.

(2) Objective: Each drawing randomly selects twenty numbers from a possible eighty numbers that are the winning numbers. The winning numbers selected at each drawing are generated through the use of a computer-driven random number generator.

(3) Selection of the Keno Multiplier Number: The Lottery will conduct a separate random Keno Multiplier drawing and announce the result prior to each of the regular Keno drawings by displaying the Keno Multiplier number on the Keno monitor immediately prior to each new Keno game drawn and after the previous game pool closes. During each random Keno Multiplier drawing, one number will be selected. The Keno Multiplier numbers available for selection are 1, 2, 3, 5, and 10. The Keno Multiplier number selected at each drawing is generated through the use of a computer-driven random number generator in accordance with the provisions of OAR 177-046-0080.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 2-2004(Temp), f. 2-20-04, cert. ef. 2-23-04 thru 8-20-04; LOTT 10-2004, f. & cert. ef. 5-26-04

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## Oregon State Marine Board Chapter 250

**Adm. Order No.:** OSMB 2-2004(Temp)  
**Filed with Sec. of State:** 5-20-2004  
**Certified to be Effective:** 5-20-04 thru 9-20-04  
**Notice Publication Date:**  
**Rules Amended:** 250-020-0161

**Subject:** The Marine Board is temporarily prohibiting boats from using a portion of Lake Billy Chinook (Jefferson County) immediately above Round Butte Dam due to a barge-based drilling operation and associated activities in the forebay.

**Rules Coordinator:** Jill E. Andrick—(503) 373-1405, ext. 243

## 250-020-0161

### Boat Operations in Jefferson County

(1) No person shall operate a motorboat for any purpose on the following lakes:

- (a) Scout;
- (b) Round;
- (c) Jack;
- (d) Island;
- (e) Cache;
- (f) Hand; and
- (g) Link.

(2) Suttle Lake:

(a) No water skiing or motorboat operation in excess of 10 MPH to be permitted on Suttle Lake between the hours of 8 p.m. and 9 a.m., standard time, each day;

(b) No water skiing or motorboat operation in excess of 10 MPH to be permitted on Suttle Lake between the hours of 9 a.m. and 8 p.m., standard time, each day, except within the signed and designated fast boat area, water skier dropoff zone, and water skier take-off lanes, at the west end of the lake;

(c) Operating any boat which is equipped with a toilet to be prohibited on Suttle Lake, unless such toilet has an approved device to render waste harmless, or unless such toilet is rendered inoperative by having the discharge outlet effectively sealed.

(3) Lake Simtustus:

(a) No person shall operate a motorboat at a speed in excess of 5 MPH, a "Slow-No Wake" in the area within 300 feet of the moorage and extending to the opposite shore;

(b) No person shall operate a boat for any reason within the restricted tailrace area enclosed by the log boom approximately 1200 feet downstream of Round Butte Dam;

(c) No person shall moor a boat to the log boom or operate a boat for any reason within the restricted intake area enclosed by the log boom located approximately 200 feet upstream of Pelton Dam;

(d) Boat access in the areas closed by subsections (b) and (c) of this section is permitted for federal, state, local and tribal government agencies and Portland General Electric employees or their agents for official business only.

(4) Lake Billy Chinook:

(a) No person shall operate a motorboat in excess of 10 MPH in the following areas:

- (A) On the Crooked River Arm above the Crooked River Bridge;
- (B) On the Deschutes River Arm above the Deschutes River Bridge;
- (C) On the Metolius River Arm from a point approximately 1,000 feet upstream of Street Creek, as marked.

(b) No person shall operate a motorboat in excess of "Slow-No Wake," maximum 5 MPH speed within the buoyed areas at:

- (A) Cove Palisades State Park Marina;
- (B) The Crooked River Launching Ramp;
- (C) The Deschutes River Launching Ramp;
- (D) Within 200 feet of a designated swimming area;
- (E) Within a cove at Chinook Island (Metolius Arm) as marked;
- (F) Within the cove at Camp Perry South (Metolius Arm) as marked.

(c) Except for federal, state, local and tribal government agencies and Portland General Electric employees or their agents on official business, it is illegal for anyone to operate a boat between Round Butte Dam and the line of exclusion and warning buoys located approximately 1,400 feet upstream of the dam, as marked.

(5) No person shall beach, anchor or moor a boat within 200 feet of shore in the following areas at Lake Billy Chinook between 10 p.m. and 5 a.m.

(a) Crooked River Arm:

(A) East shore-between a point approximately 1,000 feet north of the cove Marina, as marked, and the Crooked River Bridge;

(B) West Shore — From the State Park boundary north approximately 2,000 feet, as marked.

(b) Deschutes Arm: East Shore — Between a point approximately 2,000 feet north of the northernmost boat launch, as marked, and the Deschutes River Bridge;

(c) This prohibition shall not apply to any leased or rented space within established marinas or moorages.

(6) No person shall operate or provide for others to operate a boat on Lake Billy Chinook which is equipped with a marine toilet, unless the toilet has a holding tank or is rendered inoperative so as to prevent any overboard discharge. This section becomes effective January 1, 1987.

(7) Haystack Reservoir. No person shall operate a boat in excess of 5 MPH in the following areas:

(a) In the western cove inside a buoy line approximately 500 feet from shore, as marked;

(b) In the southern cove inside a buoy line extending from south of the boat ramp on the east shore to a point south of the southeast peninsula, as marked.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 43, f. 7-18-69; MB 58, f. 7-2-74, ef. 7-2-74(Temp) & 7-25-74(Perm); Renumbered from 250-020-0200; MB 16-1985, f. & ef. 10-21-85; MB 8-1986, f. & ef. 7-28-86; MB 11-1986, f. & ef. 10-30-86; MB 6-1987, f. 4-20-87, ef. 5-1-87; MB 4-1990, f. & cert. ef. 7-13-90; MB 10-1992, f. & cert. ef. 8-21-92; MB 7-1993, f. & cert. ef. 10-11-93; MB 8-1994(Temp), f. & cert. ef. 6-17-94; MB 10-1994, f. & cert. ef. 9-28-94; OSMB 2-2004(Temp), f. & cert. ef. 5-20-04 thru 9-20-04

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## Oregon University System Chapter 580

**Adm. Order No.:** OSSHE 4-2004  
**Filed with Sec. of State:** 6-9-2004  
**Certified to be Effective:** 6-9-04  
**Notice Publication Date:** 5-1-04  
**Rules Adopted:** 580-040-0300, 580-040-0301, 580-040-0302, 580-040-0303, 580-040-0304, 580-040-0305, 580-040-0306, 580-

# ADMINISTRATIVE RULES

040-0307, 580-040-0308, 580-040-0309, 580-040-0310, 580-040-0311

**Subject:** This rule establishes procedures for disposition of property surplus to the needs of the Chancellor's Office and the Oregon University System institutions. In the 2003 Legislative Session, Legislation (Senate Bill 437) was passed and signed into law by the Governor granting authority to the State Board of Higher Education to dispose of surplus property.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5795

## 580-040-0300

### Purpose

These rules establish, for the Institutions of the Oregon University System (OUS) and the Chancellor's Office, a process for disposal of surplus and scrap property that safeguard's state assets, creates efficiency in surplus or scrapping, maximizes the value received for property that is surplus to institutional or the System needs, and is attentive to environmental impacts.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0301

### Definitions

For purposes of OAR 580-040-0301 through 580-040-0311, unless context requires otherwise:

(1) "Board" means Oregon State Board of Higher Education.

(2) "Chancellor's Office" means the offices that provide direct administrative support to the Chancellor and the Board, and are not part of an OUS institution.

(3) "Employee" means a person who, within the last twelve months, has been paid a wage for full-time, part-time, or temporary work by an institution or the Chancellor's Office.

(4) "Federally Funded Surplus Property" means personal property, vehicles, and titled equipment, purchased with federal grant or other federal funds and that is worn-out, obsolete, or excess to the Chancellor's Office or an institution's needs, or otherwise unsuitable for intended use, the disposal of which would be to the financial benefit of the institution or Chancellor's Office.

(5) "Institution" means any of the institutions of the Oregon University System.

(6) "President" means the chief executive officer of an Oregon University System campus or designee.

(7) "Scrap" means materials, including lost, mislaid, or abandoned property having no financial value or such low financial value as to make sale not cost effective.

(8) "Surplus Property" means all personal property, including lost, mislaid or abandoned property, vehicles and titled equipment that is worn-out, obsolete or excess to the Chancellor's Office or an institution's needs, or otherwise unsuitable for intended use, the disposal of which would be to the financial benefit of the institution or Chancellor's Office.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0302

### General

(1) The Chancellor's Office and Oregon University System institutions may, in accordance with these rules, dispose of any worn out, obsolete, scrap, or otherwise unsuitable surplus property, the disposal of which would be to the benefit of the Chancellor's Office or the institution, except as set forth in subsection (2).

(2) These rules do not apply to any equipment, goods, supplies, material, information technology or other personal property encumbered by a certificate of participation that will be disposed of in accordance with applicable law.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0303

### Delegations

These rules apply to the Chancellor's Office. An institution may follow the procedures set out herein or adopt its own rules, which rules will conform to the purposes set out below. Prior to adoption, the OUS Senior Vice Chancellor for Finance and Administration must approve the rules developed by the campuses. In addition, the State Board of Higher

Education delegates to each president responsibility for implementing these rules or rules adopted by that institution. Purposes: Rules developed for surplus and scrap property will:

- (1) Safeguard state assets;
- (2) Create efficiency in surplus or scrapping;
- (3) Maximize the value received for property to the extent consistent with efficiency; and

(4) Attempt to reduce negative environmental impacts.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0304

### Environmental Standards

Disposal of surplus property and scrap will be accomplished in accordance with all state, federal, and local regulations regarding environmental health and recycling. If ownership of surplus property or scrap is transferred to another party, the institution, or Chancellor's Office transferring the property must document passing of title. The acquiring party assumes environmental responsibility when title transfers.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0305

### Maintenance of Proper Inventory Records and Justification of Sale or Disposal

(1) The Chancellor's Office and institutions will each set thresholds and standards that identify by value or type, for personal property for which disposal records must be maintained.

(2) Disposal records for assets, whether or not capitalized, will include the following information:

- (a) Description of property and, if capitalized, asset number; and
- (b) Reason, date, and method of disposal.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0306

### Disposition of Federally Funded Surplus Property

Federally funded property will be disposed of in accordance with applicable federal law or federal grant terms, if any. Otherwise, such property will be disposed of in accordance with these rules, or institution rules adopted hereunder.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0307

### Disposition of Property Acquired by Gift

Disposition of property acquired by gift will be in accordance with the Internal Revenue Code and any restrictions applicable to the property. Otherwise, the property will be disposed of in accordance with these or institution rules adopted hereunder.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0308

### Exchange or Trade-in Option.

The Chancellor's Office or institution may exchange or trade-in property when such exchange or trade-in is in the best interest of the Chancellor's Office or institution and is otherwise in compliance with applicable rules or policy. Exchange or trade-in will be considered disposal for purposes of these rules. Records will be kept regarding the valuation methodology used in evaluating the relative benefits of trade-in, exchange or sale.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0309

### Transfer of Property to a Collaborating Government or Non-Profit Institution

Transfers of surplus property or scrap may be made to a collaborating government or other non-profit institution when intended for institution purposes and consistent with restrictions on its transfer.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

# ADMINISTRATIVE RULES

## 580-040-0310

### Method of Disposal; Eligibility to Acquire

(1) The Chancellor's Office or institution will use a method of disposal that is cost-effective, taking into account the costs of disposal and the potential for financial return. Disposal methods include, but are not limited to, exchanges, trade-ins, auctions, sealed bid sales, scrapping, fixed price retail sales, donation to other state agencies, Oregon political subdivisions, public non-profits, web-based auctions or sales and, for scrap, transfer for no valuable consideration.

(2) No current or former employee or agent for such will be granted any benefit or opportunity not granted the general public in acquisition of items through the disposal process.

(3) All property is conveyed "AS-IS, WHERE-IS" with no warranty, express or implied, of merchantability or fitness for a particular purpose, or any other warranties or guarantees. A purchaser or disappointed bidder will have no recourse against the State of Oregon, the Oregon University System, an institution, or any of their officers, employees, or agents. All sales will be final.

(4) The Chancellor's Office or institution may provide that payment may be made by credit card, cash, cashier's check, personal check, wire transfer, or money order.

(5) Surplus property paid for, but not claimed with the time specified in the sales terms and conditions will be conclusively considered the property of the Chancellor's Office or institution and may be disposed of in compliance with these rules.

(6) Title to surplus property or scrap is transferred to the purchaser when the Chancellor's Office or institution makes the item available to the purchaser either by the purchaser, purchaser's agent, or purchaser's or institution's designated shipper taking possession of the item. Surplus property must be paid for in full before the institution or Chancellor's Office will make it available to the purchaser. Purchaser assumes all responsibility, including risk of loss or damage, for the item when title is transferred.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## 580-040-0311

### Disposal of Computer and Other Electronic Storage Devices and Media

Prior to disposal of any computer, computer peripheral, computer software, electronic storage device, or storage media device, the Chancellor's Office or institution will, as applicable, completely erase or otherwise render unreadable all information, data, and software residing on the Device, unless the information, data, or software is to be conveyed and may be conveyed lawfully.

Stat. Auth: ORS 351.210  
Stats. Implemented: ORS 351.210  
Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

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**Adm. Order No.:** OSSHE 5-2004(Temp)

**Filed with Sec. of State:** 6-9-2004

**Certified to be Effective:** 6-9-04 thru 12-5-04

**Notice Publication Date:**

**Rules Adopted:** 580-050-0000, 580-050-0110, 580-050-0120, 580-050-0130, 580-050-0140, 580-050-0150, 580-050-0160, 580-050-0170, 580-050-0180, 580-050-0190, 580-050-0200, 580-050-0210, 580-050-0220, 580-050-0230, 580-050-0240, 580-050-0250, 580-050-0260, 580-050-0270, 580-050-0280, 580-050-0290, 580-050-0300, 580-050-0310, 580-050-0320, 580-050-0330, 580-050-0340

**Rules Amended:** 580-050-0001, 580-050-0005, 580-050-0010, 580-050-0015, 580-050-0020, 580-050-0025, 580-050-0032, 580-050-0033, 580-050-0040, 580-050-0041, 580-050-0042, 580-050-0100, 580-050-0105

**Subject:** 1. OAR 580-050-0010: Added traffic signals, sidewalks, streetcars, and other items similar to utilities to the types of easements that can be approved by the Board President and Secretary without Board action. Removed the requirement that only easements for underground utilities could be approved by the Board President and Secretary. This reflects present practice.

2. OAR 580-050-0015: Added leases to the authority to purchase certain types of property delegated to the Vice Chancellor for Finance and Administration. Increased the cost of property that the Vice Chancellor can approve from \$100,000 to \$500,000 to reflect the

increase in property values over the past ten years. Limit lease approval to those leases where the total value over the term of the lease does not exceed \$500,000. Rules still need to be developed and adopted for the process to be used to purchase and lease property.

3. OAR 580-050-0020: The definition of Consultants for design, evaluation and management of construction projects or real property is expanded to include materials testing, hazardous materials evaluation and abatement, engineering, cost estimating, land surveying, appraisal, commissioning and special inspections. Subsection (1): Clearly states that Consultants will be chosen on the basis of qualifications, not price. This tracks ORS 279.057 which requires that price only be negotiated after the Consultant is selected and as part of the process for determining the scope of work. Although OUS is not subject to ORS 279.057, at the Legislative hearings on this statute OUS represented that it chose its professional consultants on the basis of qualifications. Subsection (2): The advertising process for Consultants wishing to enter into Retainer Agreements may be done electronically. The proposal may also be submitted electronically. The maximum term of a Retainer Agreement is extended from three years to four, the same maximum term as used for construction contractor Retainer Agreements. Subsection (3): The maximum payable to a Consultant on a single project under a Retainer Agreement is increased from \$100,000 to \$200,000. The formal procurement process used for contracts in excess of \$200,001 only requires a minimum of three proposals. This reflects the reality that often five Consultants did not submit a proposal. Added specific authority to continue with the procurement process even if fewer than three Consultants submitted proposals if the purpose of the rule is still met. Subsection (5): This new subsection permits sole source contracts in the following situations: (a) if the Institution stopped a project and decides to restart it and wants to use the same Consultant to continue professional liability insurance coverage on the project, or because a different Consultant will likely not want to do the work, or because the cost will be greater if a different Consultant finishes the work, (b) if the project is a phased project, (c) if the work is an addition or remodel to a project the Consultant has already worked on and there is likely to be a cost saving if the same Consultant does the new work, or (d) if the Consultant is the only person able to do the work.

4. OAR 580-050-0032(1): Distinguish between Construction Trade Services (those services not performed by a construction contractor, usually associated with maintenance or repair) and Public Improvement contracts (construction, reconstruction, major renovation costing more than \$25,000 that does not include emergencies, repair, maintenance or minor alterations). Subsection (2): Delegates authority from the Vice Chancellor for Finance and Administration to individual campuses. Subsection (4): The maximum amount payable to a contractor for a single project under a Retainer Agreement is increased from \$200,000 to \$500,000. Subsection (6): This new subsection permits sole source contracts in the following limited situations: (a) if there is only one firm that can reasonably do the work, (b) if the work must be done by a particular firm so as not to void a warranty, (c) if the firm is the only one authorized by a supplier to install a certain item, (d) if the contract will not encourage favoritism or substantially diminish competition. Subsection (8): Added requirements prohibiting contracts with a firm that is not properly licensed or which has been determined ineligible by the Bureau of Labor and Industries or OUS. Subsection (9): Added a requirement for a 100% performance and payment bond on all contracts in excess of \$100,000. This protects OUS in the event the contractor does not pay its subcontractors or suppliers or fails to complete the work and OUS has to have another contractor finish the work. Subsection (11): Retainage (the withholding of 5% of each payment draw until the contract is completed) is not applicable to projects performed under Retainer Agreements. Subsection (13): Omitted the incorporation by reference of certain 1995 AG Model Rules regarding the contracting process. These are replaced by the new rules the Board will be temporarily adopting. This further distances OUS from DAS control in accordance with the Higher Edu-

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ation Efficiency Acts. Subsection (15): This new subsection creates exemptions from the competitive procurement process for the following types of contracts: (a) contracts with the federal government or another public agency, (b) emergency contracts, and (c) if the IFPO finds that an exemption will not encourage favoritism or substantially diminish competition and will result in cost savings. These exemptions track those in ORS 279.015.

5. Retainage Rule: Five percent retainage is required on all projects except those less than \$500,000, where it is permissive. Retainage may be released on phased projects as each phase is completed.

6. Negotiation When Bids Exceed Cost Estimates Rule: This rule permits institutions to negotiate with the lowest bidder or best proposer when their bid or proposal exceeds the institution's cost estimate. This saves an institution from having to go through the solicitation process all over again.

The following minor changes were made in the rules:

1. Changed references from OSSHE to OUS throughout the rules.

2. OAR 580-050-0005: This rule requires all conveyances of interests in real property to be approved by DOJ and executed by the President and Secretary of the Board. The change brings the rule into conformity with ORS 351.150. Interests in real property include purchases, sales, leases, and easements.

3. OAR 580-050-0020(2): Changed the rule to conform to the process actually used.

4. OAR 580-050-0032: In general distinguished between Invitations to Bid, Requests for Proposals and design-build processes.

5. OAR 580-050-0033: Changed the title to refer to amendments because the body of the rule refers to amendments.

6. OAR 580-050-0041(11) and 580-050-0042(10): Removed the requirement for the Board to review the effect of the rules regarding Emerging Small Businesses and Minority/Women Business Enterprises participation in OUS contracts because this review has not been occurring.

7. Definitions Rule: This rule defines terms used throughout OAR Chapter 580, Division 50. It will be placed at the beginning of the Division.

8. Deleted the rule incorporated by reference in OAR 580-050-0032(14) that referred to electronic data interchange because it has never been used. Instead, added references to electronic advertisement and submission of bids or proposals electronically to the rule regarding facsimile submissions.

Amending OAR 580-050-0001 through 580-050-0100, as described above and temporarily adopt the rules titled: Retainage; Negotiation When Offers Exceed Cost Estimate; Definitions; Bids or Proposals Are Offers; Facsimile and Electronic Offers; Offeror Submissions; Pre-Offer Conferences; Solicitation Protest, Request for Change, Request for Clarification; Addenda to a Solicitation Document; Pre-Closing Modification or Withdrawal of Offers; Receipt, Opening, and Recording of Offers; Late Offers, Late Withdrawals and Late Modifications; Time for Institution Acceptance; Extension of Time for Acceptance of Offer; Low Tie Offers; Rejection of an Offer; Rejection of All Offers; Protest of Contractor Selection, Contract Award; Disqualification of an Entity; Cancellation of Solicitation; Disposition of Offers if Solicitation Canceled; Foreign Contractor; Contract Suspension, Termination Procedures; Institution Payment for Unpaid Labor or Supplies.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

### 580-050-0000

#### Definitions

All capitalized terms in chapter 580, division 50 have the meanings set forth below, unless otherwise defined in the chapter 580, division 50 rules.

(1) Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Entities.

(2) Bid: A competitive offer, binding on the Bidder and submitted in response to an Invitation to Bid.

(3) Bidder: An Entity that submits a Bid in response to an Invitation to Bid.

(4) Board: Oregon State Board of Higher Education.

(5) Closing: The date and time announced in the Solicitation Document as the deadline for submitting Offers.

(6) Construction Trade Services: Construction services that are not personal services on projects that are not Public Improvements.

(7) Consultants: Architects, engineers, planners, land surveyors, appraisers, managers and related professional consultants.

(8) Contract: The Written agreement, resulting from the Solicitation Document that sets forth the rights and obligations of the parties.

(9) Contract Price: The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(10) Contractor: The Entity awarded the Contract in response to the Solicitation Document.

(11) Days: Calendar days unless otherwise specified by these rules.

(12) Disqualification or Disqualify: The preclusion of an Entity from contracting with an Institution for a period of time. An Institution is authorized to disqualify an Entity in accordance with OAR "Disqualification of an Entity".

(13) Electronic Offer: An Offer made by an Offeror in response to an Institution's or the Board's Solicitation Document posted on its procurement website. In order to accept Electronic Offers, Institutions and the Board must create a separate e-mail address and mailbox to which Electronic Offers may be made and this mailbox must send automatic replies to Offerors indicating when their Offer was received.

(14) Emergency: Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a Contract to remedy the condition.

(15) Entity: A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a governmental or governmental subdivision.

(16) Facsimile: A document that has been transmitted to and received by the Institution in a format that is capable of being received via a device commonly known as a facsimile machine (e.g., a Facsimile Bid). A facsimile machine allows hard copy documents (written, typed or drawn material) to be sent over telephone lines and printed in another location.

(17) Foreign Contractor: A Contractor that is not domiciled in or registered to do business in the State of Oregon.

(18) Institution: One of the universities that is part of the Oregon University System, including the Board's Chancellor's Office.

(19) Institution Facilities Planning Official: The Senior Vice Chancellor for Finance and Administration or his or her designee at an Institution with the authority to enter into Contracts. An Institution may further designate persons who may act as the Institution Facilities Planning Official.

(20) Invitation to Bid or ITB: A Solicitation Document calling for Bids.

(21) Offer: A Bid or Proposal as applicable.

(22) Offeror: A Bidder or Proposer as applicable.

(23) Opening: The date, time, and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(24) Project Contract: A Contract entered into with an Entity that has signed a retainer agreement under OAR 580-800-0032(4).

(25) Proposal: A competitive offer submitted in response to a Request for Proposals or a request from an Institution Facilities Planning Official to respond to a proposed assignment under OAR 580-050-0020(3)(b) or (c).

(26) Proposer: An Entity that submits a Proposal in response to a Request for Proposals.

(27) Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for an Institution where the Contract Price exceeds \$25,000, other than projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection. "Public Improvement" does not include Emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement or projects where the total Contract Price is less than \$25,000.

(28) Public Work: Includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction,

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reconstruction, major renovation or painting of which is carried on or contracted for by an Institution or the Board to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by the Board or an Institution.

(29) Request for Proposals or RFP: A Solicitation Document calling for Proposals.

(30) Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable): Is an Entity that has submitted an Offer and meets the standards set forth in OAR "Rejection of an Offer (1)(c)(G)" and that has not been disqualified by the Institution under OAR "Disqualification of an Entity".

(31) Request for Qualifications or RFQ: A Written document that: (a) Provides a general description of a proposed project; (b) Indicates the type of Consultant services needed, including, if deemed necessary or appropriate, a description of the particular services needed for part or all of a proposed project or projects; and (c) Requests each prospective Consultant to provide a Written response setting forth the Consultant's specific experience and qualifications for performing the type of services required.

(32) Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable): An Offer that substantially complies with applicable solicitation procedures and requirements and the Solicitation Document.

(33) Signed or Signature: Any mark, word, or symbol executed or adopted by an Entity evidencing an intent to be bound.

(34) Solicitation Document: An Invitation to Bid or Request for Proposals or Request for Qualifications including all documents incorporated by reference.

(35) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(36) Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

(37) Written or Writing: Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0001

### Comprehensive Plan Coordination

(1) Use of property owned by the Board will conform to this rule and the procedures in the Oregon University System Coordination Plan created pursuant to the Land Conservation and Development Commission OAR chapter 660, division 030, State Agency Coordination. In approving decisions concerning use of property owned by the Board, the Oregon University System, Institutions, and managers at activity locations will find that the project, plan, or action complies with the Statewide Planning Goals and is compatible with applicable acknowledged comprehensive plans.

(2) Compliance with Statewide Goals and compatibility with acknowledged Comprehensive Plans will be achieved by making decisions concerning property owned by the Board in conformance with local jurisdiction comprehensive land use plans and land use regulation as follows:

(a) For each of the Institutions, a long-range campus development plan will be formulated covering at least the area within the approved campus boundaries. Campus plans will be reviewed with officials of the local jurisdiction for conformance with the local acknowledged Comprehensive Plan. A campus plan may be formulated as a refinement plan or amendment to the local Comprehensive Plan and be implemented as a special zoning district or planning district within the local jurisdiction land use regulations;

(b) For other lands that support activities governed by the Board, the activity and the land use will conform to the local jurisdiction acknowledged Comprehensive Plan and associated land use regulations.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1990, f. & cert. ef. 2-13-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0005

### Conveyances

Authorized conveyances of all interests in real property will be approved by the Assistant Attorney General serving as chief counsel to the Department, or a designee, and executed by the Board President and Board Secretary pursuant to ORS 351.150.

Stat. Auth.: ORS 351.150

Stats. Implemented: ORS 351.150

Hist.: HEB 3-1978, f. & ef. 6-5-78; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0010

### Easements

The Board President and the Board Secretary are authorized, without Board approval, to execute easements affecting real property owned by the State of Oregon for the benefit of the Board in accordance with the following:

(1) The easement will be recommended by the Senior Vice Chancellor for Finance and Administration, or designee, and will be in a form approved by the Assistant Attorney General serving as chief counsel to the Board, or designee.

(2) If the property affected is within approved projected campus boundaries, the easement will relate only to utilities, traffic control devices, sidewalks, surface transportation, and other similar items, with appropriate access.

(3) If the property affected is not within approved projected campus boundaries, the easement will relate either to utilities or to rights of way for access to adjacent properties.

(4) Easements granting rights in real property other than those set forth in sections (2) and (3) of this rule will be approved by the Board prior to their execution by the Board President and Board Secretary.

Stat. Auth.: ORS 351.070, 351.150

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0015

### Purchases and Leases of Real Property

The Senior Vice Chancellor for Finance and Administration or designee has authority to purchase real properties or enter into leases, with appropriate report to be made to the Board, subject to the following conditions:

(1) Location. Properties will be located within the Board-established projected campus boundaries of an Institution. Property exchanges are subject to specific Board authorization.

(2) Sources of Funds. Properties to be purchased principally as sites for educational and general construction or improvements, or principally for current educational and general use, will be financed from funds available for these purposes, usually a state appropriation or proceeds from the sale of bonds issued under the provisions of Article XI-G of the Oregon Constitution. Properties to be purchased principally as sites for auxiliary enterprises construction or improvements, or principally for current auxiliary enterprises use, will be financed from funds available for these purposes, such as proceeds from the sale of bonds issued under provisions of Article XI-F(1) of the Oregon Constitution or appropriate restricted funds.

(3) Purchase Price. Purchases will be made at prices based on current market values, determined by averaging two or more independent appraisals. Limit on each purchase will be \$500,000. All purchases will conform to the procedures set out in OAR.

(4) Value of Lease. The total cost of the lease over its term, including any options to extend the lease, will not exceed \$500,000. All leases will conform to the requirements set out in OAR.

(5) Priority of Property Acquisitions. To the extent practical, purchases will be made in the following priority order:

(a) Site for building construction or other improvement projects for which funds are available;

(b) Unimproved property;

(c) Property with improvements having value materially less than the land;

(d) Sites intended for building or other improvement projects for which construction authorization is expected to be sought from the Legislature at its next session, with a high priority assigned to the project;

(e) Property for which the owner plans costly improvements or other action that would materially increase the market value and cost to the Board if acquired later;

(f) Property offered for sale by owner.

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(6) Condemnation. Authorization to acquire real property by condemnation is subject to specific Board action.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0020

### Appointment of Professional Consultants

The Institution Facilities Planning Official is authorized to select and enter into contracts with Consultants for the design, evaluation, and management of construction projects or real property. Services performed by Consultants may include but are not limited to: energy management, construction management, facilities planning, materials testing, hazardous materials evaluation and abatement, engineering, cost estimating, land surveying, appraisal, commissioning, special inspections and related services in accordance with the following standards and procedures:

(1) General Standards; Selection Factors. The purposes of this rule are to assure that Consultants are evaluated fairly for Contracts; that those selected will be highly qualified; and to encourage excellence and cost consciousness on the part of Consultants in performing professional services for the Institutions. The following factors, which are based on the qualifications of the Consultants, will be considered in evaluating and selecting Consultants:

(a) Experience, design talent, required licensure, professional certification(s) and technical competence, including an indication of the design, evaluation, planning, management, or other processes expected to be used in the Consultant's performance of services under any resulting Contract;

(b) Capacity and capability to perform the services within the time limitations set for the completion of the project;

(c) Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules, coordination and supervision of sub-consultants, timely payment of sub-consultants and suppliers, and contract administration;

(d) Availability to and familiarity with the area in which the project is located, including knowledge of design and construction techniques peculiar to the area;

(e) Proposed cost management techniques to be employed; and

(f) Ability to communicate effectively.

(2) Procurement of Consultant Services Under Retainer Agreements.

(a) At least biennially, in a trade periodical or an Oregon newspaper of general circulation, or on the Oregon University System's procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Consultant services for future services and inviting Consultants to submit a Proposal to perform the services described in the RFP at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a copy of the above notice to the Office of Minority, Women, and Emerging Small Business.

(b) Following the procedures set out in section (2)(a) of this rule, the Senior Vice Chancellor for Finance and Administration or designee will prepare a list of potential Consultants that have met the minimum criteria for selection set out in the retainer agreement RFP. An Institution that wishes to use the services of Consultants that have entered into retainer agreements may appoint a person to serve on the evaluation committee. Such committee will review the list prepared by the Senior Vice Chancellor for Finance and Administration or designee of any of the Consultants who have met the minimum criteria for selection set out in the RFP and will select Consultants who appear to have the qualifications for and interest in performing professional services for the Institutions. The committee will recommend to the Senior Vice Chancellor for Finance and Administration or designee the selected Consultants.

(c) Each selected Consultant will be invited to enter into a retainer agreement for a two-year period with the option to extend for an additional two-year term. Services of the selected Consultants will be available to all Institutions that the Consultants have indicated they are willing to work at. The Senior Vice Chancellor for Finance and Administration or designee may enter into interagency agreements to permit other public agencies to utilize the services of Consultants selected for retainer agreements pursuant to this subsection, under the terms of those retainer agreements.

(d) The Office of Finance and Administration will maintain a current roster of all Consultants who have signed retainer agreements with the Board and copies of the retainer agreements.

(3) General Procurement of Consultant Services: The procedures to be followed when contracting for professional consulting services will depend upon a combination of factors including the total anticipated Contract Price and whether or not the Consultant has entered into a retainer agreement pursuant to section (2) of this rule.

(a) For contracts where the anticipated Contract Price, including Consultant fees and reimbursable expenses and all amendments contemplated by the parties, is \$25,000 or less, the Institution Facilities Planning Official may contract for such professional services with any Consultant who has entered into a retainer agreement or such other Consultant as the Institution Facilities Planning Official may choose who appears to have the qualifications for and interest in the proposed assignment.

(b) For contracts involving an anticipated Contract Price, including Consultant fees and reimbursable expenses and including amendments contemplated by the parties, between \$25,001 and \$200,000, or in an Emergency situation, the Institution Facilities Planning Official may select a Consultant to perform the needed services using the following procedure:

(i) Select a Consultant:

(A) From those who have signed a retainer agreement who appear to have the qualifications for and interest in the assignment; or

(B) Select at least three Consultants not on a retainer agreement who appear to have the qualifications for and interest in the proposed assignment and notify each Consultant selected in reasonable detail of the proposed assignment and invite each Consultant to submit a Written Proposal which includes their qualifications;

(ii) The Institution Facilities Planning official will negotiate the payment terms and specific statement of work of a Contract with the selected Consultant using a form of contract deemed legally sufficient by the Department of Justice (for all Consultant Contracts requiring Department of Justice approval). If a mutually satisfactory contract cannot be agreed to, the Institution Facilities Planning Official may select another Consultant on retainer or who submitted a Proposal and enter into contract negotiations.

(c) For professional service contracts with an anticipated Contract Price, including Consultant fees and reimbursable expenses, over \$200,001, except in Emergency situations, the Institution Facilities Planning Official will select for consideration no fewer than three Consultants using the following procedure:

(i) Announcement: The Institution Facilities Planning Official will give notice of intent to contract for professional services in a trade periodical, or newspaper of general circulation, or on the Institution's procurement website and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses. The notice will invite qualified prospective Consultants to respond to the Solicitation Document. The notice will specify where the Solicitation Document may be obtained and the Closing. The Institution Facilities Planning Official will also provide a copy of the notice of intent to the Office of Minority, Women and Emerging Small Business.

(ii) Consultant's Response: The Consultant's Proposal must include a statement that describes the prospective Consultant's credentials, performance data and other information sufficient to establish the Consultant's qualification for the project, as well as any other information required by the Solicitation Document.

(iii) Initial Screening: The Institution Facilities Planning Official will appoint a Consultant screening committee consisting of no fewer than two individuals to review, score, and rank the Consultants according to the criteria set out in the Solicitation Document. The Consultant screening committee will evaluate the qualifications of all Proposers and select no fewer than three prospective Consultants whose Proposals demonstrate that the selected Consultants can best fulfill the provisions of section (1) of this rule. In the event that fewer than three Consultants reply to the Solicitation Document, the Institution Facilities Planning Official may still proceed with the final selection of a Consultant if the Institution Facilities Planning Official makes a Written finding that the purpose set out in section (1) of this rule will still be met by continuing with the selection process.

(iv) The Final Selection Procedure:

(A) Interviews: Following screening and evaluation, the Institution Facilities Planning Official and Consultant screening committee may invite to interview, in person, a minimum of three finalists selected from the initial screening or such lesser number as have been determined to be Responsible and Responsive Proposers.

(B) Award of Contracts: The Institution Facilities Planning Official will make the final selection based on the factors set out in the Solicitation Document; recommend the Consultant to the president or designee if the Institution Facilities Planning Official does not have contracting authority and notify the selected Consultant of such selection.

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(C) The Institution Facilities Planning Official will then negotiate the payment terms and the statement of work of a Contract with the selected Consultant using a form of Contract deemed legally sufficient by the Department of Justice. In the event a mutually satisfactory Contract cannot be agreed to, the Consultant screening committee may select for consideration and contract negotiations another Consultant from the remaining recommended Consultants.

(4) Any Consultant who has submitted a Proposal as outlined in subsections (2)(b), (3)(b) or (3)(c) of this rule and claims to have been adversely affected or aggrieved by the selection of a competing Consultant, and unless a different deadline is specified in the Solicitation Document, will:

(a) Have seven (7) calendar days after receiving notice of selection to submit a Written protest of the selection to the Institution Facilities Planning Official. The Institution Facilities Planning Official will not consider a selection protest submitted after the time period provided in this subsection, unless a different deadline is provided in the notice of selection.

(b) The Institution Facilities Planning Official will have the authority to accept, reject, settle or resolve a written protest submitted in accordance with this rule.

(c) Judicial review of the disposition of a written protest submitted in accordance with subsection (4)(a) of this rule may be available pursuant to the provisions of ORS 183.484.

(5) Notwithstanding anything in this rule to the contrary, the Institution Facilities Planning Official may enter into a Contract with a Consultant without following the processes herein in the following situations:

(a) The Consultant previously performed Work on a project, the Institution terminated the Work or decided not to complete the Work or decided not to proceed with all phases of the project and the Institution now wants to continue the project and wants to use the same Consultant in order to continue professional liability insurance coverage or because the Institution Facilities Planning Official reasonably believes no other Consultant would want to do the Work or the cost would be greater to have a different Consultant complete the work;

(b) The new Work constitutes a latter phase of a multi-phased project;

or  
(c) The new Work constitutes an addition to or remodel of a building which the Consultant previously worked on and the Institution Facilities Planning Official reasonably believes that there will be cost savings in using a Consultant who is familiar with the previous Work; or

(d) The Institution Facilities Planning Official reasonably believes that the Consultant has special skills uniquely required for the adequate performance of the Work.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 6-1994, f. & cert. ef. 4-28-94; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0025

### Naming Buildings

No building or structure of the Oregon University System will be named after a living person. However, the Board may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist. Subject to the limitations in this rule, Presidents are authorized to name buildings or structures.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0032

### Contracts for Repairs and Public Improvements

(1) The Institution Facilities Planning Official will be the contracting officer. All Contracts for Construction Trade Services or for Public Improvements will be awarded and executed by the Institution Facilities Planning Official.

(2) The Senior Vice Chancellor for Finance and Administration, or designee, may delegate, through the Institution president, to a specific person or persons at each Institution the authority to execute Contracts for Public Improvements and Construction Trade Services, provided that all applicable statutory and rule requirements are fulfilled. The Institution president may, by written agreement with the president of another Institution, subject to this rule, transfer such delegation to a person at such other Institution. A copy of each Contract must be filed with the Institution Facilities Planning Official who may audit the project and the contracting process.

(3) The Institution Facilities Planning Official will award Contracts valued at \$25,000 or more for Public Improvements and Construction Trade Services to the lowest Bidder or best Proposer pursuant to appropriate competitive processes, utilizing ITBs or Requests for Proposals, including negotiated procurements for design-build or construction manager/general contractor services. Criteria for award will include price and any other factors as the Institution Facilities Planning Official deems appropriate, including, but not limited to, past performance of the Contractor, experience of the Contractor and the Contractor's management team on projects of similar size and scope, the Contractor's reputation for quality and timely completion of projects, the Contractor's business and project management practices, the Contractor's demonstrated commitment to affirmative action, the Contractor's willingness to agree to the Contract terms proposed by the Institution Facilities Planning Official and the Contractor's ability to post required bonds. The Institution Facilities Planning Official will maintain appropriate records of the competitive process utilized for each Contract. The appropriate planning official of each Institution will determine the procedures to be used for the award of Contracts valued at less than \$25,000 for Construction Trade Services.

(4) The Senior Vice Chancellor for Finance and Administration or designee may enter into retainer agreements, including price agreements, with Contractors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of Offerors, price structure, ability and willingness to respond to requests from one or more Institutions, location and such other factors as the Senior Vice Chancellor for Finance and Administration or designee will deem appropriate. At least biennially, in a trade periodical or an Oregon newspaper of general circulation or on the Oregon University System procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Public Improvement and Construction Trade Services for future services and inviting construction firms to submit a Proposal to perform the services described in the Request for Proposals at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a copy of the above notice to the Office of Minority, Women and Emerging Small Business. The Institution Facilities Planning Official may utilize the services of Contractors under retainer agreement for projects whose total Contract Price is less than \$500,000.

(a) Project Contracts to the retainer agreement, describing the scope of the specific work and the price for which it will be performed, must be executed prior to the commencement of any Work by a Contractor. If the Project Contract requires review for legal sufficiency by the Department of Justice, that review must be received prior to any Work being performed by the Contractor or payment being made by the Institution, except as set out in relevant sections of OAR Chapter 137, Division 45.

(b) Project Contracts having a total Contract Price of \$25,000 or less on a project where the combined price of all contracts awarded on the project is less than \$25,000 will not be subject to the provisions of section (7) of this rule. However, projects may not be divided into more than one Project Contract to avoid the application of section (7);

(c) The Institution Facilities Planning Official will maintain appropriate records of the competitive process used to select a specific Contractor from the list of Contractors with current retainer agreements in force at the time the selection is made and the Project Contract is issued;

(d) The Institution Facilities Planning Official will solicit prices from at least two Contractors under retainer agreements, or document in the contracting file the reason for not doing so.

(5) The Institution president may declare an Emergency. The reasons for the declaration will include justification for the use of any sole source or negotiated procurements for Public Improvements or Construction Trade Services within the scope of the Emergency declaration. After the president has declared an Emergency, the Institution Facilities Planning Official may negotiate a Contract with any qualified construction firm for Public Improvements or Construction Trade Services included in the scope of the Emergency declaration. The Institution Facilities Planning Official will maintain appropriate records of negotiations carried out as part of the contracting process.

(6) The Institution Facilities Planning Official may enter into a Contract for a Public Improvement or Construction Trade Services with a construction firm without following the procedures set out in this rule if the services are reasonably available only from one firm, if the firm has special skills uniquely required for the adequate performance of the Public Improvements or Construction Trade Services, if the work must be done by

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a particular firm so as not to void a warranty, or if the firm is the only one authorized by a supplier to install particular items, and if a sole source exemption is not likely to encourage favoritism or substantially diminish competition for public contracts. The Institution must maintain documentation to support its determination that the Work can only be performed by that one firm.

(7) All Public Work Contracts will require Contractors to pay, and Contractors will pay, at least the rate of wage for labor determined by the Bureau of Labor and Industries (BOLI) to be the rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed for work performed under the Contract. All Public Work Contracts will require Contractors to pay to BOLI the fee required by ORS 279.375(1).

(8) No Contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, registered or licensed by the appropriate state licensing boards or listed as ineligible to enter into Public Improvement or Construction Trade Service contracts by the Bureau of Labor and Industries or the Oregon University System.

(9) The Institution Facilities Planning Official will require Offerors and Contractors to post and maintain such bonds as the Institution Facilities Planning Official decides is appropriate. Requirements related to the posting, form, maintenance, and return of bonds will be included in Solicitation Documents. One hundred percent performance and payment bonds will be required on Public Improvement Contracts with a total Contract Price in excess of \$100,000.

(10) All Contractors will provide and maintain insurance as may be required by the Institution Facilities Planning Official. Such insurance will remain in force throughout the term of the Contract, including any extensions.

(11) The Institution Facilities Planning Official may require that retainage of not more than five percent of the Contract Price is withheld from payments to any Contractor. This requirement is not applicable to Project Contracts. Retainage will be withheld, applied, and adjusted as set out in OAR "Retainage."

(12) The Institution Facilities Planning Official may execute change orders or amendments to Contracts in accordance with OAR 580-050-0033.

(13) The Board of Higher Education and/or the Director of the Internal Audit Division may audit or investigate any Contract or retainer agreement executed under authority of this rule.

(14) The procedures set out in OAR through will be used in soliciting, evaluating, and rejecting or accepting Bids or Proposals for Contracts for Public Improvements or Construction Trade Services.

(15) Notwithstanding anything in this rule to the contrary, Institutions are not required to use a competitive process to select a Contractor to perform contracts for Public Improvements or Construction Trade Services if:

- (a) The Contract is with another public agency or the federal government;
- (b) It is an Emergency; or
- (c) The Institution Facilities Planning Official grants an exemption from the competitive process after finding that the exemption:
  - (i) Is unlikely to encourage favoritism in the award of public contracts;
  - (ii) Is unlikely to substantially diminish competition for public contracts; and
  - (iii) Will likely result in substantial cost savings to the Institution.

(d) In making these findings the Institution Facilities Planning Official may consider the type, cost and amount of the Contract, the number of Entities available to make Offers and such other factors as the Institution Facilities Planning Official deems appropriate.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0033

### Change Orders and Amendments

The Senior Vice Chancellor for Finance and Administration or designee may delegate to each Institution the authority to execute change orders or amendments to Contracts for Public Improvements and Construction Trade Services and Consultant Contracts under OAR 580-050-0020 in accordance with the following conditions:

(1) No change order or amendment substantially changes the identity or overall scope of the Work encompassed within the original Contract and Solicitation Document;

(2) Sufficient funds are available within the project budget for the Work contemplated by a change order or amendment;

(3) Approval of a change order or amendment will not result in a project exceeding the appropriation or limitation approved by the Legislative Assembly or Emergency Board and, if required, released for construction purposes.

(4) The Senior Vice Chancellor for Finance and Administration may revoke delegated authority upon written notice to the president of the Institution for which revocation is sought.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0040

### General Purpose

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the Contract from minority, women and emerging small business enterprises.

(2) For purposes of this rule and OAR 580-050-0041 and 580-050-0042, minority, women and emerging small business enterprises are those certified as such by the Office of Minority, Women and Emerging Small Business at the Bid or Proposal Closing.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0041

### Emerging Small Businesses

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will meet the project's goal, if any, for subcontracting with or obtaining materials to be used in performing the Contract from emerging small businesses. The goal will be set out in the Specifications that accompany the project's Solicitation Document.

(2) The goal for each project will be based upon the nature of the project, its size and location, and the availability of emerging small businesses.

(3) Should an Offeror fail to meet the requirements of section (1) of this rule, the Offer will be disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

- (a) The identity of each emerging small business enterprise requested to submit Bids, Proposals and/or quotations;
- (b) The amounts of any such Bids, Proposals and/or quotations;
- (c) The identity of each emerging small business enterprise to be engaged as a subcontractor;
- (d) The reason for rejection of an emerging small business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;
- (e) All other evidence of good faith efforts through performance of all of the actions described in section (4) of this rule.

(4) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform emerging small business enterprises of contracting and subcontracting, or material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised once in at least two of the following publications: general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of emerging small business enterprises identified from current certified lists of such business enterprises provided or maintained by the Office of Minority, Women and Emerging Small Business, for the selected subcontractor or material supply or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the emerging small business enterprises identified in subsection (d) to deter-

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mine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested emerging small business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply or other work;

(g) Where applicable, the Offeror advised and made efforts to assist emerging small business enterprises in obtaining bonding, lines of credit, or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state, and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment, and placement of emerging small business enterprises; and

(i) The Offeror negotiated in good faith with emerging small business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any emerging small business enterprise. "Good faith" negotiating means engaging in good faith discussions with emerging small business enterprises about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing work among the Offerors and various subcontractors and the Offers of the emerging small business enterprises, including sharing with them any cost estimates from the Solicitation Documents, if available.

(5) Should the Offeror not make the good faith effort required in section (4) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified emerging small business enterprise; or

(b) The Offeror has engaged one or more certified emerging small business enterprises as subcontractors which meets or exceeds the goal of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities.

(6) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made, pursuant to the criteria of section (4) of this rule.

(7) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offeror to divulge its records when a dispute occurs, regardless of whether they have been awarded the Contract or whether a court action has been filed.

(8) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(9) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(10) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require in the Solicitation Document or will attempt to negotiate affirmative efforts on behalf of emerging small businesses similar to those outlined in sections (1) or (4) of this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0042

### Minority Business Enterprises and Women Business Enterprises

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education or its designee will make a good faith

effort to subcontract with or obtain materials to be used in performing the Contract from minority and women business enterprises.

(2) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform minority and women business enterprises of contracting and subcontracting, material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to minority and women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of minority and women business enterprises identified from current certified lists of such business enterprises provided or maintained by the state Office of Minority, Women and Emerging Small Business, for the selected subcontracting or material supply, or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the enterprises to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested minority and women business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply, or other work;

(g) Where applicable, the Offeror advised and made efforts to assist minority and women business enterprises in obtaining bonding, lines of credit or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of minority and women business enterprises; and

(i) The Offeror negotiated in good faith with minority and women business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any minority or women business. "Good faith" negotiating means engaging in good faith discussions with minority or women businesses about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing of work among the Offerors, and various subcontractors and the Offers of the minority or women businesses, including sharing with them any cost estimates from the Solicitation Documents, if available.

(3) Should an Offeror fail to meet the requirements of section (2) of this rule, the Offer will be Disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

(a) The identity of each minority and women business enterprise requested to submit Bids, Proposals, and/or quotations;

(b) The amounts of any such Bids, Proposals and/or quotations;

(c) The identity of each minority and women business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of a minority and women business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (2) of this rule.

(4) Should the Offeror not make the good faith effort required in section (2) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified minority or women business enterprise or is an approved joint venture, including but not limited to a mentor-protégé relationship, which includes a minority or women enterprise as a partner in the joint venture; or

(b) The Offeror has engaged one or more certified minority or women business enterprises as subcontractors that meet or exceed the recommended portion of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities: The recommended portion for each project will be

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based upon the nature of the project, its size and location, and the availability of minority and women business enterprises.

(5) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made pursuant to the criteria of this rule.

(6) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offerors to divulge their records when a dispute occurs, regardless of whether they have been awarded a contract or whether a court action has been filed.

(7) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(8) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(9) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require affirmative efforts in its Solicitation Documents or will attempt to negotiate affirmative efforts on behalf of minority and women business enterprises similar to those outlined in this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0100

### Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415, for the purpose of OAR 580-050-0100, the terms:

(a) "Housing" includes single- and multiple-family dwellings, apartments and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy, but does not include Dormitory facilities at any Institution.

(b) "Dormitory" includes any facility that houses students.

(c) "Furnishings" includes furniture used in connection with the occupancy of Housing and will not be provided as part of any Housing. Furnishings do not include rugs, draperies, range, refrigerator, washer, dryer or any item of Furnishings received as a gift, nor does it include any furniture purchased prior to September 9, 1971, for the state-owned residence required in relation to the official duties of an Institution President or the Chancellor.

(2) As required under ORS 182.425, the Institutions will collect a rental for Housing provided to officers and employees based on the fair rental value as determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under ORS 674.310, subject to any reductions therefrom authorized under ORS 182.435 as described in Section 7.170 of the Board's Internal Management Directives. Rental fees collected will be credited to the appropriate account.

(3) Determination of fair rental value will be reexamined periodically but not less frequently than once every five years, and the rental will be adjusted annually by the change in real estate values for the affected community as determined by the Oregon University System.

(4) When an Institution provides Housing to an officer or employee, it will notify the Office of Finance and Administration, on the form supplied by the Office, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. The reason for and amount of each specific reduction will be detailed in such notification.

(5) The Office of Finance and Administration will prepare a report indicating the fair rental value of each Housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report will be available for public inspection.

Stat. Auth.: ORS 182.415, 182.425 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1994, f. & cert. ef. 10-12-94; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0105

### Properties Subject to Flood Hazards

(1) Flood hazards will be evaluated in the administration of any construction program of buildings, structures, roads, or other facilities to minimize the exposure to potential flood damage and preclude the uneconomical, hazardous, or unnecessary use of flood plains.

(a) National Flood Insurance Regulations and criteria will apply to any plans for construction or development in a flood plain.

(b) Flood-proofing measures to existing facilities will be made where budgets permit, to reduce flood damage potential.

(2) Flood hazards will be evaluated in connection with lands or public properties proposed for disposal to other public instrumentalities or private interest to minimize future state expenditures for flood protection and flood disaster relief.

(a) Appropriate restrictions will be imposed with respect to uses of the lands or properties for disposal.

(b) Appropriate allowance will be made for any estimated loss in sales price resulting from the incorporation of use restrictions outlined in the disposal document.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1980(Temp), f. & ef. 6-18-80; HEB 10-1980, f. & ef. 8-20-80; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0110

### Retainage

(1) An Institution will not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Institution may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Institution will respond in Writing to all such applications within a reasonable time. When the Contract Work is 97% percent completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(2) Upon request of the Contractor, an Institution will deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Institution. Earnings on such account will accrue to the Contractor. Institutions will establish the account through the Controller's Office.

(3) In lieu of cash retainage to be held by an Institution, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the Institution or in any bank or trust company to be held for the benefit of the Institution. In such event, the Institution will reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage will be of a character approved by the Controller's Office, including but not limited to:

(i) Bills, certificates, notes, or bonds of the United States.

(ii) Other obligations of the United States or its agencies.

(iii) Obligations of any corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the Institution Facilities Planning Official's determination that all requirements for the protection of the Institution's interests have been fulfilled, it will release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. An Institution, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Institution in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond will accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond, and the excess will be reimbursed to the Contractor.

(4) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, in accordance with OAR 580-040-0007 or by reduction of the final payment.

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(5) Notwithstanding subsection (1) of this rule, an Institution, at its discretion, does not need to withhold retainage on Contracts where the Contract Price does not exceed \$500,000. In addition, if the Work is to be performed in phases the Institution, at its discretion, may release up to 100% of the retainage of a completed phase, depending upon requirements applicable to all phases.

Stat. Auth.: ORS 351.060  
Stats. Implemented: ORS 351.060  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0120

### Negotiation When Offers Exceed Cost Estimate

(1) If all Responsive Offers from Responsible Offerors on a competitively bid Project, including Offers received under OAR 580-050-0032(3) and (4), exceed the Institution's Cost Estimate, prior to Contract award the Institution may negotiate Value Engineering and Other Options with the Responsible Offeror submitting the lowest, Responsive Bid or the best, Responsive Proposal in an attempt to bring the Project within the Institution's Cost Estimate.

(2) The following definitions apply to this administrative rule:

(a) Cost Estimate: The Institution's most recent pre-Offer, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) Other Options: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance, but excluding any material requirements previously announced in the Solicitation Document that would likely affect the field of competition.

(c) Project: A Public Improvement or Construction Trade Services.

(d) Value Engineering: Those proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement or Construction Trade Services. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) In determining whether all Responsive Offers from Responsible Offerors exceed the Cost Estimate, only those Offers that have been formally rejected, or Offers from Offerors who have been formally Disqualified by the Institution, will be excluded from consideration.

(4) Institutions will not proceed with Contract award if the scope of the Project is significantly changed from the original Offer. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Offerors would have been expected by the Institution to participate in the solicitation process had the change been made during the solicitation process rather than during negotiation. This rule will not be construed to prohibit resolicitation of trade subcontracts.

(5) The Institution may discontinue negotiations at any time, and will do so if it appears to the Institution that the apparent low Offeror is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the Project, or to obtain subcontractor pricing information upon request, will be considered a lack of good faith.

(6) Negotiations will be initially undertaken with the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer. If the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the second lowest Responsive, Responsible Bidder or second best Responsive, Responsible Proposer. If that Offeror is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the next lowest Responsive, Responsible Bidders (each in order of their Bid) or the next best Responsive, Responsible Proposers (each in order of their Proposal). Records of an Offeror used in Contract negotiations do not become public records unless they are also submitted to the Institution.

Stat. Auth.: ORS 351.060  
Stats. Implemented: ORS 351.060  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0130

### Bids or Proposals Are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract. The Offer is a "Firm Offer," i.e.,

the Offer will be held open by the Offeror for the Institution's acceptance for the period specified in OAR "Time for Institution Acceptance". The Institution's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Responsive Offer. An Institution may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions in the Solicitation Document, a Proposer will not make its Offer contingent upon the Institution's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Solicitation Document permits proposal of alternative terms, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Institution in Writing.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0140

### Facsimile and Electronic Offers

(1) Institution Authorization. An Institution may authorize Offerors to submit Facsimile or Electronic Offers. If the Institution determines that Bid or Proposal security is or will be required, the Institution should not authorize Facsimile or Electronic Offers unless the Institution has another method for receipt of such security. Prior to permitting Facsimile or Electronic Offers the Institution must determine whether the Institution's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

(a) For receiving, identifying, recording, and safeguarding Facsimile and Electronic Offers, and

(b) To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive procurement.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Institution authorizes a Facsimile or Electronic Offer, the Institution will include in the Solicitation Document provisions substantially similar to the following:

(a) A Facsimile or Electronic Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Institution via a Facsimile machine or the worldwide web.

(b) Offerors may submit Facsimile or Electronic Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.

(c) Offerors must Sign their Facsimile or Electronic Offers.

(d) The Institution reserves the right to award the Contract solely on the Facsimile or Electronic Offer. However, upon the Institution's request the apparently successful Offeror will promptly submit its complete original Signed Offer.

(e) The data and compatibility characteristics of the Institution's receiving Facsimile machine as follows:

(A) Telephone number;

(B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.

(f) The e-mail address of the Institution to be used to receive Electronic Offers.

(g) The Institution is not responsible for any failure attributable to the transmission or receipt of the Facsimile or Electronic Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents.

(B) Availability or condition of the receiving Facsimile machine, computer or computer system.

(C) Incompatibility between the sending and receiving Facsimile machine or between the sending and receiving computers.

(D) Delay in transmission or receipt of documents.

(E) Failure of the Offeror to properly identify the Offer documents.

(F) Illegibility of Offer documents.

(G) Security and confidentiality of data.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

# ADMINISTRATIVE RULES

## 580-050-0150

### Offeror Submissions

(1) Identification of Offers.

(a) To ensure proper identification and handling, Offers will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. If the Institution permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit and identify Facsimile or Electronic Offers in accordance with the Solicitation Document.

(b) The Institution is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(2) Receipt of Offers. The Offeror is responsible for ensuring the Institution receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0160

### Pre-Offer Conferences

(1) Purpose. An Institution may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required attendance. The Institution may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Statements Not Binding. Statements made by an Institution's representative at the pre-Offer conference do not change the Solicitation Document unless the Institution confirms such statements with a Written Addendum to the Solicitation Document.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0170

### Solicitation Protest; Request for Change; Request for Clarification

(1) Protest:

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Institution not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest will include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including Specifications.

(B) An Offeror will mark its protest as follows:

(i) Solicitation Specification or Contract Provision Protest; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document)

(2) Request for Change:

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Institution not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change will include a statement of the requested changes to the Contract terms and conditions, including Specifications together with the reason for the requested change.

(B) An Offeror will mark its request for change as follows:

(i) Solicitation Specification or Contract Provision Request for Change; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document)

(3) Institution Response. The Institution will not consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Institution will provide notice to the applicable Entity if it entirely rejects a protest. If the Institution agrees with the Entity's request or protest, in whole or in part, the Institution will either issue an Addendum reflecting its determination under OAR "Addenda to a Solicitation Document" or cancel the solicitation under OAR "Cancellation of Solicitation."

(4) Extension of Closing. If an Institution receives a Written request for change or protest from an Offeror in accordance with this rule, the Institution may extend Closing if the Institution determines an extension is

necessary to consider the request or protest and to issue an Addendum, if any, to the Solicitation Document.

(5) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Institution clarify any provision of the Solicitation Document. The Institution's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Institution unless the Institution amends the Solicitation Document by Addendum.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0180

### Addenda to a Solicitation Document

(1) Issuance; Receipt. The Institution may change a Solicitation Document only by Written Addenda. An Offeror will provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Institution otherwise specifies in the Addenda or Solicitation Document.

(2) Notice and Distribution. The Solicitation Document will specify how the Institution will provide notice of Addenda and how the Institution will make the Addenda available. For example, "Institution will not mail notice of Addenda, but will publish notice of any Addenda on Institution's Web site. Addenda may be downloaded off the Institution's Web site. Offerors should frequently check the Institution's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions. The Institution will issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Institution should extend the Closing if the Institution determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest or when changes do not materially affect pricing, the Institution will not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR "Solicitation Protest," by the close of the Institution's next business day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest under OAR "Solicitation Protest," whichever date is later. The Institution will consider only an Offeror's request for change or protest to the Addendum; the Institution will not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0190

### Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror will prepare and submit any modification to its Offer to the Institution in accordance with OAR "Offeror Submissions", unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror will mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Institution prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

(b) The Institution may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark;

(c) The Offeror will mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

# ADMINISTRATIVE RULES

(3) Documentation. The Institution will include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0200

### Receipt, Opening, and Recording of Offers

(1) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Institution will not open the Offer or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens an Offer or a modification prior to the Opening, the Institution will reseal and store the opened Offer or modification for Opening. The Institution will document the resealing for the solicitation file (e.g., "Institution inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and recording. An Institution will publicly open Offers including any modifications made to the Offer pursuant to OAR "Pre-Closing Modification". In the case of Invitations to Bid, to the extent practicable, the Institution will read aloud the name of each Bidder, the Bid price(s), and such other information as the Institution considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Institution will not read Offers aloud.

(3) Availability. After Opening, the Institution will make the Offers available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Institution determines such designation is not in accordance with applicable law, the Institution will make those portions available for public inspection. The Offeror will separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and will be publicly available regardless of an Offeror's designation to the contrary.

(4) Notwithstanding subsection (3) of this rule, if the Solicitation Document includes a process for interviewing Offerors, the Offers will not be made available for public inspection until after the Institution has announced the apparent successful Offeror.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0210

### Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Institution will not consider late Offers. Nor will an Institution accept late withdrawals or modifications except as permitted in OAR "Mistakes."

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0220

### Mistakes

(1) General. To protect the integrity of the competitive solicitation process and to assure fair treatment of Offerors, an Institution should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Institution Treatment of Mistakes. An Institution will not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Institution discovers certain mistakes in an Offer after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; and the Addendum involved did not affect price, quantity or delivery.

(b) An Institution may correct a clerical error if the intended Offer and the error are evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Institution's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subparagraph (b) of this subsection;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Institution does not grant it permission to withdraw the Offer;

(G) That the Institution's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Institution or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(c) of this rule will determine whether an Institution will permit an Offeror to withdraw its Offer after Closing. These criteria also will apply to the question whether an Institution will permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid security), or without liability to the Institution based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Institution, whether by award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Institution will reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer, i.e., documents submitted with the Offer.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0230

### Time for Institution Acceptance

An Offeror's Offer is a firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0240

### Extension of Time for Acceptance of Offer

An Institution may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Institution may consider their Offer(s). If an Offeror agrees to such extension, the Offer will continue as a firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0250

### Low Tie Offers

(1) Definition. Low Tie Offers are low tie Responsive Bids from Responsible Bidders or high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability, and quality.

(2) Award. If awarded, the Institution will award the Contract based on the following order of precedence:

(a) The Institution will prefer goods or services that have been manufactured or produced in Oregon.

# ADMINISTRATIVE RULES

(b) The Institution will then prefer the Offer or the Offeror whose principal offices or headquarters are located in Oregon.

(c) If a Tie Offer remains after the Institution applies subsections (2)(a) and (b), the Institution will award the Contract by drawing lots among any tied Oregon Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn;

(d) If a Tie Offer remains after the Institution applies subsection (2)(a) and none of the tied Offerors are located in Oregon, the Institution will award the Contract by drawing lots among any tied Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0260

### Rejection of an Offer

(1) Rejection of an Offer.

(a) An Institution may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.

(b) The Institution will reject an Offer upon the Institution's finding that the Offer:

(A) Is contingent upon the Institution's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or

(B) Takes exception to terms and conditions (including Specifications), or

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or

(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document; or

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The Institution will reject an Offer upon the Institution's finding that the Offeror:

(A) Has not been prequalified under ORS 279.039 and the Institution required mandatory prequalification; or

(B) Has been disqualified under OAR "Disqualification of an Entity"; or

(C) Has been declared ineligible under ORS 279.361 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or

(E) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or

(F) Has failed to provide the certification required under section 3 of this rule; or

(G) Is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Institution must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the Institution must determine that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(ii) Has a satisfactory record of contract performance. An Institution should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Institution should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Institution may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Institution will make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Institution determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an agency. An Institution may find an Offeror nonre-

sponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for Conduct Disqualification under OAR "Disqualification of an Entity" may be used to determine an Offeror's integrity. The Institution will make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(iv) Is qualified legally to contract with the Institution; and

(v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Institution concerning responsibility, the Institution will base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this rule or to apply the disqualification provisions of OAR "Disqualification of an Entity".

(3) Certification of Non-Discrimination. The Offeror will certify and deliver to the Institution Written certification, as part of the Offer, that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0270

### Rejection of All Offers

(1) Rejection. An Institution may reject all Offers for good cause upon the Institution's Written finding it is in the public interest to do so. The Institution will notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(2) Criteria. The Institution may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Institution cancels the solicitation in accordance with OAR "Cancellation of Solicitation"; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0280

### Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's Contractor selection or Contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, the Institution will provide Written notice to all Offerors of the Institution's intent to award the Contract. The Institution's award will not be final until the later of the following:

(a) 14 Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Institution provides a Written response to all timely-filed protests that denies the protest and affirms the award.

(3) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Institution a Written protest of the Institution's intent to award within 14 Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest will be in Writing and must specify the grounds upon which the protest is based.

# ADMINISTRATIVE RULES

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for award:

(A) Because their Offers were nonresponsive; or

(B) The Institution committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Institution will not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document.

(4) Authority to Resolve Protests. The Institution Facilities Planning Official has the authority to settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(5) Decision. If a protest is not settled, the Institution Facilities Planning Official will promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(6) Award. The successful Offeror will promptly execute the Contract after the award is final.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0290

### Disqualification of an Entity

(1) Authority. An Institution may disqualify an Entity from consideration of award of the Institution's Contracts or to be used as a subcontractor to other Entities that are awarded Institution's Contracts after providing the Entity with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. An Institution may disqualify an Entity for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Entity's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Institution to be so serious as to justify Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, an Entity's failure to perform or unsatisfactory performance caused by acts beyond the Entity's control is not a basis for Disqualification.

(E) Having been Disqualified by the Bureau of Labor and Industries, another Institution, another state agency or another public entity.

(b) Standards for DBE Disqualification. As provided in ORS 200.065 or 200.075, an Institution may disqualify an Entity's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Institution may disqualify an Entity upon finding that:

(i) The Entity fraudulently obtained or retained or attempted to obtain or retain or aided another person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Entity knowingly made a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Entity has been disqualified by another agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Institution may disqualify an Entity upon finding that:

(i) The Entity has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Entity exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Entity uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If an Entity is Disqualified for a DBE Disqualification under ORS 200.075, the affected Institution will not permit such Entity to participate in that Institution's Contracts.

(2) Notice of Intent to Disqualify. The Institution will notify the Entity in writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice will:

(a) State that the Institution intends to disqualify the Entity;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Entity's right to a hearing if requested in Writing within the time stated in the notice and that if the Institution does not receive the Entity's Written request for a hearing within the time stated, the Entity will have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Entity may be represented by legal counsel.

(3) Hearing. The Institution will schedule a hearing upon the Institution's receipt of the Entity's timely request. The Institution will notify the Entity of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) Notice of Disqualification. The Institution will notify the Entity in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice will contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Entity's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0300

### Cancellation of Solicitation

(1) Cancellation in the Public Interest. An Institution may cancel a solicitation for good cause if the Institution finds that cancellation is in the public interest. The Institution's reasons for cancellation will be made part of the solicitation file.

(2) Notice of Cancellation. If the Institution cancels a solicitation prior to Opening, the Institution will provide notice of cancellation. Such notice of cancellation will:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0310

### Disposition of Offers if Solicitation Canceled

(1) Prior to Offer Opening. If the Institution cancels a solicitation prior to Offer Opening, the Institution will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Institution will open the Offer to determine the source and then return it to the Offeror. If the Offeror submitted a Facsimile or Electronic Offer, the Institution will destroy all copies of the Facsimile or Electronic Offer in its possession.

(2) After Offer Opening. If the Institution rejects all Offers, the Institution will retain all such Offers as part of the Institution's solicitation file.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

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## 580-050-0320

### Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor will promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report will be forwarded to the Institution. The Institution awarding the Contract will satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0330

### Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Institution suspends performance of Work for any reason considered by the Institution to be in the public interest other than a labor dispute, the Contractor will be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by mutual agreement for reasons other than default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Institution suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this subsection (2), the Institution will pay the Contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. The Institution will also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment will be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public interest termination by Institution. An Institution may include in its Contracts terms detailing the circumstances under which the Contractor will be entitled to compensation as a matter of right in the event the Institution unilaterally terminates the Contract for any reason considered by the Institution to be in the public interest.

(4) Responsibility for completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule will not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies cumulative. The Institution may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0340

### Institution Payment for Unpaid Labor or Supplies

(1) Contract incomplete. If the Contract is still in force, the Institution may pay a valid claim to the Entity furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If an Institution chooses to make such a payment, the Contractor and the Contractor's surety will not be relieved from liability for unpaid claims.

(2) Contract completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims will be referred to the Contractor's surety for resolution. The Institution will not make payments to subcontractors or suppliers for Work already paid for by the Institution.

Stat. Auth.: ORS 351.060, 351.070  
Stats. Implemented: ORS 351.060, 351.070  
Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

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**Adm. Order No.:** OSSHE 6-2004  
**Filed with Sec. of State:** 6-15-2004  
**Certified to be Effective:** 6-15-04  
**Notice Publication Date:** 4-1-04

## Rules Amended: 580-040-0040

**Subject:** To establish tuition and fees for the 2004-05 Academic Year, including room and board rates.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-040-0040

### Academic Year Fee Book

The document entitled "Academic Year Fee Book 2004-05," dated June 4, 2003, is hereby amended by reference as a permanent rule. All prior adoptions of academic year fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04

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## Oregon University System, Oregon Institute of Technology Chapter 578

**Adm. Order No.:** OIT 1-2004

**Filed with Sec. of State:** 6-9-2004

**Certified to be Effective:** 6-9-04

**Notice Publication Date:** 5-1-04

**Rules Amended:** 578-041-0030

**Subject:** 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2004-2005. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Office.

**Rules Coordinator:** Ceilia E. Foster—(541) 885-1105

## 578-041-0030

### Special Institution Fees and Charges

(1) The Schedule of Special Institution Fees and Charges establishes charges for selected courses and general services for Oregon Institute of Technology for the academic year 2004-05 and are hereby adopted by reference.

(2) Copies of this fee schedule may be obtained from the Oregon Institute of Technology Business Office.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070(2)  
Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7-7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996, f. & cert. ef. 12-19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04

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## Parks and Recreation Department Chapter 736

**Adm. Order No.:** PRD 8-2004

**Filed with Sec. of State:** 6-3-2004

**Certified to be Effective:** 6-3-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 736-010-0098, 736-010-0099, 736-010-0100, 736-010-0115, 736-010-0120, 736-010-0125

**Subject:** Amendments to the existing rules will update the listed rates to reflect current charges; waive day-use and camping fees for foster parents; waive day-use and camping fees for disabled veterans or active duty military personnel on Memorial Day, Independence Day

# ADMINISTRATIVE RULES

and Veterans Day; allow use by Tribal members who wish to conduct traditional cultural, religious or community ceremonies or activities; allow an individual or group to provide in-kind services or materials in lieu of fees, such as trail maintenance in exchange for a one night camping fee; waive, exempt, or reduce fees when in there is a benefit to the Department either through marketing, promotion of Oregon State Parks or promotion of Oregon tourism; and reduce fees when service levels fall below normal standards.

**Rules Coordinator:** Angie Springer—(503) 986-0719

## 736-010-0098

### General Regulations

(1) Established rates shall be paid for use of selected facilities and the purchase of services and products.

(2) Unless posted otherwise, payment shall be made prior to use and refunds or credits prior to departure from the park area.

(3) With proper identification, individual campsite and day use entry rates are exempted for Oregon foster parents described in ORS 418.625 and 443.830 when accompanied by a foster child residing in their home.

(4) Persons who do not pay the established rates shall be subject to a citation issued by an enforcement officer.

(5) The Commission shall establish fees through OAR based on the following criteria:

(a) Prevailing rates for comparable facilities;

(b) Day of week;

(c) Season of year;

(d) Amenities of the park area and site;

(e) Marketing opportunities to encourage use and revenues.

(6) As authorized in ORS 390.124, the Director, at the direction of the Commission, may waive, reduce or exempt fees charged in OAR 736-010-0099 through 736-010-0125 under the following conditions:

(a) An individual or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the Director;

(b) Marketing or promotional considerations, including commercial filming, are provided which promote the use of park areas and Oregon tourism.

(c) Members of a tribe, as defined in ORS 182.162(2), wish to conduct traditional cultural, religious or community ceremonies or activities in accordance with policy adopted by the Commission.

(d) The normal level of service cannot be delivered at a facility due to failure of utility systems or other occurrences outside the control of the park employee.

(7) The Director is authorized to establish rates and rental charges for services, facilities and products that are optional and/or nonessential or complement the basic facilities described in OAR 736-010-0099 through 736-010-0125 and 736-015-0010. Rates will be established based on comparable services by other providers and marketing opportunities to encourage use and revenues.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 5-1983, f. & ef. 3-30-83; PR 10-1983(Temp), f. & ef. 12-28-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1994, f. & cert. ef. 7-11-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04

## 736-010-0099

### Reservations

(1) Purpose: Based on the Oregon Parks and Recreation Department's goal to promote outdoor recreation in Oregon a reservation program was established to increase visitor use of state parks and facilities. The Director may designate that reservations be accepted for specific park facilities to enhance visitor access and promote department financial self-sufficiency by maximizing the use of park areas and facilities. The reservation service is offered through a centralized call center service and through the Internet. The reservation function is managed through the department's reservation program known as Reservations Northwest.

(2) General Regulations:

(a) Reservations will be accepted for specific facilities as defined in the department's operating procedures. All reservations will be processed through the reservation service unless otherwise exempted in the department's operating procedures.

(b) Reservations can be made a minimum of two days and a maximum of nine months prior to the requested arrival date.

(c) Customers must be 18 years of age or older.

(d) Reservations for Americans with Disabilities Act (ADA) accessible campsites will be made for persons who qualify.

(e) Reservations made for multiple parks for the same date range under one customer name is prohibited.

(f) Boat slip reservations (where available) must be accompanied by another facility reservation.

(g) Split reservations will be allowed to accommodate customers. A split reservation is defined as a stay at a park made for one customer for one continuous date range that requires a mid-stay move from one site to another. One split reservation shall be allowed per reservation.

(h) Customer requests to change or cancel an existing reservation, or access to information associated with a reservation can only be made by the person whose name appears on the original reservation request or their designee (as documented in the original reservation).

(i) Specific customer information regarding confirmed reservations will not be released to the public in general as defined in ORS 192.501 and 192.502.

(j) Customer information will be made available upon written request in compliance with ORS 192 and department policy.

(3) Transaction Fees and Deposits:

(a) A \$6.00 non-refundable transaction fee will be charged for each reservation made through the reservation call center or the Internet reservation service.

(b) A deposit fee is defined as the rate charged for one night/day use of a facility. All reservations require a deposit fee in addition to the non-refundable transaction fee. All fees are due at the time the reservation is made.

(c) Express Check-In (where available) allows those customers making a reservation and paying in full for the duration of their stay for individual tent, electrical or full hook-up campsites to expedite the check-in process upon arrival at the park.

(d) Customers may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo to secure a reservation. Customers may also pay by personal check, money order, certified check, or travelers check (in U.S. funds). Payment must be received within five calendar days of making the reservation. If payment is not received within this time frame, the reservation will be cancelled. The customer remains responsible for the \$6.00 transaction fee for each reservation request.

(e) If a check is returned to the agency from the banking institution for any reason or if a bankcard is declined, an attempt will be made to contact the customer. Inability to resolve the payment dispute will result in a reservation cancellation. The customer will remain responsible for the \$6.00 transaction fee.

(f) Government agencies and non-profit agencies may request to be invoiced for services. Non-profit agencies must have a 5012 exempt status filed with the US Department of Internal Revenue Service. Reservations must be made 30 days prior to arrival and payment must be received within 25 days of the date the reservation is made. If payment is not received the reservations will be cancelled and the agency will be billed for the \$6.00 transaction fee for each reservation request.

(g) Outstanding account balances must be paid prior to making future reservations.

(4) Reservation Cancellations:

(a) General: A reservation cancellation is defined as when the customer with a reservation calls to request that the reservation be canceled and ends the call with no reservation. Customers canceling reservations three calendar days or more prior to their arrival date may cancel by calling Reservations Northwest. An automated reservation cancellation voice mail system will be available seven days a week, twenty-four hours a day. Customers may also cancel a reservation through Email by accessing the department's web site and following the posted cancellation procedures. The web site will normally be available seven days a week twenty-four hours a day. The customer must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(b) Reservation cancellations for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages must be cancelled three or more calendar days prior to arrival in order to receive a refund of the facility deposit. If the cancellation is not received three or more days in advance of the arrival date, the deposit fee will be forfeited.

(c) Reservation cancellations for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as defined in department operating procedures must be cancelled at least one month prior to

# ADMINISTRATIVE RULES

arrival in order to receive a refund of the facility deposit. If the cancellation is not received one month or more in advance of the arrival date, the deposit fee will be forfeited.

## (5) Reservation Changes:

(a) General: A \$6.00 non-refundable transaction fee will be charged for each reservation change. A reservation change is defined as a modification to an existing reservation to change the arrival or departure dates, a complete change to reservation dates, or to change the type of site from the original request. Requests to change a confirmed reservation may be made by contacting Reservations Northwest during normal business hours Monday through Friday. Customers may also request to change a reservation through Email by accessing the agency web site and following the posted reservation change procedures. The web site will normally be available seven days a week twenty-four hours a day.

(b) Changes cannot be made to reservations with an arrival date greater than eight months. The specific park may only cancel reservations with an arrival date that is two days or less from the current date.

(c) Reservation change requests for campsites, rustic cabins and yurts, tepees, camper wagons, horse camps, and boat moorages must be made more than three days from the current date. Reservation change requests with an arrival date of three days or less of the current date will be treated as a cancellation and cancellation rules will apply. Customers may request a new reservation once the existing reservation has been cancelled.

(d) Requested reservation changes for deluxe cabins and yurts, group camps, day use areas, meeting halls, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as defined in department operating procedures must be changed at least one month prior to arrival date. Reservation change requests with an arrival date of less than one month from the current date will be treated as a cancellation and cancellation rules will apply. Customers may request a new reservation once the existing reservation has been cancelled.

## (6) Fee Waivers:

(a) General: For promotional purposes, special recognition or to ensure access to state parks the Director, at the direction of the Commission, may grant exceptions to fees and facility deposits.

(b) Specific Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(A) The facility deposit fee is waived for reservations commencing on State Parks Day (first Saturday of June). All other fees will be enforced.

(B) The facility deposit fee will be waived for persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children With Developmental Disabilities as provided in OAR 736-010-0098. The fee waiver is limited to the first two campsites. All other fees apply.

(C) The facility deposit fee will be waived for disabled veterans or active duty military personnel on leave as provided in ORS 390.124 for reservations commencing on Memorial Day (the last Monday in May), Independence Day (July 4th) or Veterans Day (November 11th). All other fees apply.

(D) The \$6.00 non-refundable transaction fee is not included in the fee waiver and must be paid at the time the reservation is made.

(E) Reservations made on the Internet are not eligible for fee waivers.

(7) Customers may make refund requests under the following circumstances.

(a) The reservation fee may be refunded when a reservation error has been made by OPRD.

(b) The advance payments may be refunded and the cancellation/change rules waived when requested by the customer due to the following emergency situations:

(A) Emergency vehicle repair creating a late arrival or complete reservation cancellation; or

(B) A medical emergency creating a late arrival or complete reservation cancellation.

(C) Acts of Nature that create dangerous travel conditions.

(c) The Director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to the department via email, fax or by surface mail to be considered for a refund.

(e) Refunds for specific site or park closures will result in an automatic refund, no written request is required.

## (8) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the Director may offer group

camping to customers reserving multiple tent, electrical or full hook-up campsites.

(b) To assist groups with multiple site reservations, only one transaction fee will be charged for the group when the sites are reserved together. A deposit fee equal to the first night's site fee for each campsite will be required at the time the reservation is made.

(c) Customers must reserve a minimum of five individual campsites during Discovery Season (October 1 — April 30) or ten individual campsites during the Prime Season (May 1 — September 30) to qualify for group camping benefits.

(d) A transaction fee of \$6.00 will be charged for each site cancellation or change made to the group reservation.

(e) All remaining campsite fees must be paid 30 calendar days before the reservation arrival date. Reservations made less than 30 calendar days prior to the arrival date must be paid in full at the time the reservation is made.

(f) Reservations made on the Internet are not eligible.

(g) The group may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The meeting hall may be reserved for additional days at the normal rental rate.

(h) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as defined in department operating procedures are not included in the group camping program.

(i) Groups must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04

## 736-010-0100

### Overnight Rentals

To promote Department financial self-sufficiency, the director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The Director is authorized to increase to the nearest dollar the daily rental rate where a local transient lodging tax is charged. These additional revenues shall be retained by the Department. Campsite Rental rates (per night per site):

(1) Full Hookup Campsite:

(a) Type I: \$20;

(b) Type II: \$16;

(c) Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(2) Electrical Hookup Campsite:

(a) Type I: \$20;

(b) Type II: \$16;

(c) Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(3) Tent Campsite:

(a) Type I: \$16;

(b) Type II: \$14;

(c) Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(4) Primitive Campsite:

(a) Type I: \$8;

(b) Type II: \$8;

(c) Provides campsite with table and stove; water and sanitary facilities may be some distance away.

(5) Hikers/Bicyclist Campsite: \$4 per camper per night: Provides cleared area for camping; water and sanitary facilities may be some distance away.

(6) Extra Vehicle in Campground:

(a) Extra Vehicle — \$5 Per extra vehicle per night: An additional rental rate is charged when an extra vehicle is allowed overnight and is driven into the campground.

(b) Extra Motorcycle in Campground — If the initial campsite sale is to a motorcyclist, and the first extra vehicle is a motorcycle, the second motorcyclist will not be charged. Each additional motorcycle will be charged as an extra vehicle.

## (7) Fee Waivers:

(a) General: For promotional purposes, special recognition or to ensure access to state parks the Director, at the direction of the

# ADMINISTRATIVE RULES

Commission, may grant exceptions to fees when criteria established by the Director has been met.

(b) Specific Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(A) The overnight rental fee is waived for overnight stays on State Parks Day (first Saturday of June). All other fees will be enforced.

(B) The overnight rental fee will be waived for persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children With Developmental Disabilities as provided in OAR 736-010-098. The fee waiver is limited to the first two campsites. All other fees apply.

(C) The overnight rental fee will be waived for disabled veterans or active duty military personnel on leave as provided in ORS 390.124 for rentals commencing on Memorial Day (the last Monday in May), Independence Day (July 4th) or Veterans Day (November 11th). All other fees apply.

(D) The overnight rental fee will be waived for volunteer hosts traveling to an assignment at a property managed by the Department, providing they meet criteria approved by the Director.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04

## 736-010-0115

### Day Use

(1) At designated parks, group picnic areas can be reserved by individuals, clubs, or organizations. The maximum group size for each area will be determined by the park manager.

(2) Group picnic rental rates shall be charged to offset additional park administration and maintenance costs:

(a) Base rate (0-50 people) — \$ 35;

(b) Charges for persons in excess of the 50 person base rate will be 80 cents per person.

(3) The group leader may be asked to make prior arrangements with the park manager for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) Applicants must be 18 years of age or older. The group must have adult supervision at all times.

(6) No alcoholic beverages shall be served after 6 p.m. without prior approval of the park manager.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04

## 736-010-0120

### Day Use Parking Permit

(1) Purpose: Based on a program goal to manage increased visitor use of park areas and promote department financial self-sufficiency, the director may require a motor vehicle day use parking permit at selected parks.

(2) General Regulations:

(a) Parking permits are to be clearly displayed in the driver's inside lower left corner of windshield;

(b) Permits with a self-adhesive backing are to be affixed to the windshield;

(c) Permits are non-transferable and are assigned by vehicle license and registered owner(s).

(3) Day Use Parking Permit Fees:

(a) Daily Vehicle — \$3;

(b) 12-month Permit — \$25;

(c) 24-month Permit — \$40;

(d) Extra vehicle permits may be issued only in conjunction with, and on the same day as, the sale of a 12- or 24-month permit for additional vehi-

cles registered to purchaser of 12-month Permit (maximum 2) — \$5 each; 24-month Permit (maximum 2) — \$10 each.

(e) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits.

(f) The vendor's fee will be included in the price of the permit; no vendor fee shall be collected on extra vehicle permits.

(g) 12-month and 24-month permits may be sold by signed vendor agreement by both privately owned commercial vendors and non-profit associations affiliated with the Oregon Parks and Recreation Department;

(h) Non-profit cooperative associations affiliated with the Oregon Parks and Recreation Department under ORS 390.143, upon a signed vendor agreement with the Oregon Parks and Recreation Department, may retain fees in excess of the minimum vendor fee for use in funding interpretive programs in state parks and heritage areas.

(i) Only staff of the Oregon Parks and Recreation Department may issue duplicate permits in the event an original permit is lost, stolen, mutilated or is attached to an automobile upon its sale by the permit-holder.

(4) Annual access for foster parents and persons maintaining developmental disability child foster homes:

(a) Consistent with ORS 390.124, persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children With Developmental Disabilities as provided in OAR 736-010-098 may be issued a 12-month day use parking permit, free of charge, upon proper identification.

(b) Proper identification shall consist of a valid Certificate of Approval to Provide Foster Care in Oregon, issued by the Oregon Department of Human Services.

(c) The permit shall be valid for 12 months or until the expiration date of the Certificate of Approval to Provide Foster Care, whichever date is sooner.

(d) Free permits may only be issued by staff of the Oregon Parks and Recreation Department.

(5) Fee Waivers: For promotional purposes and to ensure access to state parks regardless of financial means, the Director may:

(a) General: For promotional purposes, special recognition or to ensure access to state parks the Director, at the direction of the Commission, may grant exceptions to fees when criteria established by the Director has been met.

(b) Specific Fee Waivers:

(A) Vehicles with recreational passes issued by other government agencies which meet criteria established by the Director.

(B) In cases provided for in OAR 736-010-0098(7), where a fee has been established for access to certain facilities in lieu of day use fee. This access fee shall not exceed the daily day use permit fee.

(C) Visitors who have rented an overnight facility from the Department may use their overnight rental receipt in lieu of paying a day-use fee. This waiver shall extend through the day of departure for the overnight stay.

(6) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) Motor vehicles of current state park registered campers;

(e) Park concessionaires and their employees;

(f) Person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) Persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children With Developmental Disabilities as provided in OAR 736-010-0098;

(i) Disabled veterans or active duty military personnel as provided in ORS 390.124;

(j) Other persons as designated by the director.

(7) Parks Subject to Day-Use Fees: Parks at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), Fogarty Creek State Recreation Area, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Site, Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle

# ADMINISTRATIVE RULES

State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04

## 736-010-0125

### Miscellaneous Rentals and Products

- (1) Firewood: Where conditions permit, firewood will be sold.
- (2) Boat Moorage Facilities — \$5 per day per boat: Where boat moorage facilities are provided they may be reserved at the time campsite reservations are made.
- (3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.
- (4) Horse Camping Area:
  - (a) Type I : \$16 per day per camper unit.
  - (b) Type II: \$14 per day per camper unitA camper unit consists of a motor home, trailer, tent or camper.
- (5) Group Camps: \$60 per group area per night. Small group areas are available in some state parks and are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04

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**Adm. Order No.:** PRD 9-2004

**Filed with Sec. of State:** 6-14-2004

**Certified to be Effective:** 6-14-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 736-018-0045

**Subject:** ORS 390.180 (1)(c) requires the Director of the Oregon Parks and Recreation Department (Oregon Parks and Recreation Department) to adopt administrative rules that establish a master plan for each state park. Accordingly, Oregon Parks and Recreation Department is adopting a new master plan for Prineville Reservoir State Park Master Plan. The master plan responds to the most current information on the park's resource conditions and public recreation needs as they pertain to the parks. Master 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 as state rule the master plan for Prineville Reservoir State Park which was developed in coordination with the US Bureau of Reclamation's Resource Management Plan.

**Rules Coordinator:** Angie Springer—(503) 986-0719

## 736-018-0045

### Adopted State Park Master Plan Documents

- (1) The following state park master plan documents have been adopted and incorporated by reference into this division:
  - (a) Fort Stevens State Park Master Plan, as amended in 2001;
  - (b) Cape Lookout State Park;
  - (c) Cape Kiwanda State Park, renamed as Cape Kiwanda State Natural Area;
  - (d) Nestucca Spit State Park, renamed as Robert Straub State Park;
  - (e) Jessie M. Honeyman State Park;
  - (f) Columbia Gorge Management Unit Master Plan, including: Rocky Butte State Scenic Corridor, Lewis and Clark State Recreation Site, Dabney State Recreation Area, Portland Womens' Forum State Scenic Viewpoint, Crown Point State Scenic Corridor, Guy W. Talbot State Park, George W. Joseph State Natural Area, Rooster Rock State Park, Shepperd's Dell State Natural Area, Bridal Veil Falls State Scenic Viewpoint, Dalton Point State Recreation Site, Benson State Recreation Area, Ainsworth State Park, McLoughlin State Natural Area, John B. Yeon State Scenic Corridor, Bonneville State Scenic Corridor, Sheridan State Scenic Corridor, Lang Forest State Scenic Corridor, Lindsey Creek State Scenic Corridor, Starvation Creek State Park, Viento State Park, Wygant State Natural Area,

Vinenz Lausman Memorial State Natural Area, Seneca Fouts Memorial State Natural Area, Koberg Beach State Recreation Site, Memaloose State Park, and Mayer State Park;

- (g) Molalla River State Park;
- (h) Champoeg State Park;
- (i) Willamette Mission State Park;
- (j) Cascadia State Park;
- (k) Elijah Bristow State Park;
- (l) Cove Palisades State Park Master Plan, as amended in 2002;
- (m) Silver Falls State Park Master Plan, as amended in 1999;
- (n) Curry County State Parks Master Plan, including: Floras Lake State Park, renamed as Floras Lake State Natural Area; Cape Blanco State Park; Paradise Point Ocean Wayside, renamed as Paradise Point State Recreation Site; Port Orford Heads Wayside, renamed as Port Orford Heads State Park; Humbug Mountain State Park; Otter Point Wayside, renamed as Otter Point State Recreation Site; Cape Sebastian State Park, renamed as Cape Sebastian State Scenic Corridor; Otter Point Wayside; Port Orford Cedar Forest Wayside, renamed as Port Orford Cedar Forest State Scenic Corridor; and Buena Vista Ocean Wayside; Pistol River State Scenic Viewpoint; Samuel H. Boardman State Scenic Corridor; Harris Beach State Recreation Area; McVay State Recreation Site; Winchuck State Recreation Site; Crissey Field State Recreation Site; Alfred A. Loeb State Park;
- (o) Hat Rock State Park Master Plan, renamed as Hat Rock State Recreation Area;
- (p) Deschutes County State Parks, including: La Pine and Tumalo State Parks; Cline Falls, renamed as Cline Falls State Scenic Viewpoint; and Pilot Butte, renamed as Pilot Butte State Scenic Viewpoint;
- (q) Sunset Bay District Parks, including: Umpqua Lighthouse State Park; William M. Tugman State Park; Yoakam Point State Park, renamed as Yoakum Point State Natural Site; Sunset Bay State Park; Shore Acres State Park; and Cape Arago State Park;
- (r) Bullards Beach District Parks, including: Seven Devils State Wayside, renamed as Seven Devils State Recreation Site; Bullards Beach State Park; Bandon Ocean Wayside, renamed as Face Rock State Scenic Viewpoint; and Bandon State Park, renamed as Bandon State Natural Area;
- (s) Tillamook County Coastal State Parks, including: Oswald West State Park; Nehalem Bay State Park; Cape Meares State Park, renamed as Cape Meares State Scenic Viewpoint; Neahkanie-Manzanita State Wayside, renamed as Neahkanie-Manzanita State Recreation Site; Manhattan Beach State Wayside, renamed as Manhattan Beach State Recreation Site; Rockaway Beach State Wayside, renamed as Rockaway Beach State Recreation Site; Twin Rocks State Wayside, renamed as Twin Rocks State Natural Site; Oceanside Beach State Wayside, renamed as Oceanside Beach State Recreation Site; and Neskowin Beach State Wayside, renamed as Neskowin Beach State Recreation Site;
- (t) Beverly Beach District Parks South, including: Boiler Bay State Park, renamed as Boiler Bay State Scenic Viewpoint; Rocky Creek State Wayside, renamed as Rocky Creek State Scenic Viewpoint; Otter Crest State Wayside, renamed as Otter Crest State Scenic Viewpoint; Devil's Punchbowl State Park, renamed as Devil's Punchbowl State Natural Area; Beverly Beach State Park; Agate Beach State Wayside, renamed as Agate Beach State Recreation Site; and Ellmaker State Park, renamed as Ellmaker State Wayside;
- (u) Smith Rock State Park;
- (v) Collier District Parks, including: Booth State Wayside, renamed as Booth State Scenic Corridor; Chandler State Wayside; Collier Memorial State Park; Goose Lake State Recreation Area; Jackson F. Kimball State Park, renamed as Jackson F. Kimball State Recreation Site; and Klamath Falls-Lakeview Forest Wayside, renamed as Klamath Falls-Lakeview Forest State Scenic Corridor;
- (w) Banks-Vernonia State Park, renamed as Banks-Vernonia State Trail;
- (x) Sumpter Valley Dredge State Park, renamed as Sumpter Valley Dredge State Heritage Area; and
- (y) Illinois River Forks State Park.
- (z) Wallowa County State Parks Master Plan, 2000.
- (aa) Master Plan for a Proposed New State Park in Washington County, currently unnamed, 2001.
- (bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003.
- (cc) South Beach State Park Master Plan, 2003.
- (dd) Prineville Reservoir Resource Management Plan/Master Plan, 2003.
- (ee) Detroit Lake State Park Master Plan, 2002.

# ADMINISTRATIVE RULES

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem OR 97301.

(Publications: Publications referenced are available from the agency.)  
Stat. Auth.: ORS 390.180(1)(c)  
Stats. Implemented: ORS 390.180(1)(c)  
Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98; PRD 4-1999, f. & cert. ef. 5-14-99; PRD 9-2000, f. 6-14-00, cert. ef. 7-1-00; PRD 1-2001, f. & cert. ef. 2-1-01; PRD 5-2001, f. & cert. ef. 6-29-01; PRD 6-2001, f. & cert. ef. 9-6-01; PRD 3-2002, f. & cert. ef. 3-22-02; PRD 2-2003, f. & cert. ef. 2-27-03; PRD 3-2003, f. & cert. ef. 2-27-03; PRD 5-2003, f. & cert. ef. 7-8-03; PRD 9-2003, f. & cert. ef. 10-13-03; PRD 11-2003, f. & cert. ef. 11-7-03; PRD 7-2004, f. & cert. ef. 5-14-04; PRD 9-2004, f. & cert. ef. 6-14-04

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**Public Utility Commission**  
**Chapter 860**

**Adm. Order No.:** PUC 11-2004

**Filed with Sec. of State:** 6-2-2004

**Certified to be Effective:** 6-2-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 860-021-0200, 860-034-0010, 860-034-0140, 860-036-0040, 860-037-0035

**Subject:** The amended rules clarify a utility's responsibility regarding the use of credit scoring to establish an applicant's credit and allow a small telecommunications utility to apply for a waiver of the Commission's rules, with good cause.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-021-0200

### Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous utility service of the same type applied for (energy or telecommunications) during the preceding 24 months and the utility can verify, either by contacting the former utility or through an authorized letter provided by former utility on utility letterhead to include dates of service and presented by the applicant, customer or former utility, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the energy or large telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the energy or large telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon energy or telecommunications utility, as defined in ORS 757.005 or 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon utility as defined in ORS 757.005 or 759.005, was found to have tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service.

(4) In lieu of paying a deposit, an applicant or customer may:

(a) Provide the energy or large telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible

party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit; or

(b) For energy utilities, elect to use demand limiter or "pay as you go" metering, if equipment is available.

(5) For energy utilities, a deposit required under this rule shall not exceed one-sixth the amount of reasonable estimated billing for 12 months at rates then in effect. This estimate shall be based upon actual use at the premises during the prior 12 months, if known, or will be estimated based upon the type and size of the equipment at the premises. Each deposit shall be rounded to the nearest whole dollar.

(6) For large telecommunication utilities, a deposit required under these rules shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The large telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(7) A new or additional deposit, calculated as provided by sections (4) and (5) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The energy or large telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The energy or large telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service;

(c) For energy utilities, a customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit; or

(d) For large telecommunications utilities, if service records for the customer indicates unbilled intraLATA toll activity under the utilities' tariff and price list is greater than the basis of the prior deposit.

(8) Paying a deposit does not excuse a customer from complying with the energy or large telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(9) An energy or large telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1981, f. & ef. 8-10-81 (Order No. 81-498); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-21-040; PUC 5-1989(Temp), f. & cert. ef. 4-19-89 (Order No. 89-493); PUC 13-1989, f. & cert. ef. 9-12-89 (Order No. 89-1173); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04

## 860-034-0010

### Scope of the Rules

(1) The adoption of these rules shall not preclude the Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard upon a complaint, Commission motion, or small telecommunications utility application. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law. Upon application by a small telecommunications utility, the Commission may relieve the small telecommunications utility of any obligations under these rules.

(2) The rules contained in this Division apply exclusively to telecommunications cooperatives and small telecommunications utilities as defined in section (3) of this rule.

(3) As used in this Division:

(a) "Small telecommunications utility" means a telecommunications utility partially exempt from regulation under ORS 759.040;

(b) "Telecommunications utility" has the meaning given the term in ORS 759.005;

(c) "Telecommunications cooperative" or "Type 1 cooperative" means an unincorporated association or cooperative corporation that provides telecommunications services; and

(d) "Type 2 cooperative" means an unincorporated association or cooperative corporation that charges joint rates or provides through services as defined in OAR 860-034-0015.

Stat. Auth.: ORS 183, 756 & ORS 759

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 756.040, 759.045, 759.220 & 759.225  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04

## 860-034-0140

### Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous telecommunications utility service during the preceding 24 months and the small telecommunications utility can verify, either by contacting the former utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the small telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the small telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a small telecommunications utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon telecommunications utility or telecommunications cooperative, as defined in ORS 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon telecommunications utility or telecommunications cooperative as defined in ORS 759.005, was found to have tampered with other telecommunications utility facilities, or was otherwise found to have diverted telecommunications utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the small telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for telecommunications service shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The small telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The small telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The small telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service; or

(c) If service records for the customer indicates unbilled intraLATA toll activity under the small telecommunications utility's tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the small telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A small telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04

## 860-036-0040

### Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water utility service during the preceding 24 months and the water utility can verify, either by contacting the former water utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water utility service from it or any Oregon water utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water utility as defined in ORS 757.005, was found to have tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water utility service shall not exceed one-sixth the amount of reasonable billing for one year at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior year or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water utility discovers that the customer has stolen water utility service, has tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service; or

# ADMINISTRATIVE RULES

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04

## 860-037-0035

### Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water/wastewater utility service type during the preceding 24 months and the new water/wastewater utility can verify, either by contacting the former water/wastewater utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water/wastewater utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water/wastewater utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water/wastewater utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water/wastewater utility service from it or any Oregon water/wastewater utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water/wastewater utility as defined in ORS 757.005, was found to have tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water/wastewater utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water/wastewater utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water/wastewater utility service shall not exceed one-sixth the amount of reasonable billing for 12 months at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior 12 months or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water/wastewater utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water/wastewater utility discovers that the customer has stolen water/wastewater utility service, has tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water/wastewater utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water/wastewater utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005 & 757.061  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 11-2004, f. & cert. ef. 6-2-04

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**Secretary of State,  
Elections Division  
Chapter 165**

**Adm. Order No.:** ELECT 5-2004  
**Filed with Sec. of State:** 6-11-2004  
**Certified to be Effective:** 6-11-04  
**Notice Publication Date:** 5-1-04  
**Rules Adopted:** 165-010-0110

**Subject:** This proposed rule adopts a standard deadline for candidates to file to fill a vacancy in nonpartisan office that occurs between the 70th day before the nominating election and on or before the 80th day before the general election.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-010-0110

### Filling Vacancy in Nomination to Nonpartisan Office or Vacancy in Nonpartisan Office

(1) The purpose of this rule is to specify the period within which a candidate for a nonpartisan office may file a declaration of candidacy or nominating petition. This rule applies when the only candidate nominated to a nonpartisan office dies, withdraws or becomes ineligible, or if a vacancy occurs in the nonpartisan office after the 70th day before the nominating election and on or before the 62nd day before the general election.

(2) If the vacancy in nomination occurs between the 70th day before the nominating election and the 80th day before the general election, the deadline for filing a declaration of candidacy or nominating petition, for nonpartisan office, is no later than the 70th day before the general election.

(3) If the vacancy in nomination or vacancy in nonpartisan office occurs after the 80th day before the general election, but on or before the 62nd day before the election the deadline for filing nominating petitions or declarations of candidacy will be specified in a separate rule for that vacancy.

Stat. Auth.: ORS 246.150 & 249.205  
Stats. Implemented: ORS 249.205  
Hist.: ELECT 5-2004, f. & cert. ef. 6-11-04

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**Adm. Order No.:** ELECT 6-2004  
**Filed with Sec. of State:** 6-11-2004  
**Certified to be Effective:** 6-11-04  
**Notice Publication Date:** 5-1-04  
**Rules Amended:** 165-012-0230

**Subject:** This rule permanently adopts the temporary amendments to 165-012-0230 that were filed December 15, 2003. The proposed amendment conforms the electronic filing rule to OAR 165-012-0005, the 2004 Campaign Finance Manual. Beginning January 1, 2004, the Secretary of State can no longer grant waivers for committees required under ORS 260.159 to file electronically. ORS 246.021(4) states that reports required to be filed electronically cannot be accepted in any other format. This rule amendment implements this change by noting that reports required to be filed electronically are not filed until successfully filed electronically. If a committee is required to file electronically, and fails to file a report electronically, the report will be considered late, and the committee will be penalized under ORS 260.232 and the 2004 Campaign Finance Manual.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

# ADMINISTRATIVE RULES

## 165-012-0230

### Electronic Filing Rule

The purpose of this rule is to adopt standards and procedures for contribution and expenditure reports filed electronically under ORS 260.159.

(1) For each election, the following reports shall be filed electronically by state committees and candidates required to file electronically:

- (a) First Preelection report;
- (b) Second Preelection report;
- (c) Post-Election report;
- (d) September supplemental report; and
- (e) Reports required under ORS 260.118.

(2) The supplement to the second preelection, supplement to the post-election, and contributions received during legislative session reports may not be filed electronically. These reports must be filed in a paper format.

(3) Once a committee begins filing reports electronically, all subsequent reports must be filed electronically (other than the reports that this rule requires to be filed in a paper format) unless the committee demonstrates to the Secretary that extraordinary and unforeseeable calamitous circumstances have made it impracticable to continue to file electronically.

(4) State candidates and committees must file electronically if, during the election or reporting period, as described in ORS 260.159(1), the committee or candidate has an aggregate amount of contributions received and expenditures made of more than \$50,000. This means that when the committee has a total of contributions and expenditures exceeding \$50,000 (such as \$25,100 in contributions and \$25,000 in expenditures), it must begin filing electronically, starting with the report covering the next accounting period after the accounting period in which the threshold is exceeded.

(5) Candidates and committees filing electronically must have their own software that they use to enter data. The software must be capable of generating final data for detailed contribution and expenditure reports, including forms PC 1, PC 2, PC 3, PC 4A, PC 4B, PC 5, PC 6, and PC 9. The information provided on the forms must fully comply with ORS Chapter 260 and the current Campaign Finance Manual. To file reports electronically, the committee or candidate must export the data of the final contribution and expenditure report generated in its software into an ASCII tab-delimited file that is formatted with the following file format specifications. Reports not corresponding to the required file format will not be considered filed.

(a) All reports must correspond to the required file format. (**Attachment 1** to this rule);

(b) The character set must be ASCII.

(c) Files must have been created by or be readable by an operating system that is compatible with Microsoft Windows 95 or higher.

(d) Records must end with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF).

(7) Amendments to electronically filed reports must consist of a complete version of the original filing, as amended. It is not sufficient to submit just the portions of the original filing that have been changed. A committee must make any necessary changes in its database and transmit the entire report using the same file format. The PC 1 form of the file must indicate that the filing is an "Amendment" in the "Filing Type" field. When a file is loaded into the Election Division's database, the division will compare this filing with the committee's previous filing of the same report and print amendment forms noting any changes.

(8) Reports must be submitted in one of the following formats, and must be received by 5:00 p.m. on the filing deadline to be considered filed timely:

- (a) 3-1/2-inch high-density MS DOS-formatted diskette, or
- (b) PC-readable CD; or
- (c) Attached to an e-mail to elecfile.sos@state.or.us .

(9) Each report filed electronically must be named as follows:

- (a) The committee's six-digit identification number;
- (b) The date of the election in MMDDYY format;
- (c) The report type (1st, 2nd, Post, Supp. or I&R);
- (d) The filing type (Orig. or Amend.); and
- (e) The current date in MMDDYY format. An example of a file name is XXXXX MMDDYY 1st Orig MMDDYY. If the committee transmits its report via email, the subject line of the email must consist of the file name.

(10) Electronic reports must not contain viruses. The Election Division's computer system will screen and reject all reports filed electronically that are detected to contain viruses. Any report rejected for this reason is considered not filed.

(11) Each committee or candidate filing electronically must also submit a paper copy or PDF of the Summary Statement of Contributions and

Expenditures (form PC 1) containing the candidate's or treasurer's signature. The paper copy may be submitted by mail, fax or hand delivery, and must be received by the filing deadline. The PDF must be attached to the email of the report or included on the diskette or CD.

(12) Unless the committee or candidate required to file electronically is excused by the Secretary of State under subsection (3), a report is not considered filed until it is successfully filed electronically. **Attachment 1** contains the required file format specifications for electronic filing. [Attachment not included. See ED. NOTE.]

[ED. NOTE: The Attachment referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.159 & Ch. 824, Sec. 8, OL 1999

Stats. Implemented: ORS 260.159 & Ch. 824, Sec. 8, OL 1999

Hist.: ELECT 5-2000, f. & cert. ef. 3-6-00; ELECT 19-2003, f. & cert. ef. 12-5-03; ELECT 24-2003(Temp), f. & cert. ef. 12-15-03 thur 6-12-04; ELECT 6-2004, f. & cert. ef. 6-11-04

## Water Resources Department Chapter 690

**Adm. Order No.:** WRD 3-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 7-1-04

**Notice Publication Date:** 4-1-04

**Rules Adopted:** 690-014-0090, 690-014-0110

**Rules Amended:** 690-014-0005, 690-014-0020, 690-014-0030, 690-014-0050, 690-014-0080, 690-014-0100, 690-014-0170, 690-014-0190, 690-014-0220

**Rules Repealed:** 690-014-0150, 690-014-0200

**Subject:** The Water Resources Commission adopted and amended rules under OAR Chapter 690, Division 14 regarding certification of Water Right Examiners and the criteria and standards for conducting surveys to describe the extent of beneficial use under a water appropriation. These rules have not been updated since adoption in 1988.

These rules were updated to address the following issues: general housekeeping; statutory and rule references; the addition of registered geologists to the list of individuals qualified to become a Certified Water Right Examiner as provided in ORS 537.797; definitions; information required in the Claim of Beneficial Use report; additional information in the Claim of Beneficial Use report for certain reservoirs; waivers of reporting and mapping standards; requirement that the Claim of Beneficial Use map indicate the location of fish screens, by-pass devices, and meters if required; mapping standards for municipal Claim of Beneficial Use maps.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

### 690-014-0005

#### Introduction

(1) The purpose of these rules is to establish the criteria for certification of Water Right Examiners. They also define the minimum standards and criteria under which Certified Water Right Examiners shall conduct surveys to describe the extent of appropriation for beneficial use of public waters. The rules also describe the information required and procedure for preparing maps to accompany transfer applications. These rules are in addition to OAR chapter 690, divisions 020, 051, 300, 310 and 380.

(2) These rules shall not deprive or limit the Director of the Water Resources Department or the Water Resources Commission from exercising powers or duties bestowed by law. Nor shall they limit or restrict the information the Director or Commission may require from any water user or authorized agent to determine satisfactory proof.

(3) The authority for these rules are found in ORS chapters 183, 536, 537, and 540, and in particular ORS 537.797 to 537.799.

(4) These rules shall apply to Claims of Beneficial Use submitted on or after July 1, 2004. Claims of Beneficial Use submitted before this date shall be subject to the rules in effect at the time of submittal.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

### 690-014-0020

#### Definitions

The definitions found in Oregon Administrative Rules chapter 690, divisions 300 and 380, apply. The following definitions also apply:

(1) "Acre-Foot (AF)" means the equivalent volume of one acre covered with one foot of water (325,851 gallons).

# ADMINISTRATIVE RULES

(2) "Certified Water Right Examiner" or "CWRE" means any individual certified by OSBEELS to collect and report data and conduct surveys to describe the extent of appropriation for Claims of Beneficial Use, and also to prepare maps for transfer applications.

(3) "Claim of Beneficial Use" means documents submitted to the Department requesting a certificate of water right be issued for the authorized use or uses made. These documents shall include the report of the site inspection, calculations for the rate of flow, and the map illustrating the location of beneficial use made within the terms of the permit or transfer final order.

(4) "Commission" means the Water Resources Commission.

(5) "Cubic Foot per Second (cfs)" means a rate of water flow, equal to 448.83 gallons of water per minute.

(6) "Department" means the Water Resources Department.

(7) "Director" means the Director of the Department or the Director's authorized deputies or officers.

(8) "Measuring Device" means a structure or apparatus such as a weir, meter, or flume to determine rate of flow or volume of water.

(9) "OAR" means Oregon Administrative Rules.

(10) "ORS" means Oregon Revised Statutes.

(11) "OSBEELS" means Oregon State Board of Examiners for Engineering and Land Surveying.

(12) "Rate and Duty of Water" means the flow of water expressed in cfs or gallons per minute (instantaneous rate) and the volume of water expressed in AF (duty) as allowed in the permit or transfer final order.

(13) "Spring" means a place where water naturally emerges from the ground.

(14) "Source" means the surface or ground water body for each point of diversion or point of appropriation involved in a permit or transfer final order.

(15) "Survey of Appropriation" means the field inspection and document preparation performed by a CWRE to obtain the data necessary to support the Claim of Beneficial Use.

(16) "Water Rights Act" means the same as defined by ORS 537.010.

(17) "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.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0030

### Certified Water Right Examiner Required

The water user or person responsible for a permit, transfer application, or transfer final order must have a CWRE prepare:

(1) The map for a transfer application.

(2) The Claim of Beneficial Use if the permit or transfer application was filed after July 9, 1987.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0050

### Certification of Water Right Examiners

CWREs shall be certified by OSBEELS. In addition to these rules, OSBEELS rules found in OAR chapter 820 apply.

(1) CWRE applicants shall be registered in Oregon as a professional engineer, professional land surveyor or registered geologist.

(2) To become a CWRE, an applicant shall pass a written examination administered by OSBEELS and approved by the Department to determine the applicant's ability to properly perform the surveying, mapping, hydraulic computations, and information gathering duties required by ORS 537.798.

(3) All documents, drawings, or narratives required by these rules shall be prepared by or under the direct supervision of a CWRE. These items shall bear the seal and original signature of the CWRE.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0080

### Revocation of Certified Water Right Examiner's Certificate

CWREs may be decertified by OSBEELS for violation of OAR chapter 690, division 014 rules or violation of OAR chapter 820 rules.

(1) Any violation of these rules by a CWRE and brought to the attention of the Director by Department staff, the public, or other means may be submitted to OSBEELS. A material misstatement of fact shall be referred to OSBEELS for disciplinary action.

(2) Revocation of the CWRE's certificate does not in itself cause forfeiture of that person's other professional licenses or credentials.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0090

### Maps for Transfer Applications

Application maps for transfer shall comply with ORS Chapters 536, 537, and 540, and OAR chapter 690, divisions 020 and 380.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0100

### Minimum Requirements for Claims of Beneficial Use for Permits and Transfer Final Orders

(1) The CWRE shall prepare a report, using a form or format provided by the Department, which describes the status of conditions and limitations in permits and transfer final orders such as:

(a) Type of use;

(b) Period of use;

(c) Place of use;

(d) Extent of use;

(e) Location of point of diversion or point of appropriation;

(f) Source of water;

(g) Rate;

(h) Installation of measuring device;

(i) Water use reporting;

(j) Water level reporting;

(k) Fish screening;

(l) The date of the inspection; and

(m) All other conditions or limitations.

(2) The CWRE shall provide the Department with sufficient information for the Director to determine the extent of beneficial use developed within the conditions or limits of the permit or transfer final order, including any specified development time limits.

(3) Uses partially developed by the water user shall be described. Uses or areas which were not developed shall be noted. Uses determined to exist which are not authorized by the permit or transfer final order being examined shall also be noted in the report but not included as part of the Claim of Beneficial Use. All uses shown on the map must be described in the report.

(4) The diversion works shall be accurately described by the map and report. A general narrative description of the distribution works shall be given. This description must trace the water system from the point(s) of diversion or appropriation to, and include the place of use. The description shall also include the return to public waters when required by the permit or transfer final order, such as fish propagation, mining and power facilities. The make, capacity, serial number and description of all pumps and measuring devices shall, if available, be described in the report. If the make, capacity, serial number and description of any pumps and measuring devices are not available, the report must specify why.

(5) Other water right permits, certificates, transfer final orders, or other conveyance systems connected to the system being examined shall be described in the report. Any reservoir, diversion dam, headgate, well, canal, flume, pump, and other related structures shall be described.

(6) The crops raised or other beneficial use made of the water shall be identified.

(7) The diversion rate shall be determined for each use and source when more than one use or source is involved.

(8) The maximum rate of use shall be determined by actual measurement when possible. Water measurements may be made by weir, meter, rated flume, reservoir capacity table or other method of measurement acceptable to the Department. The report shall describe the method used in making the measurement, the date made and a description of the location where the measurement was taken. It shall contain sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case.

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(9) Computations for the maximum capacity of the system shall be submitted for all claims. These computations may suffice to determine the maximum rate of application if the system was not operating when the inspection was conducted.

(10) The amount of water shall be limited by the Department to the lesser of: the authorized amount, the capacity of the delivery system, or the amount of actual beneficial use. The Claim of Beneficial Use shall include sufficient information to make the determination.

(11) Claims of Beneficial Use for reservoir permits, for storage of less than 9.2 acre-feet of water or with a dam less than 10 feet in height, that do not require approved as-built plans and specifications be on file with the Department, shall also include the following:

(a) A drawing showing the cross section of the dam at maximum section showing complete details and dimensions. The drawing should be drawn at a standard scale. Normally this measurement is taken from the deepest part of the channel to the top of the embankment. Vertical accuracy is required to 0.25 feet for the purpose of this measurement;

(b) A description of the outlet works; and

(c) A description of the emergency spillway.

(12) The rate of flow shall be determined to three significant figures with reporting necessary only to thousandths. Examples are: 4,560 cfs; 456 cfs; 45.6 cfs; 4.56 cfs; 0.456 cfs; 0.046 cfs; and 0.005 cfs.

(13) When computing the storage capacity of reservoirs, the volume of water shall be determined to three significant figures with reporting, for the purpose of the Claim of Beneficial Use, necessary only to tenths. Examples are: 4,560 af; 456 af; 45.6 af; 4.6 af; and 0.5 af.

(14) The following statement, signed by the CWRE, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge."

(15) The following statement, signed or acknowledged by the permittee or transferee, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate."

(16) A CWRE may make a written request to the Director for a waiver of one or more of the Claim of Beneficial Use standards. Waivers cannot be requested for elements relating to conditions or other limitations of the permit or transfer final order. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0110

### Claim of Beneficial Use: General Standards

The Claim of Beneficial Use shall be prepared by a CWRE and submitted by the holder of the permit or transfer final order or by an authorized agent.

(1) In addition to the rules of professional conduct found in OAR chapter 820, CWREs should be aware of the public interest regarding Examiners' investigations of water use. Uses not authorized or not completed within the terms of the permit or transfer final order, or water not beneficially used, shall not be included in the Claim of Beneficial Use. Claims of Beneficial Use shall not violate any of the provisions of the Water Rights Act or these rules.

(2) All Claims of Beneficial Use shall be made to match with existing water rights of record, unless an error in the original location is identified. If an error in an existing water right record is found, then evidence of the correct location as it pertains to the current claim shall be submitted to the Department as part of the Claim of Beneficial Use.

(3) The Director may refuse to accept Claims of Beneficial Use which do not conform to these rules and regulations.

(4) The form or format provided by the Department for Claim of Beneficial Use shall question whether beneficial use was made. If the permittee or transferee claims that beneficial use was made, the claim must be supported with a sufficient description of the use prepared by the CWRE to enable the Department to decide if beneficial use was made under the terms and conditions of a permit or transfer final order.

(5) Follow up inspections may be made by the Department.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0170

### Minimum Requirements for Maps for Permit or Transfer Final Order Claims of Beneficial Use

(1) Maps submitted as part of the Claim of Beneficial Use shall be drawn in ink on at least 0.003-inch polyester film and otherwise conform to all the requirements for application maps as noted in OAR 690-310-0050. If for irrigation, the area cross-hatched shall not exceed the total acreage authorized in the permit or transfer final order involved. More than one permit or transfer may be entered on the same map if clearly identified by different cross-hatching. The map scale shall be 1" = 1320', 1" = 400', or the original full-size scale of the county assessor map for the location. The preferred map size is 8 1/2" x 11". The maximum size shall be 30" x 30" unless prior approval is obtained from the Department. Standard symbols shall be used as indicated in Department handouts.

(2) Horizontal accuracy is required only to ten feet for the purpose of locating and quantifying water rights. Maps shall be developed from any standard survey method. Traverse closures are not required.

(3) Maps shall clearly designate the place of use and point of diversion or appropriation for each source and use. Maps for permits or transfer final orders involving surface water must illustrate the source.

(4) The map shall indicate by description, in relation to the point of diversion or appropriation, the location of any fish screens, by-pass devices, and measuring devices required by the permit or transfer final order.

(5) The following statement shall be placed on the map: "This map is not intended to provide legal dimensions or locations of property ownership lines."

(6) Maps depicting municipal place of use need only show the township, range, section, and quarter-quarter sections where use has occurred under the subject permit. The scale for a municipal place of use map should be sufficient to identify the quarter-quarters involved in the place of use.

(7) A CWRE may make a written request to the Director for a waiver of one or more mapping standards. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0190

### Time Limit for Filing Claim of Beneficial Use

The Claim of Beneficial Use shall be submitted to the Department within one year after the use was reported to the Department as being complete or the beneficial use date allowed in the permit or transfer final order, whichever occurs first. Failure to comply with this section shall cause the Director to initiate permit cancellation proceedings as provided by ORS 537.260.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

## 690-014-0220

### Time Limit to Cure Defects in a Claim of Beneficial Use

A Claim of Beneficial Use which needs corrections or additions shall be returned to the CWRE to correct the deficiencies. The corrected claim shall be returned to the Department within the written time limit allowed. The time allowed will be determined by the Director, but shall not be less than 30 days. Any claims not returned within the specified time may result in the Director submitting the name and certificate number of the CWRE involved to OSBEELS for disciplinary action.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

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**Subject:** The Water Resources Commission approved amendments to OAR Chapter 690, Divisions 200, 205 and 240 regarding water supply and monitoring wells and geotechnical holes.

In 2003, the Oregon Legislative Assembly passed HB 2210 (Chapter 144, Oregon Laws 2003) which increases the well constructor

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bond to \$10,000 and the bond for a landowner's permit to \$5,000, effective January 1, 2004. The increased bond better reflects the cost of well repair and abandonment, provides greater resource protection and greater protection for affected parties should a well be mis-constructed.

Under previous law (ORS 537.762), a fee of \$75 was required with each "Start Card" for new construction and the conversion of a well. In 2003, the Oregon Legislative Assembly passed House Bill 2268 (Chapter 594, Oregon Laws 2003) which adjusts the fee from \$75 to \$125 and adds a requirement to submit a fee with each "Start Card" for a well deepening. The increased fee allows the continued support of Department staff directly associated with the Department's statewide well inspection program.

These rules also made changes regarding the regulation of piezometers; added examples of "cased permanent geotechnical holes" and "slope stability geotechnical holes;" and modified the requirements for submitting a "Geotechnical Hole Report" for certain slope stability geotechnical holes.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

## 690-200-0050

### Definitions

The Water Resources Commission uses the definitions of the words listed below in the administration and enforcement of Oregon's Ground Water Law and the Rules and Regulations for the Construction and Alteration of Wells. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove a well from service by completely 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. If a portion of a well is to be abandoned in order to prevent commingling, waste, or loss of artesian pressure, the abandonment shall conform with the requirements of OAR chapter 690, division 220 for water supply wells. 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) "Access Port" means a minimum 1/2-inch tapped hole and plug or a 1/2-inch capped pipe welded onto the casing in the upper portion of a water supply well, or a minimum 1/2 inch dedicated probe/transducer pipe to permit entry of water-level measuring devices into the water supply well in order to determine the water level.

(4) "Air Gap" means a complete physical break between the outlet end of the discharge pipe or other conduit and the discharged substance. The break shall be at least twice the inside diameter of the pipe or conduit. (Back-siphon prevention)

(5) "Airline" means a water level measuring device consisting of a pressure gauge attached to an airtight line or pipe of known length, within the water supply well bore, extending from land surface to below the pumping level. The device will allow the water level to be computed by measuring the stable air pressure remaining in the line after completely purging water from within the line.

(6) "Air/Vacuum Relief Valve" means a device to automatically relieve or break vacuum. (Back-siphon prevention)

(7) "Altering a Well" means the deepening, reaming, hydrofracturing, casing, re-casing, perforating, re-perforating, installation of liner pipe, packers, seals, and any other material change in the design or construction of a well.

(8) "Annular Space" means the space between the drillhole wall and the outer well casing.

(9) "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 (see Figure 200-2).

(10) "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 (see Figure 200-2).

(11) "Artesian Water Supply Well" means a water supply 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 sur-

face. If the water level stands above land surface the well is a flowing artesian water supply well.

(12) "Automatic Low-Pressure Drain" means a self-activating device designed and constructed to intercept incidental leakage and drain that portion of an irrigation pipeline or any other method of conveyance whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down. (Back-siphon prevention)

(13) "Back-Siphon Prevention Device" means a safety device used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals in the opposite direction of that intended. (Back-siphon prevention)

(14) "Bored Well" means a well constructed with the use of earth augers turned either by hand or by power equipment.

(15) "Buried Slab Type Well" means a dug well in which well casing is used to case the upper hole. A slab, sealed with cement grout, is placed between the upper hole and lower drillhole, and the remainder of the annulus is filled with concrete.

(16) "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.

(17) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall 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.

(18) "Check Valve" means a certified device designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (Back-siphon prevention)

(19) "Chemigation" means the method of applying agricultural chemicals and fertilizer through an irrigation system.

(20) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(21) "Commission" means the Oregon Water Resources Commission.

(22) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(23) "Community Well" means a water supply well, whether publicly or privately owned, which serves or is intended to serve more than three connections for residences or other connections for the purpose of supplying water for drinking, culinary, or household uses.

(24) "Confined Animal Feeding or Holding Area" means the concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, swine, and dairy confinement areas, slaughterhouse or shipping terminal holding pens where the animal waste is allowed to build up on the ground. Pastures and areas adjacent to buildings where animals and animal waste is confined by a physical barrier such as concrete are exempt.

(25) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer (see Figure 200-2).

(26) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, such materials as basalt, sandstone, shale, hard claystone, and granite.

(27) "Contamination" means an impairment of water quality by chemicals, radionuclides, biologic organisms or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

(28) "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.

(29) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(30) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(31) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

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(32) "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.

(33) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(34) "Department" means the Oregon Water Resources Department.

(35) "Director" means the Director of the Department or the Director's authorized representatives.

(36) "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.

(37) "Domestic Well" means a water supply well used to serve no more than three residences for the purpose of supplying water for drinking, culinary, or household uses, and which is not used as a public water supply.

(38) "Drawdown" means the difference in vertical distance between the pumping level and the static water level in a well.

(39) "Drive Point Well" means a well constructed by driving into the ground a well-point fitted to the end of a pipe section or series of pipe sections.

(40) "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)

(41) "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.

(42) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(43) "Filter Pack Well" means a well in which the area immediately surrounding the well screen or perforated pipe within the water-producing zone is filled with graded granular material.

(44) "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."

(45) "Geologist" means an individual registered by the State of Oregon to practice geology.

(46) "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 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).

(47) "Grout" means approved cement, concrete, or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(48) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(49) "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)

(50) "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.

(51) "Hazardous Waste" means a substance as defined by ORS 466.005.

(52) "Hazardous Waste Disposal Site" means a geographical site in which or upon which hazardous waste is disposed.

(53) "Hazardous Waste Storage Site" means the geographical site upon which hazardous waste is stored.

(54) "Hazardous Waste Treatment Site" means the geographical site upon which or a facility in which hazardous waste is treated.

(55) "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.

(56) "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 water supply 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, sanitary seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(57) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(58) "Hydrofracturing" means the use of high pressure liquid, sand, packers or other material to open or widen fractures in consolidated formations for the purpose of increasing well yield.

(59) "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.

(60) "Impermeable Sealing Material" means cement, concrete, or bentonite which is used to fill the open annulus between the lower and upper sealing intervals.

(61) "Inspection Port" means an orifice or other viewing device from which the low-pressure drain and check valve may be observed.

(62) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(63) "Leakage" means movement of surface and/or subsurface water around the well casing or seal.

(64) "Liner Pipe" means the inner tubing, pipe, or conduit installed inside the well casing or lower well bore. The liner pipe is used to protect against caving formations and is not permanently affixed to the drillhole wall or casing.

(65) "Lower Drillhole" means that part of the well bore extending below the surface seal interval in a well.

(66) "Mineralized Water" means any naturally occurring ground water containing an amount of dissolved chemical constituents limiting the beneficial uses to which the water may be applied.

(67) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(68) "Monitoring Well Constructor" means any person who has a current, effective monitoring well constructor license issued in accordance with ORS 537.747(3).

(69) "Municipal or Quasi-Municipal Well" means a water supply well owned by a municipality or nonprofit corporation that may be used as a community or public water supply.

(70) "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.

(71) "Other Hole" means a hole other than a water supply well, a 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. Other holes are regulated under OAR 690-240. Examples of other holes are listed in 690-240-0030.

(72) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material (see Figure 200-2).

(73) "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.

(74) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(75) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(76) "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." (See OAR 690-240)

(77) "Pitless Adaptor" means a commercially manufactured unit or device designed for attachment to one or more openings through a well casing, which will permit water service pipes to pass through the wall of a well casing or extension thereof and prevent entrance of contaminants into the well or ground water.

(78) "Pitless Unit" means a commercially manufactured unit extending the upper terminal of the well casing to above land surface, constructed and installed so as to prevent the entrance of contaminants into the well

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and to protect the ground water supply, conduct water from the well, and provide full access to the well and water system parts therein.

(79) "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.

(80) "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.

(81) "Potentiometric Surface" means the level to which water will rise in tightly cased artesian wells (see Figure 200-2).

(82) "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.

(83) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(84) "Public-at-Large" means a person not actively engaged in the well industry.

(85) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such a system has more than three service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by ten or more individuals per day or is a facility licensed by the Oregon Health Division.

(86) "Public Well" means a water supply well, whether publicly or privately owned, other than a municipal well, where water is provided for or is available through the single user for public consumption. This includes, but is not limited to, a school, a farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel, or a group care home.

(87) "Pumping Level" means the level of the water surface in a well while it is being pumped or bailed.

(88) "Pump Test" means the procedure involving pumping water for a specified period of time to determine the yield characteristics of an aquifer.

(89) "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.

(90) "Remediation Well" means a well used for extracting contaminants and/or contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well."

(91) "Respondent" means the person against whom an enforcement action is taken.

(92) "Responsible Party" means the person or agency that is in charge of construction or maintenance and is either in violation as specified in a notice of violation or who may benefit from that violation.

(93) "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.

(94) "Revoke" means termination of a well constructor's license.

(95) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(96) "Sanitary Seal" means a tight fitting properly sized threaded, welded, or gasketed cap placed on the top of the permanent well casing to prevent entry of water and foreign material.

(97) "Sealant": See Grout

(98) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.005 mm in diameter.

(99) "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.

(100) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(101) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(102) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(103) "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.

(104) "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.

(105) "System Interlock" means an interlocking mechanism used to link irrigation pumps and chemical injection units, other pumps, or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the chemical injection units will occur. (Back-siphon prevention)

(106) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(107) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(108) "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.

(109) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(110) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(111) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground or surface water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(112) "Water Supply Well Constructor" means any person who has a current, effective water supply well constructor license issued in accordance with ORS 537.747(3).

(113) "Water Supply Well Drilling Machine" means any power-driven driving, jetting, percussion, rotary, boring, digging, augering machine, or other equipment used in the construction or alteration of water supply wells.

(114) "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 200-2).

(115) "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 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9, f. & ef. 12-9-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 12-1982, f. & ef. 12-14-82; Renumbered from 690-060-0050 & 690-064-0000 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 1-1991, f. & cert. ef. 2-8-91; 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

## 690-205-0005

### License or Permit Required to Construct Water Supply Wells

(1) Unless otherwise provided in these rules, any person who constructs, alters or abandons water supply wells for another person shall have a Water Supply Well Constructor license or work under the supervision of a licensed Water Supply Well Constructor.

(2) If a person advertises services and/or enters into contracts for the construction, alteration or abandonment of water supply wells for another person, that person shall furnish a \$10,000 Water Supply Well Constructor Bond or Irrevocable Letter of Credit to the Water Resources Commission and must be a licensed water supply well constructor. This bond or letter of credit is separate from the bond or letter of credit required for construction of monitoring wells.

(3) A property owner who constructs, alters, or abandons a water supply well on their own property shall have a Landowner Well Permit as

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described in OAR 690-205-0175 for each water supply well on which work is done.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
Stats. Implemented: ORS 536.090 & 537.505 - 537.795  
Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; 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

## 690-205-0175

### Landowner Well Construction Permit, Fee and Bond

(1) The Water Resources Commission requires a permit, permit fee, and bond or irrevocable letter of credit, for each water supply well constructed, altered, converted, or abandoned by a landowner, unless the landowner is a licensed and bonded water supply well constructor. The landowner permit and bond must be obtained prior to beginning work on a well.

(2) To receive a Landowner Well permit, a person must submit the following to the Director:

(a) A completed application form provided by the Commission, containing:

(A) The property owner's name, address and telephone number;

(B) The surety company's name, address and telephone number;

(C) The proposed location of the well by township, range, section, tax-lot number if assigned, and street address;

(D) The proposed use of the water supply well; and

(E) The type of proposed work; and

(F) Well design plan on form approved by the Department.

(b) A properly executed landowner's water supply well bond or irrevocable letter of credit for \$5,000 to the State of Oregon; and

(c) A \$25 permit fee.

(3) Only the owner of record, a member of the immediate family of the owner of record, or a full time employee of the owner of record, (whose main duties are other than the construction of wells), may operate a well drilling machine under a landowner's permit.

(4) A landowner permit issued pursuant to these rules shall expire six months from the date of issuance.

(a) A water well report shall be submitted within 30 days of expiration of the landowner permit, or within 30 days of completion of the well, whichever occurs first.

(5) If the landowner permit expires, a landowner may reapply for a new landowner permit by complying with the requirements described in sections (1), (2) and (3) of this rule.

(6) The Department may deny a landowner permit if it is determined that the construction, alteration, abandonment, or conversion of the proposed well is a health threat, a health hazard, a source of contamination, or a source of waste of the ground water resource.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0026; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-205-0050; WRD 4-2004, f. & cert. ef. 6-15-04

## 690-205-0200

### Water Supply Well Construction Notice Required (Start Card)

(1) Each bonded water supply well constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any water supply well or conversion of any monitoring well, geotechnical hole, or other hole to a water supply well. The start card shall contain the following information:

(a) Name and mailing address of the landowner;

(b) Street address of the well;

(c) The approximate location of the water supply well; and

(d) The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) All start cards for new water supply wells, deepening a well, or conversion of monitoring wells, geotechnical holes, or other holes shall be submitted with a \$125 start card fee. OAR 690-205-0175 shall apply to landowners who construct, alter, convert, or abandon a water supply well.

(3) Forms for making these reports and submitting fees shall be furnished by the Water Resources Department.

(4) Each start card shall be mailed, hand-delivered during regular business hours or transmitted by Department-approved electronic submittal to the Water Resources Department in Salem no later than the day construction, conversion, alteration, or abandonment is commenced.

(a) Start cards submitted electronically shall be submitted before commencing construction, alteration, conversion or abandonment of any water supply well.

(5) In addition to the start card required under (4) of this rule, the constructor shall provide a legible copy of the start card to the Oregon Water Resources Department (OWRD) region office within which the water supply well is being constructed, altered, converted, or abandoned before commencing the construction, alteration, conversion or abandonment of any water supply well, using one of the following options:

(a) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(b) By hand delivery, during regular office hours, before commencing the construction, alteration, conversion or abandonment of any water supply well or

(c) By facsimile transmission (FAX) before commencing the construction, alteration, conversion or abandonment of any water supply well. If this method is used, a legible copy of the start card shall also be mailed, or delivered to the appropriate OWRD region office no later than the day work is commenced.

(d) Start cards submitted electronically under Section (4)(a) of this rule have satisfied the notification requirement to the OWRD region office.

(6) If a start card has been filed under section (4) and (5) of this rule and additional wells are required on the same or contiguous tax lot and for the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(7) The Director or region office may provide an alternative means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the water supply well. A water supply well constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(8) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the water supply well report required by OAR 690-205-0210 is received, whichever is shorter.

(9) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

**NOTE:** WRD region office fax numbers are listed in Table 205-1.

Region boundaries are shown in Figure 205-1.

[ED. NOTE: Tables and 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 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0035; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-1989(Temp), f. & cert. ef. 9-29-89; WRD 10-1989, f. & cert. ef. 11-20-89; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-205-0070; WRD 4-2004, f. & cert. ef. 6-15-04

## 690-205-0210

### Well Report Required (Water Supply Well Log)

(1) A water well report (water well log) shall be prepared for each water supply well constructed, altered, converted, or abandoned. This requirement includes unsuccessful wells and wells exempt from appropriation permit requirements under ORS 537.545. The log shall be certified as correct by signature of the water supply well constructor constructing the water supply well. The completed log shall also be certified by the bonded water supply well constructor responsible for construction of the well. A water well report must be submitted by each bonded constructor (if drilling responsibility is shifted to a different bonded constructor), showing the work performed by each bonded constructor.

(2) The log 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 water supply well constructor, and the second copy shall be given to the customer who contracted for the construction of the water supply well.

(3) The bonded water supply well constructor shall file the water well log with the Director within 30 days after the completion of the construction, alteration, conversion or abandonment of the water supply well.

(4) The trainee or water supply well constructor operating the water supply well drilling machine shall maintain a rough log of all geologic strata encountered and all materials used in the construction of the water supply well. This log shall be available for inspection by the Watermaster, or other authorized agent of the Water Resources Department at any time before the water well report is received by the Department. The rough drilling log shall be in handwritten or electronic form, or a voice recording.

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(5) In the event a constructor leaves any drilling equipment or other tools in a water supply well, this fact shall be entered on the water well report.

(6) A copy of any special authorizations or special standards issued by the Director shall be attached to the water supply well report.

(7) The report of water well construction required in section (1) 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) Started/Completed date;
- (c) Location of the well 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) Start card number;
- (e) Well identification label number (well tag number);
- (f) Use of well;
- (g) Type of work;
- (h) Temperature of water; and
- (i) Such additional information as required by the Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86. Renumbered from 690-010-0040; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-205-0080; WRD 4-2004, f. & cert. ef. 6-15-04

## 690-240-0005 Introduction

(1) Monitoring wells and geotechnical holes drilled to allow ground water and geologic determinations are constructed in a variety of environments and under a variety of conditions. Improper construction, maintenance, operation, and abandonment can allow deterioration of ground water quality and supply. Although enforcement actions may be exercised against other parties, the landowner of the property where the monitoring well or geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, conversion, and abandonment of the monitoring well, or geotechnical hole.

(2) Holes other than monitoring wells, water supply wells, or geotechnical holes which are drilled, excavated, or otherwise constructed in the earth's surface can also provide an avenue for deterioration of ground water quality. Improper construction, maintenance, use, and abandonment of other holes can pose a significant risk to ground water. **Table 240-1** lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring.

(3) Ground water problems are difficult, expensive, and time consuming to correct. The Water Resources Commission (Commission) has been authorized to develop standards for wells drilled for the purpose of monitoring ground water in order to protect the state's ground waters. The Commission has also been authorized to develop standards for other holes through which ground water may become contaminated. The rules set forth herein are adopted to provide that protection. Their purpose is to prevent and eliminate ground water contamination, waste, and loss of artesian pressure.

(4) The Commission may develop additional rules as needed prescribing standards for the construction, operation, maintenance, and abandonment of other specific types of wells and holes to protect ground water.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, abandonment, conversion, and maintenance of monitoring wells in Oregon.

(7) Monitoring wells are wells as defined in ORS 537.515(9). A license and licensing fee, bond, examination, well report, and start card are

required for construction, conversion, alteration, or abandonment of a monitoring well. In addition, a start card fee is required for new construction, deepening a well, and conversion.

(8) To protect the ground water resource, the Commission has the authority to regulate geotechnical holes under ORS 537.780(1)(c)(A). Construction of geotechnical holes requires either a water supply or monitoring well constructor's license or Oregon registration as a geologist or civil engineer. If any one of the criteria in OAR 690-240-0035(2)(a)-(d) is met, a geotechnical hole report must be submitted.

(9) To protect the ground water resource, the Commission has the authority, under ORS 537.780(1)(c)(A), to regulate any hole through which ground water may be contaminated. Construction of holes other than water supply wells and monitoring wells does not require a license and licensing fee, bond, examination, well report, start card, and start card fee.

(10) Holes constructed under ORS chapters 517, 520, and 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geology and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources.

(11) The rules and regulations set forth herein shall become effective upon adoption by the Water Resources Commission.

(12) Under no circumstances shall a monitoring well, piezometer, geotechnical hole, or other hole be constructed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. (See definition of aquifer.)

(13) The rules and regulations set forth herein provide the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of monitoring wells, geotechnical holes, and other holes. After the effective date of adoption of these rules and regulations, no monitoring well, geotechnical hole, or other hole shall be constructed, altered, converted, or abandoned contrary to the provisions of these rules and regulations without prior approval from the Water Resources Department. Violation of these standards may result in enforcement under OAR chapter 690, division 240, including suspension or revocation of a constructor's license, imposition of civil penalties on the landowner or constructor, action on a bond, or other sanctions authorized by law.

[ED. NOTE: Tables 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 4-2004, f. & cert. ef. 6-15-04

## 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, installation of seals, adding, removing or replacing casing, and any other material change in the design or construction of a well.

(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

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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.

(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) "Commission" means the Oregon Water Resources Commission.

(15) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(16) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer. (Figure 240-1)

(17) "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.

(18) "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.

(19) "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.

(20) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(21) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(22) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(23) "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.

(24) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(25) "Department" means the Oregon Water Resources Department.

(26) "Director" means the Director of the Department or the Director's authorized representatives.

(27) "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.

(28) "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)

(29) "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.

(30) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(31) "Filter Pack" means the granular material placed in the annular space between the well screen and the borehole.

(32) "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.

(33) "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".

(34) "Geologist" means an individual registered by the State of Oregon to practice geology.

(35) "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 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).

(36) "Grout" means approved cement, concrete or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(37) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(38) "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)

(39) "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.

(40) "Hazardous Waste" means a substance as defined by ORS 466.005.

(41) "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.

(42) "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.

(43) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(44) "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.

(45) "Impermeable Sealing Material" means cement or bentonite which is used to fill the open annulus.

(46) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(47) "Leakage" means movement of surface and/or subsurface water around the well casing or seal.

(48) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(49) "Monitoring Well Constructor" means any person who has a current, effective monitoring well constructor license issued in accordance with ORS 537.747(3).

(50) "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.

(51) "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.

(52) "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.

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(53) "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)

(54) "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.

(55) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(56) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(57) "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.

(58) "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.

(59) "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.

(60) "Potentiometric Surface" means the level to which water will rise in tightly cased wells. (Figure 240-1).

(61) "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.

(62) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(63) "Public-at-Large" means a person not actively engaged in the well industry.

(64) "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.

(65) "Remediation Well" means a well used for extracting contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well".

(66) "Respondent" means the person against whom an enforcement action is taken.

(67) "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.

(68) "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.

(69) "Revoke" means termination of a well constructor's license.

(70) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(71) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.002 mm in diameter.

(72) "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.

(73) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(74) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(75) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(76) "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.

(77) "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.

(78) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(79) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(80) "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.

(81) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(82) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(83) "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.

(84) "Water Supply Well Constructor" means any person who has a current, effective water supply well constructor license issued in accordance with ORS 537.747(3).

(85) "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)

(86) "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

## 690-240-0035

### Geotechnical Holes: General Performance and Responsibility Requirements

(1) A geotechnical hole is defined in OAR 690-240-0010(35). Geotechnical holes may be either cased or uncased and are constructed to evaluate subsurface data or information (geologic, hydrogeologic, chemical, or other physical characteristics). Geotechnical holes are not "wells" because their construction and/or duration of use are different than wells and therefore are not subject to the same requirements as wells. Geotechnical holes are broken into the following classifications:

- Temporary (abandoned within 72 hours) geotechnical holes;
- Cased permanent geotechnical holes;
- Uncased permanent geotechnical holes; or
- Slope stability geotechnical holes.

(2) A geotechnical hole report, signed by the responsible professional, must be submitted to the department if any of the criteria listed in subsections (a) through (d) below is met. The geotechnical hole is:

- Greater than 18 feet deep; or
- Within 50 feet of a water supply or monitoring well; or
- Used to make a determination of water quality; or
- Constructed in an area of known or reasonably suspected contamination.

(3) Geotechnical holes greater than ten feet in depth and less than eighteen feet in depth that do not meet any of the criteria spelled out in OAR 690-240-0035(2) shall have a professional person as described in OAR 690-240-0035(4)(c) responsible for the construction and abandonment of the geotechnical hole but do not require a 'Geotechnical Hole Report' to be filed.

(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;

# ADMINISTRATIVE RULES

(b) Conversion of a geotechnical hole to a water supply or monitoring well shall be considered by the Water Resources Department on a case by case basis;

(c) When a geotechnical hole report is required, or if it is between 10' and 18', any person (professional) who is responsible for the construction, alteration or abandonment of a geotechnical hole shall have one of the following certifications:

- (A) A current Oregon Monitoring Well Constructor License;
- (B) A current Oregon Water Supply Well Constructor License;
- (C) Be registered by the State of Oregon as a Professional Geologist;

or,

(D) Be registered by the State of Oregon as a Professional Civil Engineer.

(d) The professional shall show proof of license or registration and a current 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 OAR 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

## 690-240-0055

### License Required to Construct Monitoring Wells

(1) Unless otherwise provided in these rules, any person who constructs, alters or abandons monitoring wells for another person shall have a Monitoring Well Constructor License or work under the supervision of a licensed Monitoring Well Constructor.

(2) If a person advertises services and/or enters into contracts for the construction, alteration or abandonment of monitoring wells for another person, that person shall furnish a \$10,000 Monitoring Well Constructor Bond or Irrevocable Letter of Credit to the Water Resources Commission and must be a licensed monitoring well constructor. This bond or letter of credit is separate from the bond or letter of credit required for construction of water supply wells.

(3) A property owner who constructs, alters, or abandons a monitoring well on their own property shall have a Landowner Well Permit as described in OAR 690-240-0340 for each monitoring well on which work is done.

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 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

## 690-240-0340

### Landowner Well Construction Permit, Fee and Bond

(1) The Water Resources Commission requires a permit, permit fee, and bond or irrevocable letter of credit, for each monitoring well constructed, altered, converted, or abandoned by a landowner, unless the landowner is a licensed and bonded monitoring well constructor.

(2) To receive a Landowner Well permit, a person must submit the following to the Director:

(a) A completed application form provided by the Commission, containing, as a minimum:

- (A) The property owner's name, address and telephone number;
- (B) The surety company's name, address and telephone number;
- (C) The proposed location of the well by township, range, section, tax-lot number if assigned, and street address;

(D) The proposed use of the monitor well; and

(E) The type of proposed work; and

(F) Well design plan on form approved by the Department.

(b) A properly executed landowner's monitoring well bond or irrevocable letter of credit for \$5,000 to the State of Oregon; and

(c) A \$25 permit fee.

# ADMINISTRATIVE RULES

(3) Only the owner of record, a member of the immediate family of the owner of record, or a full time employee of the owner of record, (whose main duties are other than the construction of wells), may operate a well drilling machine under a landowner's permit.

(4) A landowner permit issued pursuant to these rules shall expire six months from the date of issuance.

(a) A monitor well report shall be submitted within 30 days of expiration of the landowner permit, or within 30 days of completion of the well, whichever occurs first.

(5) If the landowner permit expires, a landowner may reapply for a new landowner permit by complying with the requirements described in sections (1), (2) and (3) of this rule.

(6) The Department may deny a landowner permit if it is determined that the construction, alteration, abandonment, or conversion of the proposed well is a health threat, a health hazard, a source of contamination, or a source of waste of the ground water resource.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-240-0082; WRD 4-2004, f. & cert. ef. 6-15-04

## 690-240-0375

### Monitoring Well Construction Notice Required (Start Card)

(1) Each bonded monitoring well constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any monitoring well or conversion of any other hole, geotechnical hole, or water supply well to a monitoring well. The start card shall contain the following information:

- (a) Name and mailing address of the landowner;
- (b) Street address of the well;
- (c) The approximate location of the monitoring well; and
- (d) The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) All start cards for new monitoring wells, deepening a well, or conversion of other holes, geotechnical holes, or water supply wells shall be submitted with a \$125 start card fee. A start card fee is not required to abandon a monitoring well. OAR 690-240-0340 shall apply to landowners who construct, alter, convert, or abandon a monitoring well.

(3) Forms for making these reports and submitting fees shall be furnished by the Water Resources Department.

(4) Each start card shall be mailed, hand-delivered during regular business hours or transmitted by Department-approved electronic submittal to the Water Resources Department in Salem no later than the day construction, conversion, alteration, or abandonment is commenced.

(a) Start cards submitted electronically shall be submitted before commencing construction, alteration, conversion or abandonment of any monitoring well.

(5) In addition to the start card required under section (4) of this rule, the constructor shall provide a legible copy of the start card to the Oregon Water Resources Department (OWRD) region office within which the monitoring well is being constructed, altered, converted or abandoned before commencing the construction, alteration, conversion or abandonment of any monitoring well, using one of the following options:

(a) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(b) By hand delivery, during regular office hours, before commencing the construction, alteration, conversion or abandonment of any monitoring well; or

(c) By facsimile transmission (FAX) before commencing the construction, alteration, conversion or abandonment of any monitoring well. If this method is used, a legible copy of the start card shall also be mailed or delivered to the appropriate OWRD region office no later than the day work is commenced.

(d) Start cards submitted electronically under Section (4)(a) of this rule have satisfied the notification requirement to the OWRD region office.

(6) If a start card has been filed under section (4) and (5) of this rule and additional wells are required on the same or contiguous tax lot and for the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(7) The Director or region office may provide an alternate means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the monitoring well. A monitoring well constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(8) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the monitoring well report required by OAR 690-240-0395 is received, whichever is shorter.

(9) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

**NOTE:** Region office fax and telephone numbers are listed in Table 240-2. Water Resources Department Regional boundaries are shown in Figure 240-2.

[ED. NOTE: Tables and 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 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-240-0090; WRD 4-2004, f. & cert. ef. 6-15-04

## 690-240-0395

### Monitoring Well Report Required (Monitoring Well Log)

(1) A monitoring well report shall be prepared for each monitoring well constructed, altered, converted, or abandoned including unsuccessful monitoring wells. The log shall be certified as correct by signature of the monitoring well constructor constructing the monitoring well. The completed log shall also be certified by the bonded monitoring well constructor responsible for construction of the monitoring well. A monitoring well report must be submitted by each bonded constructor (if drilling responsibility is shifted to a different bonded constructor), showing the work performed by each bonded constructor.

(2) The log 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 monitoring well constructor, and the second copy shall be given to the customer who contracted for the construction of the monitoring well.

(3) The bonded monitoring well constructor shall file the monitoring well log with the Director within 30 day after the completion of the construction, alteration, conversion, or abandonment of the monitoring well.

(4) The trainee or monitoring well constructor operating the monitoring well drilling machine shall maintain a rough log of all geologic strata encountered and all materials used in the construction of the monitoring well. This log shall be available for inspection by the Watermaster or other authorized agent of the Water Resources Department or other delegated agency representative at any time before the monitoring well report is received by the Department. The rough drilling log shall be in handwritten or electronic form, or a voice recording.

(5) In the event a constructor leaves any drilling equipment or other tools in a monitoring well this fact shall be entered on the monitoring well report.

(6) A copy of any special authorizations or special standards issued by the Director shall be attached to the monitoring well report.

(7) The report of monitoring well construction required in section (1) 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) Started/Completed date;
- (c) Location of the well 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) Start card number;
- (e) Well identification label number (well tag number);
- (f) Use of well;
- (g) Type of work;
- (h) Type and amount of sealant used and measured weight of the grout slurry as required in OAR 690-240-0475(2)(g);
- (i) Temperature of water;
- (j) Map showing location of monitoring well on site, must be attached and shall include an approximate scale and a north arrow;
- (k) Such additional information as required by the Department.

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 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; Renumbered from 690-240-0095; WRD 4-2004, f. & cert. ef. 6-15-04

# ADMINISTRATIVE RULES

## 690-240-0525

### Piezometers

It is prohibited to construct a piezometer in an area of known or reasonably suspected contamination.

**NOTE:** The Water Resources Department and the Department of Environmental Quality have information sources to use in determining if contaminants are present. Customary drilling practice as conducted by licensed professional must be included as part of the appropriate inquiry to determine if contaminants are present or reasonably suspected.

(1) A piezometer is defined in OAR 690-240-0010(57). Piezometers are a type of monitoring well and shall meet current monitoring well rules except for the following:

(a) Borehole size with depth requirements:

(A) For piezometers with a sealing depth less than 50 feet deep, the borehole diameter shall be at least two and one half inches (2.5") larger than the nominal casing diameter. If the piezometer is constructed using a hollow stem auger drilling machine, the inside diameter of the auger must be at least 2.5 inches larger than the nominal diameter of the casing to be installed;

(B) For piezometers with a sealing depth greater than 50 feet deep, the borehole diameter shall be at least three inches larger than the nominal casing diameter. If the piezometer is constructed using a hollow stem auger drilling machine, the inside diameter of the auger must be at least 3 inches larger than the nominal diameter of the casing to be installed.

(b) Surface Completion:

(A) If the piezometer 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 vulnerable to damage, the piezometer shall be protected as described in OAR 690-240-0420;

(B) If the piezometer is completed below ground 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.

(c) If an artesian piezometer flows at land surface, it shall be equipped with a control valve or a watertight mechanical cap, so that all flow of water from the well can be completely stopped. Flowing artesian piezometers are not required to be equipped with a pressure gauge placed on a dead-end line or a petcock valve;

(d) The special cleaning and drill cutting storage requirements in OAR 690-240-0450 shall not apply to piezometers because they may not be constructed in areas of known or reasonably suspected contamination. However, all equipment and materials used in the construction of a piezometer shall be free of foreign materials and contaminants prior to entry into the well;

(e) Use of commercially fabricated screens are not required for piezometers. The screens installed shall be in new or like new condition, being free of pits or breaks, and shall be free of foreign materials and contaminants prior to installation;

(f) The filter pack requirements of OAR 690-240-0460(5) shall not apply to piezometers because they are not constructed in areas of known or reasonably suspected contamination;

(g) A minimum three foot annular seal is required. If a grout slurry is used, the filter pack seal requirements of 690-240-0460(6) apply. If a piezometer is completed with a flush monument, the annular seal shall extend a minimum of three feet below the monument seal.

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; Renumbered from 690-240-0137; WRD 4-2004, f. & cert. ef. 6-15-04

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**Adm. Order No.:** WRD 5-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 690-310-0040, 690-310-0060, 690-310-0150, 690-310-0160, 690-310-0180, 690-310-0220, 690-340-0030

**Rules Repealed:** 690-003-0000, 690-003-0010, 690-003-0020, 690-011-0220, 690-026-0005, 690-026-0010, 690-026-0015, 690-026-0020, 690-026-0025, 690-026-0030

**Subject:** The Water Resources Commission repealed OAR Chapter 690, Division 003, Division 011 and Division 026 due to statutory changes or because they are no longer necessary. The Commission

adopted rules under OAR Chapter 690, Division 310 and 340 in order to implement statutes adopted by the 2003 Legislature.

Repealed Rules:

OAR Chapter 690, Division 003 - These rules addressed application processing procedures and timelines. The statutory basis for the rules ORS 182.815 (Oregon Laws 1982 Special Session) were repealed by the Legislature in 1999 (ORS 285a.380).

OAR Chapter 690, Division 011 - In March of 1996, the Water Resources Commission repealed or renumbered OAR Chapter 690, Division 011 in order to implement the changes brought about by Senate Bill 674, adopted by the 1995 Legislature. The only rule that remained was 690-011-0220. However, with the passage of Senate Bill 674 in 1995, there no longer is a statutory basis for this requirement.

OAR Chapter 690, Division 026 - Prior to 1991, Oregon law provided a process for spring water users to apply for a "certificate of registration." The statutory basis for the spring registration process was repealed by the 1991 Legislature (Senate Bill 202, 1991 Oregon Laws), therefore this rule is no longer applicable.

Rule Amendments:

OAR Chapter 690, Division 310 - The Water Resources Commission adopted rules under OAR Chapter 690, Division 310 in order to implement Senate Bill 82 (2003 Oregon Laws) regarding requirements for easements on state-owned lands and House Bill 2268 (2003 Oregon Laws) regarding statutory fees.

OAR Chapter 690, Division 340 - The Water Resource Commission adopted rules under OAR Chapter 690, Division 340 regarding water use under a limited license which adjusts the examination and recording fee required.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

## 690-310-0040

### Application Requirements

(1)(a) Each application for a permit to appropriate water shall be made to the Department on a form prescribed by the Department and shall set forth:

(A) The name and mailing address of the applicant(s);

(B) The source(s) of water from which the water is proposed to be diverted or appropriated, including the name and mailing address of any owner of the land upon which the source of the water supply is located;

(C) The amount of water to be appropriated from each source;

(D) A map of the proposed water use as set forth in the mapping requirements in OAR 690-310-0050;

(E) The nature of the proposed use(s);

(F) The name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work even if the applicant has obtained written authorization or an easement from the owner.

(G) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work. This requirement shall not apply to applications for irrigation or domestic use where the applicant would occupy state-owned submersible lands for the construction, maintenance, and operation of any structure or facility necessary for the use of water.

(H) Proposed dates for the beginning of construction, completion of construction, and complete application of the water to the proposed beneficial use;

(I) The legal description of :

(i) The property from which the water is to be diverted;

(ii) Any property crossed by the proposed ditch, canal or other work; and

(iii) Any property on which the water is to be used as depicted on the map;

(J) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters;

(K) Information the applicant has that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters;

# ADMINISTRATIVE RULES

(L) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning Department;

(M) Signature of the applicant(s), and, if the applicant is a public agency, corporation or business, the title or authority of the person who signs the application on behalf of the entity;

(N) An oath that the information contained in the application is true and accurate;

(O) The estimated capacity of each pump in gallons per minute, and the horsepower of each pump motor;

(P) All other data concerning the proposed project and the applicant's ability and intention to construct the project, as the Department considers necessary;

(Q) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements;

(R) If the requested water use is supplemental to an existing water use, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant that is primary to the supplemental use.

(b) If the application is for a permit to appropriate ground water, in addition to the information required under subsection (a) of this section, the application shall contain:

(A) For any well already constructed, a copy of the well constructor's log, if available. If a well log is not available, or if the well is not already constructed, the proposed total depth, depth of casing and seal, and the anticipated perforation and open intervals;

(B) The horizontal distance for each proposed point of ground water appropriation to the nearest surface water, if less than one mile, and the difference in land surface elevation between them;

(C) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision;

(D) The depth to the water table, if known;

(E) The location of each well with reference to government survey corners or monuments or corners of recorded plats;

(F) The estimated capacity of each well;

(G) If the ground water does not require pumping, the rate of flow in gallons in such manner as the Commission may prescribe.

(c) If the application is to store water and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, the application also shall include or be accompanied by:

(A) Preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area;

(B) Proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water;

(C) A legal description of the property upon which the water is to be stored;

(D) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-014-0150 unless the application is to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height, in which case the map need not be prepared by a certified water right examiner.

(d) If for agricultural purposes, in addition to any other information required, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be;

(e) Except as otherwise provided in OAR 690, division 51, if for power purposes, in addition to any other information required, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied;

(f) If for municipal or quasi-municipal water supply, in addition to any other information required, the application shall give the already installed and available capacities to provide water service, present population to be served, and, as near as may be, the future requirements of the population served, and if known, the methods that may be used to meet such future requirements;

(g) If for mining purposes, in addition to any other information required, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050.

(3) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.987.

(4) If the department determines that the source of a proposed use of water is in or above a scenic waterway, in addition to any other information required, the applicant shall provide the information required under OAR 690-310-0260.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 390.835, 537.140 & 537.615

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 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0020; WRD 5-2004, f. & cert. ef. 6-15-04

## 690-310-0060

### Permits for Livestock Watering Outside of Riparian Areas (SB 150, 1989); Fees

(1) Applications for permits to use water exclusively for livestock watering outside of riparian areas are subject to the following reduced fees:

(a) For examining the application, \$40;

(b) For filing and recording the permit, \$10.

(2) Applications submitted under this rule shall in all other respects be subject to the usual requirements for application processing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0083; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-95, Renumbered from 690-011-0048; WRD 5-2004, f. & cert. ef. 6-15-04

## 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 mail copies of the proposed final order to the applicant and to persons 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

# ADMINISTRATIVE RULES

## 690-310-0160

### Protests and Standing to Participate in Further Proceedings

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

- (a) The name, address and telephone number of the protestant;
- (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
- (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
- (e) Any citation of legal authority supporting the protest, if known; and
- (f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.

(3) The request for standing must be in writing, signed by the requester, and include the following:

- The requester's name, mailing address and telephone number;
  - (b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
  - (c) A statement that the requester supports the proposed final order as issued;
  - (d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and
  - (e) The fee established under ORS 536.050.
- (4) Any person who has filed a timely request for standing may later file a petition for intervention in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(5) Each person submitting a protest or a request for standing 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 in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.

(7) Within 10 days after the close of the filing period established under section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.027  
Stats. Implemented: ORS 537.153, 537.170, 537.621 & 537.622  
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

## 690-310-0180

### Conduct of Contested Case

(1) Within 45 days after the Director schedules a contested case hearing under OAR 690-310-0170, the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of OAR chapter 690, division 2. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(2) The parties to any contested case hearing initiated under this section shall be limited to:

- (a) The applicant;
- (b) Any person who timely filed a protest; and
- (c) Any person who timely filed a request for standing under OAR 690-310-0160, pays the fee required under ORS 536.050 for participating in the contested case hearing and requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:

- (a) As provided in sections (1) and (2) of this rule; and
- (b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.

Stat. Auth.: ORS 536.027  
Stats. Implemented: ORS 537.170 & 537.622  
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

## 690-310-0220

### Final Determination of Whether Proposed Use of Surface Water Would Impair or Be Detrimental to Public Interest or Whether Proposed Use of Ground Water Would Preserve the Public Welfare, Safety and Health

(1) If the presumption of public interest under OAR 690-310-0110 or 690-310-0130 is overcome, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(8) or, if the application is for the use of ground water, whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering the factors set forth in ORS 537

(2) In developing the final order, the Director shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

(3) Upon issuing a final order, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department also shall publish notice of the final order by publication in the weekly notice published by the Department.

Stat. Auth.: ORS 536.027  
Stats. Implemented: ORS 537.170 & 537.625  
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

## 690-340-0030

### Limited License

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

- (a) The fee for examination and recording, \$150 for the first point of diversion plus \$15 for each additional point of diversion; and
- (b) A completed water availability statement from the local watermaster on forms provided by the department; and
- (c) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

(3) Each limited license shall be limited to an area within a single drainage basin.

(4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.

(5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.

(7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, 595 & 654  
Stats. Implemented: ORS 537.143 & 537.144  
Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0082; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-04

## ADMINISTRATIVE RULES

**Adm. Order No.:** WRD 6-2004

**Filed with Sec. of State:** 6-15-2004

**Certified to be Effective:** 6-15-04

**Notice Publication Date:** 2-1-04

**Rules Adopted:** 690-502-0215

**Subject:** The Water Resources Commission adopted a rule under the Willamette Basin Program (OAR Chapter 690, Division 502) that provides a limited opportunity for certain holders of five-year limited ground water permits to submit an application for a ground water permit without the five-year limitation.

This rule modifies the Willamette Basin Program to allow a holder of a five-year permit with a priority date of October 4, 1991 or earlier in the Damascus, Glad Tidings, Kingston, Mount Angel, Parrett Mountain, Stayton-Sublimity, Sherwood-Dammasch-Wilsonville, Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Area to submit a ground water application for any classified use under OAR 690-502-0160(2). An application submitted under this rule would not be subject to the five-year limitations of the subject Ground Water Limited Area. Applications under this

rule are subject to all current application processing rules and review requirements. The rule sunsets January 1, 2006.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

### 690-502-0215

#### Five-Year Limited Permits

(1) A holder of a five-year limited permit with a priority date of October 4, 1991, or earlier in the Damascus, Glad Tidings, Kingston, Mount Angel, Parrett Mountain, Stayton-Sublimity, Sherwood-Dammasch-Wilsonville, Chehalem Mountain, Eola Hills or South Salem Hills Ground Water Limited Areas may submit a ground water application and not be subject to the classifications or restrictions established by OAR 690-502-0180 to 690-502-0200.

(2) An application submitted under section (1) of this rule must be for the use, or portion thereof, authorized under the existing five-year limited permit (type of use, location, number of acres, source, rate, duty, season, and other permit specifications).

(3) Any permit issued for an application submitted under section (2) of this rule shall, as applicable, contain the special permit conditions under OAR 690-502-0250 and 690-502-0260.

(4) This rule is of no further force or effect after January 1, 2006.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 6-2004, f.& cert. ef. 6-15-04

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123-030-0030	2-3-04	Amend(T)	3-1-04	123-057-0430	2-3-04	Amend(T)	3-1-04
123-030-0040	2-3-04	Amend(T)	3-1-04	123-057-0450	2-3-04	Amend(T)	3-1-04
123-030-0050	2-3-04	Amend(T)	3-1-04	123-057-0470	2-3-04	Amend(T)	3-1-04
123-035-0000	2-3-04	Adopt(T)	3-1-04	123-057-0510	2-3-04	Amend(T)	3-1-04
123-035-0005	2-3-04	Adopt(T)	3-1-04	123-057-0530	2-3-04	Amend(T)	3-1-04
123-035-0010	2-3-04	Adopt(T)	3-1-04	123-057-0710	2-3-04	Amend(T)	3-1-04
123-042-0010	2-3-04	Amend(T)	3-1-04	123-068-0015	12-15-03	Adopt(T)	1-1-04
123-042-0020	2-3-04	Amend(T)	3-1-04	123-068-0105	12-15-03	Adopt(T)	1-1-04
123-042-0030	2-3-04	Amend(T)	3-1-04	123-068-0205	12-15-03	Adopt(T)	1-1-04
123-042-0040	2-3-04	Amend(T)	3-1-04	123-068-0305	12-15-03	Adopt(T)	1-1-04
123-042-0050	2-3-04	Suspend	3-1-04	125-020-0610	3-26-04	Amend	5-1-04
123-042-0060	2-3-04	Suspend	3-1-04	125-125-0050	3-5-04	Adopt(T)	4-1-04
123-042-0070	2-3-04	Amend(T)	3-1-04	125-125-0100	3-5-04	Adopt(T)	4-1-04
123-042-0075	2-3-04	Suspend	3-1-04	125-125-0150	3-5-04	Adopt(T)	4-1-04
123-042-0080	2-3-04	Amend(T)	3-1-04	125-125-0200	3-5-04	Adopt(T)	4-1-04
123-042-0140	2-3-04	Suspend	3-1-04	125-125-0250	3-5-04	Adopt(T)	4-1-04
123-042-0150	2-3-04	Amend(T)	3-1-04	125-125-0300	3-5-04	Adopt(T)	4-1-04
123-042-0160	2-3-04	Amend(T)	3-1-04	125-125-0350	3-5-04	Adopt(T)	4-1-04
123-042-0170	2-3-04	Suspend	3-1-04	125-125-0400	3-5-04	Adopt(T)	4-1-04
123-042-0180	2-3-04	Amend(T)	3-1-04	125-125-0450	3-5-04	Adopt(T)	4-1-04
123-042-0190	2-3-04	Amend(T)	3-1-04	137-001-0070	12-9-03	Amend	1-1-04
123-043-0035	3-22-04	Amend	5-1-04	137-001-0085	12-9-03	Repeal	1-1-04
123-043-0045	3-22-04	Amend	5-1-04	137-003-0000	1-1-04	Amend	1-1-04
123-043-0055	3-22-04	Amend	5-1-04	137-003-0501	1-1-04	Amend	1-1-04
123-043-0075	3-22-04	Amend	5-1-04	137-003-0510	1-1-04	Amend	1-1-04
123-049-0005	2-3-04	Amend	3-1-04	137-003-0515	1-1-04	Amend	1-1-04
123-049-0010	2-3-04	Amend	3-1-04	137-003-0520	1-1-04	Amend	1-1-04
123-049-0020	2-3-04	Amend	3-1-04	137-003-0525	1-1-04	Amend	1-1-04
123-049-0030	2-3-04	Amend	3-1-04	137-003-0528	1-1-04	Amend	1-1-04
123-049-0040	2-3-04	Amend	3-1-04	137-003-0530	1-1-04	Amend	1-1-04
123-049-0050	2-3-04	Amend	3-1-04	137-003-0535	1-1-04	Amend	1-1-04
123-049-0060	2-3-04	Adopt	3-1-04	137-003-0540	1-1-04	Amend	1-1-04
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123-055-0120	2-3-04	Amend(T)	3-1-04	137-003-0555	1-1-04	Amend	1-1-04
123-055-0200	2-3-04	Amend(T)	3-1-04	137-003-0560	1-1-04	Amend	1-1-04
123-055-0240	2-3-04	Amend(T)	3-1-04	137-003-0565	1-1-04	Amend	1-1-04
123-055-0300	2-3-04	Amend(T)	3-1-04	137-003-0570	1-1-04	Amend	1-1-04
123-055-0340	2-3-04	Amend(T)	3-1-04	137-003-0572	1-1-04	Amend	1-1-04
123-055-0400	2-3-04	Amend(T)	3-1-04	137-003-0573	1-1-04	Amend	1-1-04
123-055-0420	2-3-04	Amend(T)	3-1-04	137-003-0575	1-1-04	Amend	1-1-04
123-055-0440	2-3-04	Amend(T)	3-1-04	137-003-0580	1-1-04	Amend	1-1-04
123-055-0460	2-3-04	Amend(T)	3-1-04	137-003-0585	1-1-04	Amend	1-1-04
123-055-0525	2-3-04	Amend(T)	3-1-04	137-003-0590	1-1-04	Amend	1-1-04
123-055-0600	2-3-04	Amend(T)	3-1-04	137-003-0595	1-1-04	Amend	1-1-04
123-055-0620	2-3-04	Amend(T)	3-1-04	137-003-0600	1-1-04	Amend	1-1-04
123-055-0900	2-3-04	Amend(T)	3-1-04	137-003-0605	1-1-04	Amend	1-1-04
123-057-0110	2-3-04	Amend(T)	3-1-04	137-003-0610	1-1-04	Amend	1-1-04
123-057-0130	2-3-04	Amend(T)	3-1-04	137-003-0615	1-1-04	Amend	1-1-04
123-057-0170	2-3-04	Amend(T)	3-1-04	137-003-0625	1-1-04	Amend	1-1-04
123-057-0190	2-3-04	Amend(T)	3-1-04	137-003-0630	1-1-04	Amend	1-1-04
123-057-0210	2-3-04	Amend(T)	3-1-04	137-003-0635	1-1-04	Amend	1-1-04
123-057-0230	2-3-04	Amend(T)	3-1-04	137-003-0640	1-1-04	Amend	1-1-04
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137-003-0655	1-1-04	Amend	1-1-04	137-055-3400	1-5-04	Amend	2-1-04
137-003-0660	1-1-04	Amend	1-1-04	137-055-3420	1-5-04	Amend	2-1-04
137-003-0665	1-1-04	Amend	1-1-04	137-055-3440	1-5-04	Amend	2-1-04
137-003-0670	1-1-04	Amend	1-1-04	137-055-3480	4-1-04	Amend	5-1-04
137-003-0675	1-1-04	Amend	1-1-04	137-055-3490	1-5-04	Amend	2-1-04
137-003-0690	1-1-04	Amend	1-1-04	137-055-3660	1-5-04	Adopt	2-1-04
137-003-0695	1-1-04	Amend	1-1-04	137-055-4060	1-5-04	Amend	2-1-04
137-004-0800	12-9-03	Amend	1-1-04	137-055-4080	1-5-04	Amend	2-1-04
137-008-0000	12-9-03	Amend	1-1-04	137-055-4100	1-5-04	Amend	2-1-04
137-008-0010	12-9-03	Amend	1-1-04	137-055-4110	1-5-04	Adopt	2-1-04
137-008-0010	12-10-03	Amend(T)	1-1-04	137-055-4120	1-5-04	Amend	2-1-04
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137-025-0020	5-19-04	Amend	7-1-04	137-055-4140	1-5-04	Repeal	2-1-04
137-025-0045	5-19-04	Adopt	7-1-04	137-055-4160	1-5-04	Amend	2-1-04
137-025-0115	5-19-04	Adopt	7-1-04	137-055-4180	1-5-04	Amend	2-1-04
137-025-0117	5-19-04	Adopt	7-1-04	137-055-4200	1-5-04	Repeal	2-1-04
137-025-0160	4-1-04	Amend	4-1-04	137-055-4220	1-5-04	Repeal	2-1-04
137-025-0160	5-19-04	Amend	7-1-04	137-055-4240	1-5-04	Repeal	2-1-04
137-025-0180	4-1-04	Amend	4-1-04	137-055-4260	1-5-04	Repeal	2-1-04
137-025-0180	5-19-04	Amend	7-1-04	137-055-4280	1-5-04	Repeal	2-1-04
137-025-0181	5-19-04	Adopt	7-1-04	137-055-4440	1-5-04	Amend	2-1-04
137-025-0182	5-19-04	Adopt	7-1-04	137-055-4450	1-5-04	Adopt	2-1-04
137-025-0183	5-19-04	Adopt	7-1-04	137-055-4520	1-5-04	Amend	2-1-04
137-025-0184	5-19-04	Adopt	7-1-04	137-055-5020	1-5-04	Amend	2-1-04
137-025-0186	5-19-04	Adopt	7-1-04	137-055-5025	1-5-04	Adopt	2-1-04
137-025-0188	5-19-04	Adopt	7-1-04	137-055-5040	1-5-04	Amend	2-1-04
137-025-0189	5-19-04	Adopt	7-1-04	137-055-5110	1-5-04	Amend	2-1-04
137-040-0017	1-2-04	Amend	2-1-04	137-055-5220	1-5-04	Amend	2-1-04
137-040-0500	1-2-04	Amend	2-1-04	137-055-5510	1-5-04	Adopt	2-1-04
137-040-0510	1-2-04	Amend	2-1-04	137-055-6020	1-5-04	Amend	2-1-04
137-040-0520	1-2-04	Amend	2-1-04	137-055-6025	1-5-04	Amend	2-1-04
137-040-0550	1-2-04	Amend	2-1-04	137-055-6110	1-5-04	Amend	2-1-04
137-040-0560	1-2-04	Amend	2-1-04	137-060-0010	2-11-04	Repeal	3-1-04
137-040-0565	1-2-04	Adopt	2-1-04	137-060-0011	2-11-04	Repeal	3-1-04
137-045-0010	12-9-03	Amend	1-1-04	137-060-0012	2-11-04	Repeal	3-1-04
137-045-0015	12-9-03	Amend	1-1-04	137-060-0013	2-11-04	Repeal	3-1-04
137-045-0030	12-9-03	Amend	1-1-04	137-060-0014	2-11-04	Repeal	3-1-04
137-045-0035	12-9-03	Amend	1-1-04	137-060-0015	2-11-04	Repeal	3-1-04
137-045-0050	12-9-03	Amend	1-1-04	137-060-0016	2-11-04	Repeal	3-1-04
137-045-0055	12-9-03	Adopt	1-1-04	137-060-0020	2-11-04	Repeal	3-1-04
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137-055-1140	4-1-04	Amend	5-1-04	137-060-0026	2-11-04	Repeal	3-1-04
137-055-1160	1-5-04	Amend	2-1-04	137-060-0030	2-11-04	Repeal	3-1-04
137-055-1320	4-1-04	Amend	5-1-04	137-060-0031	2-11-04	Repeal	3-1-04
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137-055-1600	4-1-04	Amend	5-1-04	137-060-0034	2-11-04	Repeal	3-1-04
137-055-2140	4-1-04	Amend	5-1-04	137-060-0035	2-11-04	Repeal	3-1-04
137-055-3200	1-5-04	Adopt	2-1-04	137-060-0036	2-11-04	Repeal	3-1-04
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137-060-0044	2-11-04	Repeal	3-1-04	141-030-0045	1-1-04	Adopt	1-1-04
137-060-0045	2-11-04	Repeal	3-1-04	141-035-0005	1-1-04	Amend	1-1-04
137-060-0100	2-11-04	Adopt	3-1-04	141-035-0010	1-1-04	Repeal	1-1-04
137-060-0110	2-11-04	Adopt	3-1-04	141-035-0011	1-1-04	Adopt	1-1-04
137-060-0120	2-11-04	Adopt	3-1-04	141-035-0012	1-1-04	Adopt	1-1-04
137-060-0130	2-11-04	Adopt	3-1-04	141-035-0013	1-1-04	Amend	1-1-04
137-060-0140	2-11-04	Adopt	3-1-04	141-035-0015	1-1-04	Amend	1-1-04
137-060-0150	2-11-04	Adopt	3-1-04	141-035-0016	1-1-04	Adopt	1-1-04
137-060-0160	2-11-04	Adopt	3-1-04	141-035-0018	1-1-04	Adopt	1-1-04
137-060-0200	2-11-04	Adopt	3-1-04	141-035-0020	1-1-04	Amend	1-1-04
137-060-0210	2-11-04	Adopt	3-1-04	141-035-0025	1-1-04	Amend	1-1-04
137-060-0220	2-11-04	Adopt	3-1-04	141-035-0030	1-1-04	Amend	1-1-04
137-060-0230	2-11-04	Adopt	3-1-04	141-035-0035	1-1-04	Amend	1-1-04
137-060-0240	2-11-04	Adopt	3-1-04	141-035-0040	1-1-04	Amend	1-1-04
137-060-0250	2-11-04	Adopt	3-1-04	141-035-0045	1-1-04	Amend	1-1-04
137-060-0260	2-11-04	Adopt	3-1-04	141-035-0047	1-1-04	Amend	1-1-04
137-060-0300	2-11-04	Adopt	3-1-04	141-035-0048	1-1-04	Amend	1-1-04
137-060-0310	2-11-04	Adopt	3-1-04	141-035-0050	1-1-04	Amend	1-1-04
137-060-0320	2-11-04	Adopt	3-1-04	141-035-0055	1-1-04	Amend	1-1-04
137-060-0330	2-11-04	Adopt	3-1-04	141-035-0060	1-1-04	Amend	1-1-04
137-060-0340	2-11-04	Adopt	3-1-04	141-035-0065	1-1-04	Amend	1-1-04
137-060-0350	2-11-04	Adopt	3-1-04	141-035-0068	1-1-04	Adopt	1-1-04
137-060-0360	2-11-04	Adopt	3-1-04	141-035-0070	1-1-04	Amend	1-1-04
137-060-0400	2-11-04	Adopt	3-1-04	141-035-0075	1-1-04	Adopt	1-1-04
137-060-0410	2-11-04	Adopt	3-1-04	141-040-0005	1-1-04	Amend	1-1-04
137-060-0420	2-11-04	Adopt	3-1-04	141-040-0010	1-1-04	Amend	1-1-04
137-060-0430	2-11-04	Adopt	3-1-04	141-040-0020	1-1-04	Amend	1-1-04
137-060-0440	2-11-04	Adopt	3-1-04	141-040-0030	1-1-04	Amend	1-1-04
137-060-0450	2-11-04	Adopt	3-1-04	141-040-0035	1-1-04	Amend	1-1-04
137-084-0001	1-29-04	Adopt	3-1-04	141-040-0040	1-1-04	Amend	1-1-04
137-084-0005	1-29-04	Adopt	3-1-04	141-040-0200	1-1-04	Amend	1-1-04
137-084-0010	1-29-04	Adopt	3-1-04	141-040-0211	1-1-04	Amend	1-1-04
137-084-0020	1-29-04	Adopt	3-1-04	141-040-0212	1-1-04	Amend	1-1-04
137-084-0030	1-29-04	Adopt	3-1-04	141-040-0214	1-1-04	Amend	1-1-04
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137-085-0010	2-1-04	Adopt(T)	3-1-04	141-045-0005	1-1-04	Amend	1-1-04
137-085-0020	2-1-04	Adopt(T)	3-1-04	141-045-0010	1-1-04	Amend	1-1-04
137-085-0030	2-1-04	Adopt(T)	3-1-04	141-045-0015	1-1-04	Amend	1-1-04
137-085-0040	2-1-04	Adopt(T)	3-1-04	141-045-0021	1-1-04	Amend	1-1-04
137-085-0050	2-1-04	Adopt(T)	3-1-04	141-045-0031	1-1-04	Amend	1-1-04
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137-105-0010	5-25-04	Adopt	7-1-04	141-045-0061	1-1-04	Amend	1-1-04
137-105-0020	5-25-04	Adopt	7-1-04	141-045-0100	1-1-04	Amend	1-1-04
137-105-0030	5-25-04	Adopt	7-1-04	141-045-0105	1-1-04	Amend	1-1-04
137-105-0040	5-25-04	Adopt	7-1-04	141-045-0115	1-1-04	Amend	1-1-04
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141-030-0015	1-1-04	Amend	1-1-04	141-045-0121	1-1-04	Amend	1-1-04
141-030-0025	1-1-04	Amend	1-1-04	141-045-0122	1-1-04	Amend	1-1-04
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141-030-0035	1-1-04	Amend	1-1-04	141-045-0124	1-1-04	Amend	1-1-04
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165-020-0005	12-5-03	Amend	1-1-04	177-091-0020	12-19-03	Adopt	2-1-04
165-020-0050	4-15-04	Amend	5-1-04	177-091-0030	12-19-03	Adopt	2-1-04
165-020-0060	4-15-04	Amend	5-1-04	177-091-0040	12-19-03	Adopt	2-1-04
166-001-0000	11-24-03	Amend	1-1-04	177-091-0050	12-19-03	Adopt	2-1-04
166-020-0011	3-3-04	Adopt	4-1-04	177-091-0060	12-19-03	Adopt	2-1-04
166-101-0010	11-24-03	Amend	1-1-04	177-091-0070	12-19-03	Adopt	2-1-04
166-200-0130	11-24-03	Amend	1-1-04	177-091-0080	12-19-03	Adopt	2-1-04
166-475-0060	3-31-04	Amend	5-1-04	177-091-0090	12-19-03	Adopt	2-1-04
166-500-0000	11-20-03	Amend	1-1-04	177-091-0100	12-19-03	Adopt	2-1-04
166-500-0015	11-20-03	Amend	1-1-04	177-091-0110	12-19-03	Adopt	2-1-04
166-500-0040	11-20-03	Amend	1-1-04	177-099-0050	2-23-04	Amend(T)	4-1-04
166-500-0045	11-20-03	Amend	1-1-04	177-099-0050	5-26-04	Amend	7-1-04
166-500-0050	11-20-03	Amend	1-1-04	213-001-0000	1-1-04	Amend	2-1-04
166-500-0055	11-20-03	Amend	1-1-04	213-001-0005	1-1-04	Amend	2-1-04
167-001-0080	5-5-04	Adopt(T)	6-1-04	213-003-0001	1-1-04	Amend	2-1-04
170-060-1000	1-15-04	Adopt(T)	2-1-04	213-005-0001	1-1-04	Amend	2-1-04
177-010-0003	4-6-04	Amend(T)	5-1-04	213-005-0004	1-1-04	Amend	2-1-04
177-010-0003	5-26-04	Amend	7-1-04	213-005-0007	1-1-04	Amend	2-1-04
177-040-0000	4-6-04	Amend(T)	5-1-04	213-011-0003	1-1-04	Amend	2-1-04
177-040-0000	5-26-04	Amend	7-1-04	213-017-0001	1-1-04	Amend	2-1-04
177-040-0003	4-6-04	Amend(T)	5-1-04	213-017-0002	1-1-04	Amend	2-1-04
177-040-0003	5-26-04	Amend	7-1-04	213-017-0003	1-1-04	Amend	2-1-04
177-040-0025	4-6-04	Amend(T)	5-1-04	213-017-0004	1-1-04	Amend	2-1-04
177-040-0025	5-26-04	Amend	7-1-04	213-017-0005	1-1-04	Amend	2-1-04
177-040-0026	6-27-04	Adopt	7-1-04	213-017-0006	1-1-04	Amend	2-1-04
177-040-0026	6-27-04	Adopt(T)	5-1-04	213-017-0007	1-1-04	Amend	2-1-04
177-040-0050	4-6-04	Amend(T)	5-1-04	213-017-0008	1-1-04	Amend	2-1-04
177-040-0050	5-26-04	Amend	7-1-04	213-017-0009	1-1-04	Amend	2-1-04
177-040-0052	4-6-04	Amend(T)	5-1-04	213-017-0010	1-1-04	Amend	2-1-04
177-040-0052	5-26-04	Amend	7-1-04	213-017-0011	1-1-04	Amend	2-1-04
177-040-0190	6-27-04	Repeal	7-1-04	213-018-0038	1-1-04	Amend	2-1-04
177-045-0000	1-5-04	Amend(T)	2-1-04	213-018-0047	1-1-04	Adopt	2-1-04
177-045-0000	5-26-04	Amend	7-1-04	213-018-0048	1-1-04	Adopt	2-1-04
177-045-0010	1-5-04	Amend(T)	2-1-04	213-018-0050	1-1-04	Amend	2-1-04
177-045-0010	5-26-04	Amend	7-1-04	213-018-0090	1-1-04	Amend	2-1-04
177-045-0020	1-5-04	Suspend	2-1-04	213-019-0007	1-1-04	Amend	2-1-04
177-045-0020	5-26-04	Repeal	7-1-04	213-019-0008	1-1-04	Amend	2-1-04
177-045-0030	1-5-04	Amend(T)	2-1-04	213-019-0010	1-1-04	Amend	2-1-04
177-045-0030	5-26-04	Amend	7-1-04	213-019-0011	1-1-04	Amend	2-1-04
177-045-0040	1-5-04	Amend(T)	2-1-04	250-010-0053	5-11-04	Adopt	6-1-04
177-045-0040	5-26-04	Amend	7-1-04	250-020-0161	5-20-04	Amend(T)	7-1-04
177-045-0050	1-5-04	Adopt(T)	2-1-04	255-030-0025	5-14-04	Amend(T)	6-1-04
177-045-0050(T)	4-6-04	Suspend	5-1-04	255-032-0015	4-15-04	Amend(T)	5-1-04
177-045-0060	1-5-04	Adopt(T)	2-1-04	255-032-0015	6-14-04	Amend	7-1-04

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255-060-0011	6-14-04	Amend	7-1-04	291-062-0030	1-14-04	Suspend	2-1-04
255-060-0014	6-14-04	Repeal	7-1-04	291-062-0040	1-14-04	Suspend	2-1-04
255-070-0001	1-14-04	Amend	2-1-04	291-062-0050	1-14-04	Suspend	2-1-04
255-075-0079	6-14-04	Amend(T)	7-1-04	291-062-0060	1-14-04	Suspend	2-1-04
255-080-0005	6-14-04	Amend	7-1-04	291-062-0070	1-14-04	Suspend	2-1-04
259-008-0005	4-23-04	Amend	6-1-04	291-062-0080	1-14-04	Suspend	2-1-04
259-008-0010	12-22-03	Amend	2-1-04	291-062-0100	1-14-04	Adopt(T)	2-1-04
259-008-0011	1-20-04	Amend	3-1-04	291-062-0110	1-14-04	Adopt(T)	2-1-04
259-008-0011	4-23-04	Amend	6-1-04	291-062-0120	1-14-04	Adopt(T)	2-1-04
259-008-0020	4-23-04	Amend	6-1-04	291-062-0130	1-14-04	Adopt(T)	2-1-04
259-008-0025	12-22-03	Amend	2-1-04	291-062-0140	1-14-04	Adopt(T)	2-1-04
259-008-0025	4-23-04	Amend	6-1-04	291-062-0150	1-14-04	Adopt(T)	2-1-04
259-008-0030	4-23-04	Amend	6-1-04	291-062-0160	1-14-04	Adopt(T)	2-1-04
259-008-0060	1-20-04	Amend	3-1-04	291-064-0060	12-2-03	Amend	1-1-04
259-008-0060	4-23-04	Amend	6-1-04	291-117-0020	1-20-04	Amend(T)	3-1-04
259-008-0066	4-23-04	Amend	6-1-04	291-153-0005	5-14-04	Amend(T)	6-1-04
259-008-0067	4-23-04	Amend	6-1-04	291-153-0010	5-14-04	Suspend	6-1-04
259-008-0068	1-16-04	Adopt	3-1-04	291-153-0020	5-14-04	Adopt(T)	6-1-04
259-008-0070	4-23-04	Amend	6-1-04	309-018-0100	3-1-04	Repeal	4-1-04
259-009-0005	4-23-04	Amend	6-1-04	309-018-0110	3-1-04	Repeal	4-1-04
259-009-0010	4-23-04	Amend	6-1-04	309-018-0120	3-1-04	Repeal	4-1-04
259-009-0062	4-9-04	Amend(T)	5-1-04	309-018-0130	3-1-04	Repeal	4-1-04
259-009-0062	4-23-04	Amend	6-1-04	309-018-0140	3-1-04	Repeal	4-1-04
259-009-0065	4-23-04	Adopt	6-1-04	309-018-0150	3-1-04	Repeal	4-1-04
259-009-0067	4-23-04	Amend	6-1-04	309-018-0160	3-1-04	Repeal	4-1-04
259-009-0087	4-23-04	Amend	6-1-04	309-018-0170	3-1-04	Repeal	4-1-04
259-012-0035	4-23-04	Amend	6-1-04	309-018-0180	3-1-04	Repeal	4-1-04
259-045-0010	4-23-04	Repeal	6-1-04	309-018-0190	3-1-04	Repeal	4-1-04
259-060-0020	4-23-04	Amend	6-1-04	309-041-0300	1-1-04	Repeal	2-1-04
259-060-0300	4-23-04	Amend	6-1-04	309-041-0305	1-1-04	Repeal	2-1-04
274-001-0000	4-16-04	Amend	6-1-04	309-041-0310	1-1-04	Repeal	2-1-04
274-001-0005	4-16-04	Amend	6-1-04	309-041-0315	1-1-04	Repeal	2-1-04
274-020-0341	1-22-04	Amend(T)	3-1-04	309-041-0320	1-1-04	Repeal	2-1-04
274-020-0341	3-26-04	Amend	5-1-04	309-041-0375	1-1-04	Repeal	2-1-04
274-020-0341	4-8-04	Amend(T)	5-1-04	309-041-0400	1-1-04	Repeal	2-1-04
274-020-0341	4-29-04	Amend(T)	6-1-04	309-041-0405	1-1-04	Repeal	2-1-04
274-020-0341	5-11-04	Amend(T)	6-1-04	309-041-0410	1-1-04	Repeal	2-1-04
274-020-0341(T)	1-22-04	Suspend	3-1-04	309-041-0415	1-1-04	Repeal	2-1-04
274-020-0341(T)	3-26-04	Repeal	5-1-04	309-041-0435	1-1-04	Repeal	2-1-04
274-020-0341(T)	4-29-04	Suspend	6-1-04	309-041-0445	1-1-04	Repeal	2-1-04
274-020-0341(T)	5-11-04	Suspend	6-1-04	309-041-0450	1-1-04	Repeal	2-1-04
274-020-0388	1-15-04	Amend(T)	2-1-04	309-041-0455	1-1-04	Repeal	2-1-04
274-020-0388	2-24-04	Amend	4-1-04	309-041-0460	1-1-04	Repeal	2-1-04
274-020-0388(T)	2-24-04	Repeal	4-1-04	309-041-0465	1-1-04	Repeal	2-1-04
274-040-0015	12-31-03	Amend	2-1-04	309-041-0470	1-1-04	Repeal	2-1-04
274-040-0015(T)	12-31-03	Repeal	2-1-04	309-041-0475	1-1-04	Repeal	2-1-04
274-040-0030	12-31-03	Amend	2-1-04	309-041-0480	1-1-04	Repeal	2-1-04
274-040-0030(T)	12-31-03	Repeal	2-1-04	309-041-1750	12-28-03	Am. & Ren.	2-1-04
291-001-0020	12-12-03	Amend	1-1-04	309-041-1760	12-28-03	Am. & Ren.	2-1-04
291-001-0025	12-12-03	Amend	1-1-04	309-041-1770	12-28-03	Am. & Ren.	2-1-04
291-001-0070	12-12-03	Repeal	1-1-04	309-041-1780	12-28-03	Am. & Ren.	2-1-04
291-013-0010	1-27-04	Amend(T)	3-1-04	309-041-1790	12-28-03	Am. & Ren.	2-1-04
291-013-0100	1-27-04	Amend(T)	3-1-04	309-041-1800	12-28-03	Am. & Ren.	2-1-04
291-013-0215	1-27-04	Amend(T)	3-1-04	309-041-1810	12-28-03	Am. & Ren.	2-1-04
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309-049-0150	1-1-04	Repeal	2-1-04	331-010-0030	2-13-04	Adopt	3-1-04
309-049-0155	1-1-04	Repeal	2-1-04	331-010-0040	2-13-04	Adopt	3-1-04
309-049-0160	1-1-04	Repeal	2-1-04	331-020-0000	2-13-04	Adopt	3-1-04
309-049-0165	1-1-04	Repeal	2-1-04	331-020-0010	2-13-04	Adopt	3-1-04
309-049-0170	1-1-04	Repeal	2-1-04	331-020-0020	2-13-04	Adopt	3-1-04
309-049-0175	1-1-04	Repeal	2-1-04	331-020-0030	2-13-04	Adopt	3-1-04
309-049-0180	1-1-04	Repeal	2-1-04	331-020-0040	2-13-04	Adopt	3-1-04
309-049-0185	1-1-04	Repeal	2-1-04	331-020-0050	2-13-04	Adopt	3-1-04
309-049-0190	1-1-04	Repeal	2-1-04	331-020-0060	2-13-04	Adopt	3-1-04
309-049-0193	1-1-04	Repeal	2-1-04	331-020-0070	2-13-04	Adopt	3-1-04
309-049-0195	1-1-04	Repeal	2-1-04	331-030-0000	2-13-04	Adopt	3-1-04
309-049-0200	1-1-04	Repeal	2-1-04	331-030-0010	2-13-04	Adopt	3-1-04
309-049-0205	1-1-04	Repeal	2-1-04	331-030-0020	2-13-04	Adopt	3-1-04
309-049-0207	1-1-04	Repeal	2-1-04	331-030-0030	2-13-04	Adopt	3-1-04
309-049-0210	1-1-04	Repeal	2-1-04	333-005-0000	3-29-04	Adopt	5-1-04
309-049-0215	1-1-04	Repeal	2-1-04	333-005-0010	3-29-04	Adopt	5-1-04
309-049-0220	1-1-04	Repeal	2-1-04	333-005-0020	3-29-04	Adopt	5-1-04
309-049-0225	1-1-04	Repeal	2-1-04	333-005-0030	3-29-04	Adopt	5-1-04
330-070-0010	1-21-04	Amend	3-1-04	333-005-0040	3-29-04	Adopt	5-1-04
330-070-0013	1-21-04	Amend	3-1-04	333-005-0050	3-29-04	Adopt	5-1-04
330-070-0014	1-21-04	Amend	3-1-04	333-005-0060	3-29-04	Adopt	5-1-04
330-070-0020	1-21-04	Amend	3-1-04	333-008-0030	4-1-04	Amend(T)	5-1-04
330-070-0021	1-21-04	Amend	3-1-04	333-012-0050	4-9-04	Amend	5-1-04
330-070-0022	1-21-04	Amend	3-1-04	333-012-0053	4-9-04	Adopt	5-1-04
330-070-0024	1-21-04	Amend	3-1-04	333-012-0055	4-9-04	Amend	5-1-04
330-070-0025	1-21-04	Amend	3-1-04	333-012-0057	4-9-04	Amend	5-1-04
330-070-0026	1-21-04	Amend	3-1-04	333-012-0060	4-9-04	Amend	5-1-04
330-070-0027	1-21-04	Amend	3-1-04	333-012-0061	4-9-04	Adopt	5-1-04
330-070-0040	1-21-04	Amend	3-1-04	333-012-0063	4-9-04	Adopt	5-1-04
330-070-0045	1-21-04	Amend	3-1-04	333-012-0065	4-9-04	Amend	5-1-04
330-070-0048	1-21-04	Amend	3-1-04	333-012-0067	4-9-04	Adopt	5-1-04
330-070-0055	1-21-04	Amend	3-1-04	333-012-0070	4-9-04	Amend	5-1-04
330-070-0059	1-21-04	Adopt	3-1-04	333-013-0006	1-2-04	Repeal	2-1-04
330-070-0060	1-21-04	Amend	3-1-04	333-013-0026	1-2-04	Repeal	2-1-04
330-070-0062	1-21-04	Amend	3-1-04	333-015-0025	5-7-04	Amend(T)	6-1-04
330-070-0063	1-21-04	Amend	3-1-04	333-015-0030	5-7-04	Amend(T)	6-1-04
330-070-0064	1-21-04	Adopt	3-1-04	333-015-0034	5-7-04	Amend(T)	6-1-04
330-070-0070	1-21-04	Amend	3-1-04	333-015-0035	5-7-04	Amend(T)	6-1-04
330-070-0073	1-21-04	Amend	3-1-04	333-015-0040	5-7-04	Amend(T)	6-1-04
330-070-0085	1-21-04	Amend	3-1-04	333-015-0045	5-7-04	Amend(T)	6-1-04
330-070-0089	1-21-04	Amend	3-1-04	333-015-0050	5-7-04	Amend(T)	6-1-04
330-070-0091	1-21-04	Amend	3-1-04	333-015-0055	5-7-04	Suspend	6-1-04
330-070-0097	1-21-04	Amend	3-1-04	333-015-0060	5-7-04	Amend(T)	6-1-04
330-090-0105	1-21-04	Amend	3-1-04	333-015-0065	5-7-04	Adopt(T)	6-1-04
330-090-0110	1-21-04	Amend	3-1-04	333-015-0070	5-7-04	Adopt(T)	6-1-04
330-090-0120	1-21-04	Amend	3-1-04	333-015-0075	5-7-04	Adopt(T)	6-1-04
330-090-0130	1-21-04	Amend	3-1-04	333-015-0080	5-7-04	Adopt(T)	6-1-04
330-090-0135	1-21-04	Amend	3-1-04	333-015-0085	5-7-04	Adopt(T)	6-1-04
330-090-0140	1-21-04	Amend	3-1-04	333-015-0090	5-7-04	Adopt(T)	6-1-04
330-090-0150	1-21-04	Amend	3-1-04	333-020-0125	12-16-03	Amend	2-1-04
331-001-0000	2-13-04	Adopt	3-1-04	333-020-0127	12-16-03	Adopt	2-1-04
331-001-0010	2-13-04	Adopt	3-1-04	333-020-0130	12-16-03	Amend	2-1-04
331-001-0020	2-13-04	Adopt	3-1-04	333-020-0135	12-16-03	Amend	2-1-04
331-010-0000	2-13-04	Adopt	3-1-04	333-020-0140	12-16-03	Amend	2-1-04
331-010-0010	2-13-04	Adopt	3-1-04	333-020-0145	12-16-03	Amend	2-1-04

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333-020-0149	12-16-03	Adopt	2-1-04	333-054-0050(T)	1-5-04	Repeal	2-1-04
333-020-0150	12-16-03	Amend	2-1-04	333-054-0060	1-5-04	Amend	2-1-04
333-020-0151	12-16-03	Adopt	2-1-04	333-054-0060(T)	1-5-04	Repeal	2-1-04
333-020-0153	12-16-03	Adopt	2-1-04	333-054-0070	1-5-04	Amend	2-1-04
333-020-0155	12-16-03	Amend	2-1-04	333-054-0070(T)	1-5-04	Repeal	2-1-04
333-020-0160	12-16-03	Amend	2-1-04	333-054-0090	1-5-04	Repeal	2-1-04
333-020-0165	12-16-03	Amend	2-1-04	333-054-0100	1-5-04	Adopt	2-1-04
333-024-0500	3-23-04	Am. & Ren.	5-1-04	333-054-0100(T)	1-5-04	Repeal	2-1-04
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333-024-0520	3-23-04	Renumber	5-1-04	333-055-0030	3-23-04	Amend	5-1-04
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333-024-0550	3-23-04	Am. & Ren.	5-1-04	333-061-0025	4-9-04	Amend(T)	5-1-04
333-024-0560	3-23-04	Repeal	5-1-04	333-061-0034	4-9-04	Amend(T)	5-1-04
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333-025-0105	3-23-04	Adopt	5-1-04	333-061-0060	4-9-04	Amend(T)	5-1-04
333-025-0105(T)	3-23-04	Repeal	5-1-04	333-061-0061	4-9-04	Amend(T)	5-1-04
333-025-0110	3-23-04	Adopt	5-1-04	333-061-0064	4-9-04	Adopt(T)	5-1-04
333-025-0110(T)	3-23-04	Repeal	5-1-04	333-061-0065	4-9-04	Amend(T)	5-1-04
333-025-0115	3-23-04	Adopt	5-1-04	333-061-0085	4-9-04	Amend(T)	5-1-04
333-025-0115(T)	3-23-04	Repeal	5-1-04	333-061-0087	4-9-04	Amend(T)	5-1-04
333-025-0120	3-23-04	Adopt	5-1-04	333-061-0090	4-9-04	Amend(T)	5-1-04
333-025-0120(T)	3-23-04	Repeal	5-1-04	333-061-0205	4-9-04	Amend(T)	5-1-04
333-025-0125	3-23-04	Adopt	5-1-04	333-061-0210	4-9-04	Amend(T)	5-1-04
333-025-0125(T)	3-23-04	Repeal	5-1-04	333-061-0215	4-9-04	Amend(T)	5-1-04
333-025-0130	3-23-04	Adopt	5-1-04	333-061-0220	4-9-04	Amend(T)	5-1-04
333-025-0130(T)	3-23-04	Repeal	5-1-04	333-061-0225	4-9-04	Amend(T)	5-1-04
333-025-0135(T)	3-23-04	Repeal	5-1-04	333-061-0228	4-9-04	Adopt(T)	5-1-04
333-025-0140(T)	3-23-04	Repeal	5-1-04	333-061-0230	4-9-04	Amend(T)	5-1-04
333-025-0145(T)	3-23-04	Repeal	5-1-04	333-061-0235	4-9-04	Amend(T)	5-1-04
333-025-0150(T)	3-23-04	Repeal	5-1-04	333-061-0240	4-9-04	Suspend	5-1-04
333-025-0155(T)	3-23-04	Repeal	5-1-04	333-061-0245	4-9-04	Amend(T)	5-1-04
333-025-0160(T)	3-23-04	Repeal	5-1-04	333-061-0250	4-9-04	Amend(T)	5-1-04
333-029-0105	2-13-04	Amend(T)	3-1-04	333-061-0255	4-9-04	Suspend	5-1-04
333-029-0105	4-9-04	Amend	5-1-04	333-061-0260	4-9-04	Amend(T)	5-1-04
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333-029-0110	4-9-04	Amend	5-1-04	333-061-0272	4-9-04	Adopt(T)	5-1-04
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333-030-0095(T)	4-9-04	Repeal	5-1-04	333-063-0015	7-1-04	Repeal	6-1-04
333-040-0135	4-9-04	Amend	5-1-04	333-063-0020	7-1-04	Repeal	6-1-04
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333-063-0130	7-1-04	Repeal	6-1-04	333-170-0050	2-13-04	Amend(T)	3-1-04
333-063-0135	7-1-04	Repeal	6-1-04	333-170-0050	4-9-04	Amend	5-1-04
333-063-0140	7-1-04	Repeal	6-1-04	333-170-0050(T)	4-9-04	Repeal	5-1-04
333-064-0005	12-8-03	Amend	1-1-04	333-170-0060	2-13-04	Amend(T)	3-1-04
333-064-0005(T)	12-8-03	Repeal	1-1-04	333-170-0060	4-9-04	Amend	5-1-04
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333-064-0010(T)	12-8-03	Repeal	1-1-04	333-170-0070	2-13-04	Amend(T)	3-1-04
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333-064-0060(T)	12-8-03	Repeal	1-1-04	333-170-0120	2-13-04	Amend(T)	3-1-04
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333-560-0010	1-16-04	Amend	3-1-04	340-011-0535	12-12-03	Adopt	1-1-04
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333-635-0030	1-16-04	Repeal	3-1-04	340-011-0580	12-12-03	Adopt	1-1-04
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335-010-0080	5-26-04	Adopt	7-1-04	340-041-0033	12-9-03	Adopt	1-1-04
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335-095-0030	2-6-04	Amend	3-1-04	340-041-0061	12-9-03	Adopt	1-1-04
335-095-0030	5-26-04	Amend	7-1-04	340-041-0061	5-28-04	Amend	7-1-04
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340-041-0170	12-9-03	Adopt	1-1-04	340-041-0344	12-9-03	Adopt	1-1-04
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340-041-0194	12-9-03	Adopt	1-1-04	340-041-0442	12-9-03	Repeal	1-1-04
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340-041-0207	12-9-03	Adopt	1-1-04	340-041-0495	12-9-03	Repeal	1-1-04
340-041-0215	12-9-03	Repeal	1-1-04	340-041-0522	12-9-03	Repeal	1-1-04
340-041-0220	12-9-03	Adopt	1-1-04	340-041-0525	12-9-03	Repeal	1-1-04
340-041-0224	12-9-03	Adopt	1-1-04	340-041-0535	12-9-03	Repeal	1-1-04
340-041-0225	12-9-03	Adopt	1-1-04	340-041-0562	12-9-03	Repeal	1-1-04
340-041-0230	12-9-03	Adopt	1-1-04	340-041-0565	12-9-03	Repeal	1-1-04
340-041-0234	12-9-03	Adopt	1-1-04	340-041-0575	12-9-03	Repeal	1-1-04
340-041-0235	12-9-03	Adopt	1-1-04	340-041-0580	12-9-03	Repeal	1-1-04
340-041-0242	12-9-03	Repeal	1-1-04	340-041-0602	12-9-03	Repeal	1-1-04
340-041-0245	12-9-03	Repeal	1-1-04	340-041-0605	12-9-03	Repeal	1-1-04
340-041-0250	12-9-03	Adopt	1-1-04	340-041-0615	12-9-03	Repeal	1-1-04
340-041-0254	12-9-03	Adopt	1-1-04	340-041-0642	12-9-03	Repeal	1-1-04
340-041-0255	12-9-03	Repeal	1-1-04	340-041-0645	12-9-03	Repeal	1-1-04
340-041-0256	12-9-03	Adopt	1-1-04	340-041-0655	12-9-03	Repeal	1-1-04
340-041-0260	12-9-03	Adopt	1-1-04	340-041-0682	12-9-03	Repeal	1-1-04
340-041-0264	12-9-03	Adopt	1-1-04	340-041-0765	12-9-03	Repeal	1-1-04
340-041-0265	12-9-03	Adopt	1-1-04	340-041-0775	12-9-03	Repeal	1-1-04
340-041-0270	12-9-03	Repeal	1-1-04	340-041-0802	12-9-03	Repeal	1-1-04
340-041-0271	12-9-03	Adopt	1-1-04	340-041-0805	12-9-03	Repeal	1-1-04
340-041-0274	12-9-03	Adopt	1-1-04	340-041-0815	12-9-03	Repeal	1-1-04
340-041-0275	12-9-03	Adopt	1-1-04	340-041-0842	12-9-03	Repeal	1-1-04
340-041-0282	12-9-03	Repeal	1-1-04	340-041-0845	12-9-03	Repeal	1-1-04
340-041-0285	12-9-03	Repeal	1-1-04	340-041-0855	12-9-03	Repeal	1-1-04
340-041-0286	12-9-03	Adopt	1-1-04	340-041-0882	12-9-03	Repeal	1-1-04
340-041-0289	12-9-03	Adopt	1-1-04	340-041-0885	12-9-03	Repeal	1-1-04
340-041-0290	12-9-03	Adopt	1-1-04	340-041-0895	12-9-03	Repeal	1-1-04
340-041-0295	12-9-03	Repeal	1-1-04	340-041-0922	12-9-03	Repeal	1-1-04
340-041-0300	12-9-03	Adopt	1-1-04	340-041-0925	12-9-03	Repeal	1-1-04
340-041-0304	12-9-03	Adopt	1-1-04	340-041-0935	12-9-03	Repeal	1-1-04
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340-041-0315	12-9-03	Adopt	1-1-04	340-048-0005	4-15-04	Amend	5-1-04
340-041-0320	12-9-03	Adopt	1-1-04	340-048-0010	4-15-04	Amend	5-1-04
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340-041-0324	12-9-03	Adopt	1-1-04	340-048-0020	4-15-04	Amend	5-1-04
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340-041-0326	12-9-03	Adopt	1-1-04	340-048-0025	4-15-04	Am. & Ren.	5-1-04
340-041-0330	12-9-03	Adopt	1-1-04	340-048-0025	4-15-04	Am. & Ren.	5-1-04
340-041-0334	12-9-03	Adopt	1-1-04	340-048-0027	4-15-04	Adopt	5-1-04
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340-048-0037	4-15-04	Adopt	5-1-04	410-007-0270	3-1-04	Adopt	4-1-04
340-048-0040	4-15-04	Am. & Ren.	5-1-04	410-007-0280	3-1-04	Adopt	4-1-04
340-048-0200	4-15-04	Am. & Ren.	5-1-04	410-007-0290	3-1-04	Adopt	4-1-04
340-200-0040	12-12-03	Amend	1-1-04	410-007-0300	3-1-04	Adopt	4-1-04
340-200-0040	4-14-04	Amend	5-1-04	410-007-0310	3-1-04	Adopt	4-1-04
340-214-0400	12-12-03	Adopt	1-1-04	410-007-0320	3-1-04	Adopt	4-1-04
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340-224-0010	4-14-04	Amend	5-1-04	410-007-0360	3-1-04	Adopt	4-1-04
340-224-0030	4-14-04	Amend	5-1-04	410-007-0370	3-1-04	Adopt	4-1-04
340-224-0050	4-14-04	Amend	5-1-04	410-007-0380	3-1-04	Adopt	4-1-04
340-224-0070	4-14-04	Amend	5-1-04	410-009-0000	5-26-04	Repeal	7-1-04
340-224-0080	4-14-04	Amend	5-1-04	410-009-0005	5-26-04	Repeal	7-1-04
340-225-0020	4-14-04	Amend	5-1-04	410-009-0010	5-26-04	Repeal	7-1-04
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340-228-0410	12-12-03	Adopt	1-1-04	410-009-0030	5-26-04	Repeal	7-1-04
340-228-0420	12-12-03	Adopt	1-1-04	410-009-0035	5-26-04	Repeal	7-1-04
340-228-0430	12-12-03	Adopt	1-1-04	410-009-0040	5-26-04	Repeal	7-1-04
340-228-0440	12-12-03	Adopt	1-1-04	410-050-0100	5-1-04	Adopt(T)	6-1-04
340-228-0450	12-12-03	Adopt	1-1-04	410-050-0110	5-1-04	Adopt(T)	6-1-04
340-228-0460	12-12-03	Adopt	1-1-04	410-050-0120	5-1-04	Adopt(T)	6-1-04
340-228-0470	12-12-03	Adopt	1-1-04	410-050-0130	5-1-04	Adopt(T)	6-1-04
340-228-0480	12-12-03	Adopt	1-1-04	410-050-0140	5-1-04	Adopt(T)	6-1-04
340-228-0490	12-12-03	Adopt	1-1-04	410-050-0150	5-1-04	Adopt(T)	6-1-04
340-228-0500	12-12-03	Adopt	1-1-04	410-050-0160	5-1-04	Adopt(T)	6-1-04
340-228-0510	12-12-03	Adopt	1-1-04	410-050-0170	5-1-04	Adopt(T)	6-1-04
340-228-0520	12-12-03	Adopt	1-1-04	410-050-0180	5-1-04	Adopt(T)	6-1-04
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410-007-0030	3-1-04	Repeal	4-1-04	410-050-0460	6-15-04	Adopt(T)	7-1-04
410-007-0040	3-1-04	Repeal	4-1-04	410-050-0470	6-15-04	Adopt(T)	7-1-04
410-007-0050	3-1-04	Repeal	4-1-04	410-050-0480	6-15-04	Adopt(T)	7-1-04
410-007-0060	3-1-04	Repeal	4-1-04	410-050-0490	6-15-04	Adopt(T)	7-1-04
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410-007-0210	3-1-04	Adopt	4-1-04	410-050-0530	6-15-04	Adopt(T)	7-1-04
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410-120-1195	1-1-04	Amend	2-1-04	410-122-0030	4-1-04	Amend	5-1-04
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410-120-1280	4-1-04	Amend	4-1-04	410-122-0040	4-1-04	Amend	5-1-04
410-120-1295	3-22-04	Amend	5-1-04	410-122-0040	5-1-04	Amend	5-1-04
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410-120-1295	6-1-04	Amend	7-1-04	410-122-0080	4-1-04	Amend	5-1-04
410-120-1340	4-1-04	Amend	4-1-04	410-122-0105	4-1-04	Repeal	5-1-04
410-120-1360	4-1-04	Amend	4-1-04	410-122-0120	4-1-04	Repeal	5-1-04
410-120-1390	6-1-04	Adopt(T)	7-1-04	410-122-0140	4-1-04	Repeal	5-1-04
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410-120-1570	4-1-04	Amend	4-1-04	410-122-0200	4-1-04	Amend	5-1-04
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410-121-0030	5-1-04	Amend	6-1-04	410-122-0209	4-1-04	Amend	5-1-04
410-121-0030	6-1-04	Amend	7-1-04	410-122-0210	4-1-04	Amend	5-1-04
410-121-0033	2-1-04	Adopt	3-1-04	410-122-0340	4-1-04	Amend	5-1-04
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410-121-0040	12-15-03	Amend(T)	1-1-04	410-122-0375	4-1-04	Amend	5-1-04
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410-130-0587	4-1-04	Amend	4-1-04	411-030-0020	12-11-03	Amend(T)	1-1-04
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410-131-0280	4-1-04	Amend	4-1-04	411-030-0040	12-11-03	Amend(T)	1-1-04
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410-141-0080	6-1-04	Amend(T)	7-1-04	411-030-0065	12-11-03	Amend(T)	1-1-04
410-141-0140	6-1-04	Amend(T)	7-1-04	411-030-0065	6-7-04	Repeal	7-1-04
410-141-0260	6-1-04	Amend	7-1-04	411-030-0070	6-7-04	Amend	7-1-04
410-141-0261	6-1-04	Amend	7-1-04	411-030-0080	6-7-04	Amend	7-1-04
410-141-0262	6-1-04	Amend	7-1-04	411-031-0020	6-1-04	Adopt	7-1-04
410-141-0263	6-1-04	Amend	7-1-04	411-031-0030	6-1-04	Adopt	7-1-04
410-141-0264	6-1-04	Amend	7-1-04	411-031-0040	6-1-04	Adopt	7-1-04
410-141-0265	6-1-04	Amend	7-1-04	411-031-0050	6-1-04	Adopt	7-1-04
410-141-0266	6-1-04	Amend	7-1-04	411-032-0000	5-28-04	Amend	7-1-04
410-141-0280	6-1-04	Amend(T)	7-1-04	411-032-0001	5-28-04	Amend	7-1-04
410-141-0300	6-1-04	Amend(T)	7-1-04	411-032-0005	5-28-04	Amend	7-1-04
410-141-0420	3-23-04	Amend(T)	5-1-04	411-032-0010	5-28-04	Amend	7-1-04
410-141-0420	6-1-04	Amend	7-1-04	411-032-0015	5-28-04	Amend	7-1-04
410-141-0420	6-1-04	Amend(T)	7-1-04	411-032-0020	5-28-04	Amend	7-1-04
410-141-0480	1-1-04	Amend	2-1-04	411-032-0044	5-28-04	Amend	7-1-04
410-141-0480	6-1-04	Amend	7-1-04	411-040-0000	6-1-04	Amend	7-1-04
410-141-0500	1-1-04	Amend	2-1-04	411-055-0000	2-4-04	Amend	3-1-04
410-141-0520	1-1-04	Amend	2-1-04	411-055-0000	4-1-04	Amend	5-1-04
410-141-0520	4-1-04	Amend(T)	4-1-04	411-055-0003	2-4-04	Amend	3-1-04
410-141-0520	5-1-04	Amend	6-1-04	411-055-0003	4-1-04	Amend	5-1-04
410-142-0300	12-1-03	Amend	1-1-04	411-055-0005	4-1-04	Amend	5-1-04
410-148-0000	4-1-04	Amend	4-1-04	411-055-0010	4-1-04	Amend	5-1-04
410-148-0020	4-1-04	Amend	4-1-04	411-055-0015	4-1-04	Amend	5-1-04
410-148-0080	4-1-04	Amend	4-1-04	411-055-0019	4-1-04	Amend	5-1-04
410-148-0120	4-1-04	Amend	4-1-04	411-055-0024	4-1-04	Amend	5-1-04
410-148-0260	4-1-04	Amend	4-1-04	411-055-0029	4-1-04	Amend	5-1-04
410-148-0280	4-1-04	Amend	4-1-04	411-055-0034	4-1-04	Amend	5-1-04
410-148-0300	4-1-04	Amend	4-1-04	411-055-0039	4-1-04	Amend	5-1-04
411-009-0000	3-1-04	Repeal	4-1-04	411-055-0045	4-1-04	Amend	5-1-04
411-009-0005	3-1-04	Repeal	4-1-04	411-055-0051	4-1-04	Amend	5-1-04
411-009-0015	3-1-04	Repeal	4-1-04	411-055-0061	4-1-04	Amend	5-1-04
411-009-0021	3-1-04	Repeal	4-1-04	411-055-0081	4-1-04	Amend	5-1-04
411-009-0040	3-1-04	Repeal	4-1-04	411-055-0085	4-1-04	Amend	5-1-04
411-009-0050	3-1-04	Repeal	4-1-04	411-055-0091	4-1-04	Amend	5-1-04
411-009-0060	3-1-04	Repeal	4-1-04	411-055-0101	4-1-04	Amend	5-1-04
411-009-0070	3-1-04	Repeal	4-1-04	411-055-0111	4-1-04	Amend	5-1-04
411-009-0080	3-1-04	Repeal	4-1-04	411-055-0115	4-1-04	Amend	5-1-04
411-009-0090	3-1-04	Repeal	4-1-04	411-055-0121	4-1-04	Amend	5-1-04
411-009-0100	3-1-04	Repeal	4-1-04	411-055-0131	4-1-04	Amend	5-1-04
411-009-0110	3-1-04	Repeal	4-1-04	411-055-0141	4-1-04	Amend	5-1-04
411-015-0005	4-27-04	Amend	6-1-04	411-055-0151	4-1-04	Amend	5-1-04
411-015-0010	4-27-04	Amend	6-1-04	411-055-0161	4-1-04	Amend	5-1-04

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411-055-0170	4-1-04	Amend	5-1-04	411-325-0070	1-1-04	Adopt	2-1-04
411-055-0180	4-1-04	Amend	5-1-04	411-325-0080	1-1-04	Adopt	2-1-04
411-055-0190	4-1-04	Amend	5-1-04	411-325-0090	1-1-04	Adopt	2-1-04
411-055-0200	4-1-04	Amend	5-1-04	411-325-0100	1-1-04	Adopt	2-1-04
411-055-0210	4-1-04	Amend	5-1-04	411-325-0110	1-1-04	Adopt	2-1-04
411-055-0220	4-1-04	Amend	5-1-04	411-325-0120	1-1-04	Adopt	2-1-04
411-055-0230	4-1-04	Amend	5-1-04	411-325-0130	1-1-04	Adopt	2-1-04
411-055-0240	4-1-04	Amend	5-1-04	411-325-0140	1-1-04	Adopt	2-1-04
411-055-0250	4-1-04	Amend	5-1-04	411-325-0150	1-1-04	Adopt	2-1-04
411-055-0260	4-1-04	Amend	5-1-04	411-325-0160	1-1-04	Adopt	2-1-04
411-055-0270	4-1-04	Amend	5-1-04	411-325-0170	1-1-04	Adopt	2-1-04
411-055-0280	4-1-04	Amend	5-1-04	411-325-0180	1-1-04	Adopt	2-1-04
411-056-0005	2-4-04	Amend	3-1-04	411-325-0190	1-1-04	Adopt	2-1-04
411-056-0007	2-4-04	Amend	3-1-04	411-325-0200	1-1-04	Adopt	2-1-04
411-056-0010	3-23-04	Amend(T)	5-1-04	411-325-0210	1-1-04	Adopt	2-1-04
411-056-0018	3-23-04	Amend(T)	5-1-04	411-325-0220	1-1-04	Adopt	2-1-04
411-056-0030	3-23-04	Amend(T)	5-1-04	411-325-0230	1-1-04	Adopt	2-1-04
411-070-0359	5-28-04	Amend(T)	7-1-04	411-325-0240	1-1-04	Adopt	2-1-04
411-070-0428	5-28-04	Amend(T)	7-1-04	411-325-0250	1-1-04	Adopt	2-1-04
411-070-0440	5-28-04	Suspend	7-1-04	411-325-0260	1-1-04	Adopt	2-1-04
411-070-0441	5-28-04	Adopt(T)	7-1-04	411-325-0270	1-1-04	Adopt	2-1-04
411-070-0446	5-28-04	Suspend	7-1-04	411-325-0280	1-1-04	Adopt	2-1-04
411-070-0465	5-28-04	Amend(T)	7-1-04	411-325-0290	1-1-04	Adopt	2-1-04
411-200-0010	3-24-04	Amend	5-1-04	411-325-0300	1-1-04	Adopt	2-1-04
411-300-0100	6-1-04	Amend	7-1-04	411-325-0310	1-1-04	Adopt	2-1-04
411-300-0110	12-11-03	Amend(T)	1-1-04	411-325-0320	1-1-04	Adopt	2-1-04
411-300-0110	6-1-04	Amend	7-1-04	411-325-0330	1-1-04	Adopt	2-1-04
411-300-0170	6-1-04	Amend	7-1-04	411-325-0340	1-1-04	Adopt	2-1-04
411-300-0210	6-1-04	Amend	7-1-04	411-325-0350	1-1-04	Adopt	2-1-04
411-300-0220	6-1-04	Amend	7-1-04	411-325-0360	1-1-04	Adopt	2-1-04
411-320-0010	1-1-04	Adopt	2-1-04	411-325-0370	1-1-04	Adopt	2-1-04
411-320-0020	1-1-04	Adopt	2-1-04	411-325-0380	1-1-04	Adopt	2-1-04
411-320-0030	1-1-04	Adopt	2-1-04	411-325-0390	1-1-04	Adopt	2-1-04
411-320-0040	1-1-04	Adopt	2-1-04	411-325-0400	1-1-04	Adopt	2-1-04
411-320-0050	1-1-04	Adopt	2-1-04	411-325-0410	1-1-04	Adopt	2-1-04
411-320-0060	1-1-04	Adopt	2-1-04	411-325-0420	1-1-04	Adopt	2-1-04
411-320-0070	1-1-04	Adopt	2-1-04	411-325-0430	1-1-04	Adopt	2-1-04
411-320-0080	1-1-04	Adopt	2-1-04	411-325-0440	1-1-04	Adopt	2-1-04
411-320-0090	1-1-04	Adopt	2-1-04	411-325-0450	1-1-04	Adopt	2-1-04
411-320-0100	1-1-04	Adopt	2-1-04	411-325-0460	1-1-04	Adopt	2-1-04
411-320-0110	1-1-04	Adopt	2-1-04	411-325-0470	1-1-04	Adopt	2-1-04
411-320-0120	1-1-04	Adopt	2-1-04	411-325-0480	1-1-04	Adopt	2-1-04
411-320-0130	1-1-04	Adopt	2-1-04	411-330-0010	12-28-03	Adopt	2-1-04
411-320-0140	1-1-04	Adopt	2-1-04	411-330-0020	12-28-03	Adopt	2-1-04
411-320-0150	1-1-04	Adopt	2-1-04	411-330-0030	12-28-03	Adopt	2-1-04
411-320-0160	1-1-04	Adopt	2-1-04	411-330-0040	12-28-03	Adopt	2-1-04
411-320-0170	1-1-04	Adopt	2-1-04	411-330-0050	12-28-03	Adopt	2-1-04
411-320-0180	1-1-04	Adopt	2-1-04	411-330-0060	12-28-03	Adopt	2-1-04
411-320-0190	1-1-04	Adopt	2-1-04	411-330-0070	12-28-03	Adopt	2-1-04
411-320-0200	1-1-04	Adopt	2-1-04	411-330-0080	12-28-03	Adopt	2-1-04
411-325-0010	1-1-04	Adopt	2-1-04	411-330-0090	12-28-03	Adopt	2-1-04
411-325-0020	1-1-04	Adopt	2-1-04	411-330-0100	12-28-03	Adopt	2-1-04
411-325-0030	1-1-04	Adopt	2-1-04	411-330-0110	12-28-03	Adopt	2-1-04
411-325-0040	1-1-04	Adopt	2-1-04	411-330-0120	12-28-03	Adopt	2-1-04
411-325-0050	1-1-04	Adopt	2-1-04	411-330-0130	12-28-03	Adopt	2-1-04
411-325-0060	1-1-04	Adopt	2-1-04	411-330-0140	12-28-03	Adopt	2-1-04

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411-330-0150	12-28-03	Adopt	2-1-04	413-070-0505	1-1-04	Amend	2-1-04
411-330-0160	12-28-03	Adopt	2-1-04	413-070-0510	1-1-04	Amend	2-1-04
411-330-0170	12-28-03	Adopt	2-1-04	413-070-0515	1-1-04	Amend	2-1-04
411-340-0130	4-30-04	Amend(T)	6-1-04	413-070-0517	1-1-04	Amend	2-1-04
411-999-0030	6-1-04	Adopt(T)	6-1-04	413-070-0900	4-1-04	Amend	5-1-04
413-010-0700	1-1-04	Amend	2-1-04	413-070-0905	4-1-04	Amend	5-1-04
413-010-0705	1-1-04	Amend	2-1-04	413-070-0915	1-1-04	Amend(T)	2-1-04
413-010-0712	1-1-04	Amend	2-1-04	413-070-0915	4-1-04	Amend	5-1-04
413-010-0714	1-1-04	Amend	2-1-04	413-070-0915(T)	4-1-04	Repeal	5-1-04
413-010-0715	1-1-04	Amend	2-1-04	413-070-0917	4-1-04	Amend	5-1-04
413-010-0716	1-1-04	Amend	2-1-04	413-070-0920	4-1-04	Amend	5-1-04
413-010-0717	1-1-04	Amend	2-1-04	413-070-0925	4-1-04	Amend	5-1-04
413-010-0718	1-1-04	Amend	2-1-04	413-070-0930	4-1-04	Amend	5-1-04
413-010-0719	1-1-04	Repeal	2-1-04	413-070-0935	1-1-04	Amend(T)	2-1-04
413-010-0720	1-1-04	Amend	2-1-04	413-070-0935	4-1-04	Amend	5-1-04
413-010-0721	1-1-04	Amend	2-1-04	413-070-0935(T)	4-1-04	Repeal	5-1-04
413-010-0722	1-1-04	Amend	2-1-04	413-070-0937	1-1-04	Amend(T)	2-1-04
413-010-0723	1-1-04	Amend	2-1-04	413-070-0937	4-1-04	Amend	5-1-04
413-010-0732	1-1-04	Amend	2-1-04	413-070-0937(T)	4-1-04	Repeal	5-1-04
413-010-0735	1-1-04	Amend	2-1-04	413-070-0940	4-1-04	Amend	5-1-04
413-010-0738	1-1-04	Amend	2-1-04	413-070-0945	4-1-04	Amend	5-1-04
413-010-0740	1-1-04	Amend	2-1-04	413-070-0950	4-1-04	Amend	5-1-04
413-010-0743	1-1-04	Amend	2-1-04	413-070-0955	4-1-04	Amend	5-1-04
413-010-0745	1-1-04	Amend	2-1-04	413-070-0960	4-1-04	Amend	5-1-04
413-010-0746	1-1-04	Amend	2-1-04	413-070-0965	4-1-04	Amend	5-1-04
413-010-0748	1-1-04	Adopt	2-1-04	413-070-0970	4-1-04	Amend	5-1-04
413-010-0750	1-1-04	Amend	2-1-04	413-070-0980	1-1-04	Amend(T)	2-1-04
413-040-0200	1-1-04	Amend	2-1-04	413-070-0980	4-1-04	Amend	5-1-04
413-040-0205	1-1-04	Adopt	2-1-04	413-070-0980(T)	4-1-04	Repeal	5-1-04
413-040-0210	1-1-04	Amend	2-1-04	413-070-0981	1-1-04	Amend(T)	2-1-04
413-040-0215	1-1-04	Adopt	2-1-04	413-070-0981	4-1-04	Amend	5-1-04
413-040-0220	1-1-04	Repeal	2-1-04	413-070-0981(T)	1-1-04	Suspend	2-1-04
413-040-0230	1-1-04	Amend	2-1-04	413-070-0981(T)	4-1-04	Repeal	5-1-04
413-040-0240	1-1-04	Amend	2-1-04	413-070-0982	1-1-04	Adopt(T)	2-1-04
413-040-0250	1-1-04	Am. & Ren.	2-1-04	413-070-0982	4-1-04	Adopt	5-1-04
413-040-0260	1-1-04	Amend	2-1-04	413-070-0982(T)	4-1-04	Repeal	5-1-04
413-040-0265	1-1-04	Adopt	2-1-04	413-080-0040	3-1-04	Adopt(T)	4-1-04
413-040-0270	1-1-04	Amend	2-1-04	413-080-0045	3-1-04	Adopt(T)	4-1-04
413-040-0280	1-1-04	Amend	2-1-04	413-080-0050	3-1-04	Adopt(T)	4-1-04
413-040-0290	1-1-04	Amend	2-1-04	413-080-0055	3-1-04	Adopt(T)	4-1-04
413-040-0300	1-1-04	Amend	2-1-04	413-080-0060	3-1-04	Adopt(T)	4-1-04
413-040-0310	1-1-04	Amend	2-1-04	413-090-0010	4-1-04	Amend	5-1-04
413-040-0320	1-1-04	Amend	2-1-04	413-090-0010(T)	4-1-04	Repeal	5-1-04
413-040-0330	1-1-04	Amend	2-1-04	413-090-0160	4-1-04	Amend	5-1-04
413-050-0200	12-12-03	Amend	1-1-04	413-090-0160(T)	4-1-04	Repeal	5-1-04
413-050-0210	12-12-03	Amend	1-1-04	413-100-0020	2-10-04	Amend	3-1-04
413-050-0220	12-12-03	Amend	1-1-04	413-100-0030	2-10-04	Amend	3-1-04
413-050-0230	12-12-03	Amend	1-1-04	413-100-0030(T)	2-10-04	Repeal	3-1-04
413-050-0240	12-12-03	Amend	1-1-04	413-100-0040	2-10-04	Amend	3-1-04
413-050-0250	12-12-03	Amend	1-1-04	413-100-0040(T)	2-10-04	Repeal	3-1-04
413-050-0260	12-12-03	Amend	1-1-04	413-100-0050	2-10-04	Amend	3-1-04
413-050-0270	12-12-03	Amend	1-1-04	413-100-0050(T)	2-10-04	Repeal	3-1-04
413-050-0280	12-12-03	Amend	1-1-04	413-100-0070	2-10-04	Amend	3-1-04
413-050-0290	12-12-03	Amend	1-1-04	413-100-0070(T)	2-10-04	Repeal	3-1-04
413-050-0300	12-12-03	Amend	1-1-04	413-100-0080	2-10-04	Amend	3-1-04
413-070-0500	1-1-04	Amend	2-1-04	413-100-0080(T)	2-10-04	Repeal	3-1-04

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413-100-0110(T)	2-10-04	Repeal	3-1-04	413-210-0821	1-9-04	Amend	2-1-04
413-100-0130	2-10-04	Amend	3-1-04	413-330-0085	12-17-03	Amend(T)	2-1-04
413-100-0130(T)	2-10-04	Repeal	3-1-04	413-330-0085	6-1-04	Amend	7-1-04
413-100-0135	2-10-04	Amend	3-1-04	413-330-0085(T)	6-1-04	Repeal	7-1-04
413-100-0135(T)	2-10-04	Repeal	3-1-04	413-330-0087	12-17-03	Amend(T)	2-1-04
413-100-0150	2-10-04	Amend	3-1-04	413-330-0087	6-1-04	Amend	7-1-04
413-100-0150(T)	2-10-04	Repeal	3-1-04	413-330-0087(T)	6-1-04	Repeal	7-1-04
413-100-0160	2-10-04	Amend	3-1-04	413-330-0090	12-17-03	Amend(T)	2-1-04
413-100-0160(T)	2-10-04	Repeal	3-1-04	413-330-0090	6-1-04	Amend	7-1-04
413-100-0240	2-10-04	Amend	3-1-04	413-330-0090(T)	6-1-04	Repeal	7-1-04
413-100-0240(T)	2-10-04	Repeal	3-1-04	413-330-0095	12-17-03	Amend(T)	2-1-04
413-100-0276	2-10-04	Amend	3-1-04	413-330-0095	6-1-04	Amend	7-1-04
413-100-0276(T)	2-10-04	Repeal	3-1-04	413-330-0095(T)	6-1-04	Repeal	7-1-04
413-100-0290	2-10-04	Amend	3-1-04	413-330-0097	12-17-03	Adopt(T)	2-1-04
413-100-0290(T)	2-10-04	Repeal	3-1-04	413-330-0097	6-1-04	Adopt	7-1-04
413-110-0000	1-1-04	Amend	2-1-04	413-330-0097(T)	6-1-04	Repeal	7-1-04
413-110-0010	1-1-04	Amend	2-1-04	413-330-0098	12-17-03	Adopt(T)	2-1-04
413-110-0020	1-1-04	Amend	2-1-04	413-330-0098	6-1-04	Adopt	7-1-04
413-110-0030	1-1-04	Amend	2-1-04	413-330-0098(T)	6-1-04	Repeal	7-1-04
413-110-0040	1-1-04	Amend	2-1-04	413-330-0900	1-1-04	Amend(T)	2-1-04
413-110-0100	1-1-04	Amend	2-1-04	413-330-0900	6-1-04	Amend	7-1-04
413-110-0110	1-1-04	Amend	2-1-04	413-330-0900(T)	6-1-04	Repeal	7-1-04
413-110-0120	1-1-04	Amend	2-1-04	413-330-0910	1-1-04	Amend(T)	2-1-04
413-110-0130	1-1-04	Amend	2-1-04	413-330-0910	6-1-04	Amend	7-1-04
413-110-0140	1-1-04	Amend	2-1-04	413-330-0910(T)	6-1-04	Repeal	7-1-04
413-110-0300	1-1-04	Amend	2-1-04	413-330-0920	1-1-04	Amend(T)	2-1-04
413-110-0310	1-1-04	Amend	2-1-04	413-330-0920	6-1-04	Amend	7-1-04
413-110-0320	1-1-04	Amend	2-1-04	413-330-0920(T)	6-1-04	Repeal	7-1-04
413-110-0330	1-1-04	Amend	2-1-04	413-330-0930	1-1-04	Amend(T)	2-1-04
413-110-0340	1-1-04	Amend	2-1-04	413-330-0930	6-1-04	Amend	7-1-04
413-110-0350	1-1-04	Amend	2-1-04	413-330-0930(T)	6-1-04	Repeal	7-1-04
413-110-0360	1-1-04	Amend	2-1-04	413-330-0940	1-1-04	Amend(T)	2-1-04
413-120-0100	4-1-04	Amend	5-1-04	413-330-0940	6-1-04	Amend	7-1-04
413-120-0105	4-1-04	Amend	5-1-04	413-330-0940(T)	6-1-04	Repeal	7-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	413-330-0950	1-1-04	Amend(T)	2-1-04
413-120-0115	4-1-04	Amend	5-1-04	413-330-0950	6-1-04	Amend	7-1-04
413-120-0115(T)	4-1-04	Repeal	5-1-04	413-330-0950(T)	6-1-04	Repeal	7-1-04
413-120-0150	4-1-04	Amend	5-1-04	413-330-0960	1-1-04	Suspend	2-1-04
413-120-0155	4-1-04	Amend	5-1-04	413-330-0960	6-1-04	Amend	7-1-04
413-120-0165	4-1-04	Amend	5-1-04	413-330-0960(T)	6-1-04	Repeal	7-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	413-330-0970	1-1-04	Amend(T)	2-1-04
413-120-0175	4-1-04	Amend	5-1-04	413-330-0970	6-1-04	Amend	7-1-04
413-120-0175(T)	4-1-04	Repeal	5-1-04	413-330-0970(T)	6-1-04	Repeal	7-1-04
413-120-0500	1-1-04	Amend	2-1-04	413-330-0980	1-1-04	Amend(T)	2-1-04
413-120-0510	1-1-04	Amend	2-1-04	413-330-0980	6-1-04	Amend	7-1-04
413-120-0520	1-1-04	Amend	2-1-04	413-330-0980(T)	6-1-04	Repeal	7-1-04
413-120-0530	1-1-04	Amend	2-1-04	413-330-0990	1-1-04	Amend(T)	2-1-04
413-120-0540	1-1-04	Amend	2-1-04	413-330-0990	6-1-04	Amend	7-1-04
413-120-0550	1-1-04	Adopt	2-1-04	413-330-0990(T)	6-1-04	Repeal	7-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	413-330-1000	1-1-04	Amend(T)	2-1-04
413-130-0125	4-1-04	Amend	5-1-04	413-330-1000	6-1-04	Amend	7-1-04
413-130-0125(T)	4-1-04	Repeal	5-1-04	413-330-1000(T)	6-1-04	Repeal	7-1-04
413-130-0127	4-1-04	Adopt	5-1-04	413-330-1010	1-1-04	Amend(T)	2-1-04
413-130-0127(T)	4-1-04	Repeal	5-1-04	413-330-1010	6-1-04	Amend	7-1-04
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414-050-0010(T)	3-28-04	Repeal	5-1-04	414-700-0010	12-7-03	Adopt	1-1-04
414-061-0000	12-7-03	Amend	1-1-04	414-700-0020	12-7-03	Adopt	1-1-04
414-061-0010	12-7-03	Amend	1-1-04	414-700-0030	12-7-03	Adopt	1-1-04
414-061-0020	12-7-03	Amend	1-1-04	414-700-0040	12-7-03	Adopt	1-1-04
414-061-0030	12-7-03	Amend	1-1-04	414-700-0050	12-7-03	Adopt	1-1-04
414-061-0040	12-7-03	Amend	1-1-04	414-700-0060	12-7-03	Adopt	1-1-04
414-061-0050	12-7-03	Amend	1-1-04	414-700-0070	12-7-03	Adopt	1-1-04
414-061-0060	12-7-03	Amend	1-1-04	414-700-0080	12-7-03	Adopt	1-1-04
414-061-0070	12-7-03	Amend	1-1-04	414-700-0090	12-7-03	Adopt	1-1-04
414-061-0080	12-7-03	Amend	1-1-04	416-030-0000	5-14-04	Repeal	6-1-04
414-061-0090	12-7-03	Amend	1-1-04	416-030-0010	5-14-04	Repeal	6-1-04
414-061-0100	12-7-03	Amend	1-1-04	416-030-0020	5-14-04	Repeal	6-1-04
414-061-0110	12-7-03	Amend	1-1-04	416-030-0030	5-14-04	Repeal	6-1-04
414-061-0120	12-7-03	Amend	1-1-04	416-030-0040	5-14-04	Repeal	6-1-04
414-150-0055	12-28-03	Amend	2-1-04	416-030-0050	5-14-04	Repeal	6-1-04
414-150-0080	12-28-03	Amend	2-1-04	416-030-0060	5-14-04	Repeal	6-1-04
414-150-0120	12-28-03	Amend	2-1-04	416-030-0070	5-14-04	Repeal	6-1-04
414-205-0000	12-28-03	Amend	2-1-04	416-030-0080	5-14-04	Repeal	6-1-04
414-300-0000	12-28-03	Amend	2-1-04	416-030-0090	5-14-04	Repeal	6-1-04
414-300-0005	12-28-03	Amend	2-1-04	416-030-0100	5-14-04	Repeal	6-1-04
414-300-0010	12-28-03	Amend	2-1-04	416-030-0110	5-14-04	Repeal	6-1-04
414-300-0180	12-28-03	Amend	2-1-04	416-105-0000	5-14-04	Adopt	6-1-04
414-300-0190	12-28-03	Amend	2-1-04	416-105-0010	5-14-04	Adopt	6-1-04
414-300-0200	12-28-03	Amend	2-1-04	416-105-0020	5-14-04	Adopt	6-1-04
414-300-0210	12-28-03	Amend	2-1-04	416-105-0030	5-14-04	Adopt	6-1-04
414-300-0280	12-28-03	Amend	2-1-04	416-105-0040	5-14-04	Adopt	6-1-04
414-300-0360	12-28-03	Amend	2-1-04	416-110-0000	5-14-04	Repeal	6-1-04
414-350-0010	12-28-03	Amend	2-1-04	416-110-0010	5-14-04	Repeal	6-1-04
414-350-0010	12-28-03	Amend	2-1-04	416-110-0020	5-14-04	Repeal	6-1-04
414-350-0020	12-28-03	Amend	2-1-04	416-110-0030	5-14-04	Repeal	6-1-04
414-350-0210	12-28-03	Amend	2-1-04	416-150-0000	5-14-04	Amend	6-1-04
414-350-0235	12-28-03	Amend	2-1-04	416-150-0010	5-14-04	Amend	6-1-04
414-500-0030	12-28-03	Amend	2-1-04	416-150-0020	5-14-04	Amend	6-1-04
414-600-0000	12-7-03	Suspend	1-1-04	416-150-0030	5-14-04	Amend	6-1-04
414-600-0000	3-28-04	Repeal	5-1-04	416-150-0040	5-14-04	Adopt	6-1-04
414-600-0010	12-7-03	Suspend	1-1-04	416-150-0050	5-14-04	Adopt	6-1-04
414-600-0010	3-28-04	Repeal	5-1-04	416-180-0000	5-14-04	Amend	6-1-04
414-600-0020	12-7-03	Suspend	1-1-04	416-180-0010	5-14-04	Amend	6-1-04
414-600-0020	3-28-04	Repeal	5-1-04	416-180-0020	5-14-04	Amend	6-1-04
414-600-0030	12-7-03	Suspend	1-1-04	416-180-0030	5-14-04	Amend	6-1-04
414-600-0030	3-28-04	Repeal	5-1-04	416-180-0040	5-14-04	Amend	6-1-04
414-600-0040	12-7-03	Suspend	1-1-04	416-180-0050	5-14-04	Amend	6-1-04
414-600-0040	3-28-04	Repeal	5-1-04	416-440-0010	5-14-04	Repeal	6-1-04
414-600-0050	12-7-03	Suspend	1-1-04	416-440-0030	5-14-04	Repeal	6-1-04
414-600-0050	3-28-04	Repeal	5-1-04	436-001-0000	4-1-04	Amend	4-1-04
414-600-0060	12-7-03	Suspend	1-1-04	436-001-0001	4-1-04	Amend	4-1-04
414-600-0060	3-28-04	Repeal	5-1-04	436-001-0003	4-1-04	Amend	4-1-04
414-600-0070	12-7-03	Suspend	1-1-04	436-001-0004	4-1-04	Amend	4-1-04
414-600-0070	3-28-04	Repeal	5-1-04	436-001-0005	4-1-04	Amend	4-1-04
414-600-0080	12-7-03	Suspend	1-1-04	436-001-0007	4-1-04	Amend	4-1-04
414-600-0080	3-28-04	Repeal	5-1-04	436-001-0008	4-1-04	Amend	4-1-04
414-600-0090	12-7-03	Suspend	1-1-04	436-001-0025	4-1-04	Repeal	4-1-04
414-600-0090	3-28-04	Repeal	5-1-04	436-001-0030	4-1-04	Amend	4-1-04
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436-001-0065	4-1-04	Repeal	4-1-04	436-010-0008	4-1-04	Amend	4-1-04
436-001-0090	4-1-04	Repeal	4-1-04	436-010-0210	1-1-04	Amend(T)	1-1-04
436-001-0105	4-1-04	Repeal	4-1-04	436-010-0210	4-1-04	Amend	4-1-04
436-001-0110	4-1-04	Amend	4-1-04	436-010-0220	1-1-04	Amend(T)	1-1-04
436-001-0120	4-1-04	Repeal	4-1-04	436-010-0220	4-1-04	Amend	4-1-04
436-001-0135	4-1-04	Repeal	4-1-04	436-010-0230	1-1-04	Amend(T)	1-1-04
436-001-0140	4-1-04	Repeal	4-1-04	436-010-0230	4-1-04	Amend	4-1-04
436-001-0150	4-1-04	Amend	4-1-04	436-010-0240	1-1-04	Amend(T)	1-1-04
436-001-0155	4-1-04	Amend	4-1-04	436-010-0240	4-1-04	Amend	4-1-04
436-001-0160	4-1-04	Amend	4-1-04	436-010-0250	1-1-04	Amend(T)	1-1-04
436-001-0170	4-1-04	Amend	4-1-04	436-010-0250	4-1-04	Amend	4-1-04
436-001-0171	4-1-04	Repeal	4-1-04	436-010-0265	1-1-04	Amend(T)	1-1-04
436-001-0175	4-1-04	Repeal	4-1-04	436-010-0265	4-1-04	Amend	4-1-04
436-001-0185	4-1-04	Amend	4-1-04	436-010-0270	1-1-04	Amend(T)	1-1-04
436-001-0191	4-1-04	Repeal	4-1-04	436-010-0270	4-1-04	Amend	4-1-04
436-001-0195	4-1-04	Repeal	4-1-04	436-010-0275	1-1-04	Amend(T)	1-1-04
436-001-0201	4-1-04	Amend	4-1-04	436-010-0275	4-1-04	Amend	4-1-04
436-001-0205	4-1-04	Repeal	4-1-04	436-010-0280	1-1-04	Amend(T)	1-1-04
436-001-0210	4-1-04	Amend	4-1-04	436-010-0280	4-1-04	Amend	4-1-04
436-001-0225	4-1-04	Amend	4-1-04	436-010-0340	1-1-04	Amend(T)	1-1-04
436-001-0226	4-1-04	Amend	4-1-04	436-010-0340	4-1-04	Amend	4-1-04
436-001-0231	4-1-04	Repeal	4-1-04	436-010-0350	4-1-04	Repeal	4-1-04
436-001-0240	4-1-04	Amend	4-1-04	436-015-0008	1-1-04	Amend(T)	1-1-04
436-001-0255	4-1-04	Repeal	4-1-04	436-015-0008	6-29-04	Amend	7-1-04
436-001-0260	4-1-04	Amend	4-1-04	436-015-0030	1-1-04	Amend(T)	1-1-04
436-001-0265	1-1-04	Amend(T)	1-1-04	436-015-0030	6-29-04	Amend	7-1-04
436-001-0265	4-1-04	Amend	4-1-04	436-015-0040	6-29-04	Amend	7-1-04
436-001-0275	4-1-04	Amend	4-1-04	436-015-0050	1-1-04	Amend(T)	1-1-04
436-001-0285	4-1-04	Repeal	4-1-04	436-015-0050	6-29-04	Amend	7-1-04
436-001-0295	4-1-04	Repeal	4-1-04	436-015-0060	1-1-04	Amend(T)	1-1-04
436-001-0300	4-1-04	Adopt	4-1-04	436-015-0060	6-29-04	Amend	7-1-04
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436-009-0005	4-1-04	Amend	4-1-04	436-015-0090	1-1-04	Amend(T)	1-1-04
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436-009-0008	4-1-04	Amend	4-1-04	436-015-0130	6-29-04	Repeal	7-1-04
436-009-0010	4-1-04	Amend	4-1-04	436-030-0002	2-29-04	Amend	4-1-04
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436-009-0015	4-1-04	Amend	4-1-04	436-030-0003	2-29-04	Amend	4-1-04
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436-009-0040	4-1-04	Amend	4-1-04	436-030-0007	1-1-04	Amend(T)	1-1-04
436-009-0050	4-1-04	Amend	4-1-04	436-030-0007	2-29-04	Amend	4-1-04
436-009-0060	1-1-04	Amend(T)	1-1-04	436-030-0007(T)	2-29-04	Repeal	4-1-04
436-009-0060	4-1-04	Amend	4-1-04	436-030-0009	1-1-04	Amend(T)	1-1-04
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436-030-0034(T)	2-29-04	Repeal	4-1-04	436-050-0170	1-1-04	Amend	1-1-04
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436-030-0035(T)	2-29-04	Repeal	4-1-04	436-050-0185	1-1-04	Amend	1-1-04
436-030-0036	2-29-04	Amend	4-1-04	436-050-0190	1-1-04	Amend	1-1-04
436-030-0038	2-29-04	Amend	4-1-04	436-050-0195	1-1-04	Amend	1-1-04
436-030-0045	2-29-04	Am. & Ren.	4-1-04	436-050-0200	1-1-04	Amend	1-1-04
436-030-0055	2-29-04	Amend	4-1-04	436-050-0210	1-1-04	Amend	1-1-04
436-030-0065	2-29-04	Amend	4-1-04	436-050-0220	1-1-04	Amend	1-1-04
436-030-0066	2-29-04	Amend	4-1-04	436-050-0260	1-1-04	Amend	1-1-04
436-030-0115	1-1-04	Amend(T)	1-1-04	436-050-0270	1-1-04	Amend	1-1-04
436-030-0115	2-29-04	Amend	4-1-04	436-050-0280	1-1-04	Amend	1-1-04
436-030-0115(T)	2-29-04	Repeal	4-1-04	436-050-0290	1-1-04	Amend	1-1-04
436-030-0125	1-1-04	Amend(T)	1-1-04	436-050-0400	1-1-04	Amend	1-1-04
436-030-0125	2-29-04	Amend	4-1-04	436-050-0440	1-1-04	Amend	1-1-04
436-030-0125(T)	2-29-04	Repeal	4-1-04	436-050-0480	1-1-04	Adopt	1-1-04
436-030-0135	1-1-04	Amend(T)	1-1-04	436-055-0008	1-1-04	Amend	1-1-04
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436-030-0145	1-1-04	Amend(T)	1-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-030-0145	2-29-04	Amend	4-1-04	436-060-0008	2-29-04	Amend	4-1-04
436-030-0145(T)	2-29-04	Repeal	4-1-04	436-060-0009	2-29-04	Amend	4-1-04
436-030-0155	2-29-04	Amend	4-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-030-0165	1-1-04	Amend(T)	1-1-04	436-060-0010	2-29-04	Amend	4-1-04
436-030-0165	2-29-04	Amend	4-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-030-0165(T)	2-29-04	Repeal	4-1-04	436-060-0015	2-29-04	Amend	4-1-04
436-030-0175	2-29-04	Amend	4-1-04	436-060-0017	2-29-04	Amend	4-1-04
436-030-0185	1-1-04	Amend(T)	1-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-030-0185	2-29-04	Amend	4-1-04	436-060-0019	2-29-04	Amend	4-1-04
436-030-0185(T)	2-29-04	Repeal	4-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-030-0575	2-29-04	Amend	4-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-030-0580	2-29-04	Amend	4-1-04	436-060-0020	2-29-04	Amend	4-1-04
436-030-0581	2-29-04	Repeal	4-1-04	436-060-0025	2-29-04	Amend	4-1-04
436-035-0500	1-21-04	Amend(T)	3-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-035-0500	4-19-04	Amend(T)	6-1-04	436-060-0030	2-29-04	Amend	4-1-04
436-045-0008	1-1-04	Amend	1-1-04	436-060-0035	1-1-04	Amend(T)	1-1-04
436-050-0003	1-1-04	Amend	1-1-04	436-060-0035	2-29-04	Amend	4-1-04
436-050-0005	1-1-04	Amend	1-1-04	436-060-0035(T)	1-1-04	Suspend	1-1-04
436-050-0006	1-1-04	Amend	1-1-04	436-060-0040	2-29-04	Amend	4-1-04
436-050-0008	1-1-04	Amend	1-1-04	436-060-0060	2-29-04	Amend	4-1-04
436-050-0020	1-1-04	Repeal	1-1-04	436-060-0095	1-1-04	Amend(T)	1-1-04
436-050-0040	1-1-04	Amend	1-1-04	436-060-0095	2-29-04	Amend	4-1-04
436-050-0050	1-1-04	Amend	1-1-04	436-060-0105	1-1-04	Amend(T)	1-1-04
436-050-0055	1-1-04	Amend	1-1-04	436-060-0105	2-29-04	Amend	4-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-060-0135	2-29-04	Amend	4-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-060-0140	1-1-04	Amend(T)	1-1-04
436-050-0090	1-1-04	Amend	1-1-04	436-060-0140	2-29-04	Amend	4-1-04
436-050-0100	1-1-04	Amend	1-1-04	436-060-0147	2-29-04	Amend	4-1-04
436-050-0110	1-1-04	Amend	1-1-04	436-060-0150	1-1-04	Amend(T)	1-1-04
436-050-0120	1-1-04	Amend	1-1-04	436-060-0150	2-29-04	Amend	4-1-04
436-050-0150	1-1-04	Amend	1-1-04	436-060-0180	2-29-04	Amend	4-1-04
436-050-0150(T)	1-1-04	Repeal	1-1-04	436-060-0190	2-29-04	Amend	4-1-04
436-050-0160	1-1-04	Amend	1-1-04	436-060-0195	2-29-04	Amend	4-1-04

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436-060-0210	2-29-04	Repeal	4-1-04	437-002-0340	5-20-04	Amend	7-1-04
436-060-0500	2-29-04	Amend	4-1-04	437-003-0001	12-5-03	Amend	1-1-04
436-070-0008	1-1-04	Amend	1-1-04	437-003-0001	1-1-04	Amend	2-1-04
436-075-0008	1-1-04	Amend	1-1-04	437-003-0754	1-1-04	Repeal	2-1-04
436-080-0001	1-1-04	Amend	1-1-04	437-003-1754	1-1-04	Adopt	2-1-04
436-080-0002	1-1-04	Amend	1-1-04	437-003-1760	1-1-04	Repeal	2-1-04
436-080-0003	1-1-04	Amend	1-1-04	437-007-0220	6-7-04	Amend	7-1-04
436-080-0005	1-1-04	Amend	1-1-04	437-007-0600	6-7-04	Amend	7-1-04
436-080-0006	1-1-04	Amend	1-1-04	437-007-0605	6-7-04	Amend	7-1-04
436-080-0010	1-1-04	Amend	1-1-04	437-007-0615	6-7-04	Amend	7-1-04
436-080-0020	1-1-04	Amend	1-1-04	437-007-0650	6-7-04	Amend	7-1-04
436-080-0030	1-1-04	Amend	1-1-04	437-007-0655	6-7-04	Amend	7-1-04
436-080-0040	1-1-04	Amend	1-1-04	437-007-0660	6-7-04	Amend	7-1-04
436-080-0050	1-1-04	Repeal	1-1-04	437-007-0690	6-7-04	Amend	7-1-04
436-080-0060	1-1-04	Amend	1-1-04	437-007-0725	6-7-04	Amend	7-1-04
436-080-0065	1-1-04	Amend	1-1-04	438-006-0064	1-1-04	Adopt	1-1-04
436-080-0070	1-1-04	Amend	1-1-04	438-015-0110	1-1-04	Adopt	1-1-04
436-080-0080	1-1-04	Amend	1-1-04	440-020-0010	1-1-04	Adopt	2-1-04
436-085-0008	1-1-04	Amend	1-1-04	440-020-0015	1-1-04	Adopt	2-1-04
436-105-0003	4-1-04	Amend(T)	5-1-04	440-055-0000	1-1-04	Repeal	2-1-04
436-105-0500	4-1-04	Amend(T)	5-1-04	440-055-0005	1-1-04	Repeal	2-1-04
436-105-0540	4-1-04	Amend(T)	5-1-04	440-055-0008	1-1-04	Adopt	2-1-04
436-120-0003	4-1-04	Amend	4-1-04	440-100-0010	1-1-04	Adopt	2-1-04
436-120-0004	4-1-04	Amend	4-1-04	441-001-0005	1-1-04	Adopt	2-1-04
436-120-0008	1-1-04	Amend(T)	1-1-04	441-001-0010	1-1-04	Adopt	2-1-04
436-120-0008	4-1-04	Amend	4-1-04	441-001-0020	1-1-04	Adopt	2-1-04
436-120-0320	4-1-04	Amend	4-1-04	441-001-0030	1-1-04	Adopt	2-1-04
436-120-0340	4-1-04	Amend	4-1-04	441-001-0040	1-1-04	Adopt	2-1-04
436-120-0350	4-1-04	Amend	4-1-04	441-001-0050	1-1-04	Adopt	2-1-04
436-120-0360	4-1-04	Amend	4-1-04	441-002-0005	1-1-04	Adopt	2-1-04
436-120-0410	4-1-04	Amend	4-1-04	441-002-0010	1-1-04	Adopt	2-1-04
436-120-0500	4-1-04	Amend	4-1-04	441-002-0020	1-1-04	Adopt	2-1-04
436-120-0710	4-1-04	Amend	4-1-04	441-002-0030	1-1-04	Adopt	2-1-04
436-120-0720	4-1-04	Amend	4-1-04	441-002-0040	1-1-04	Adopt	2-1-04
436-120-0830	4-1-04	Amend	4-1-04	441-035-0045	11-26-03	Amend(T)	1-1-04
436-120-0840	4-1-04	Amend	4-1-04	441-035-0045	5-19-04	Amend	7-1-04
436-120-0920	4-1-04	Repeal	4-1-04	441-049-1001	11-26-03	Adopt(T)	1-1-04
436-150-0008	1-1-04	Amend	1-1-04	441-049-1001	5-19-04	Adopt	7-1-04
436-160-0003	1-1-04	Amend	1-1-04	441-049-1021	11-26-03	Amend(T)	1-1-04
436-160-0310	1-1-04	Amend	1-1-04	441-049-1021	5-19-04	Amend	7-1-04
436-160-0320	1-1-04	Amend	1-1-04	441-049-1031	11-26-03	Amend(T)	1-1-04
436-160-0340	1-1-04	Amend	1-1-04	441-049-1031	5-19-04	Amend	7-1-04
436-160-0350	1-1-04	Amend	1-1-04	441-049-1041	11-26-03	Amend(T)	1-1-04
436-160-0360	1-1-04	Amend	1-1-04	441-049-1041	5-19-04	Amend	7-1-04
437-001-0015	11-26-03	Amend	1-1-04	441-049-1051	11-26-03	Amend(T)	1-1-04
437-001-0096	11-26-03	Amend	1-1-04	441-049-1051	5-19-04	Amend	7-1-04
437-001-0171	11-26-03	Amend	1-1-04	441-065-0001	11-26-03	Adopt(T)	1-1-04
437-001-0203	11-26-03	Amend	1-1-04	441-065-0001	5-19-04	Adopt	7-1-04
437-001-0265	11-26-03	Amend	1-1-04	441-065-0015	11-26-03	Amend(T)	1-1-04
437-001-0270	11-26-03	Amend	1-1-04	441-065-0015	5-19-04	Amend	7-1-04
437-001-0430	11-26-03	Amend	1-1-04	441-065-0020	11-26-03	Amend(T)	1-1-04
437-001-0700	11-26-03	Amend	1-1-04	441-065-0020	5-19-04	Amend	7-1-04
437-001-0765	11-26-03	Amend	1-1-04	441-065-0035	11-26-03	Amend(T)	1-1-04
437-002-0120	7-1-04	Amend	5-1-04	441-065-0035	5-19-04	Amend	7-1-04
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441-065-0180	11-26-03	Amend(T)	1-1-04	445-050-0060	2-15-04	Amend	2-1-04
441-065-0180	5-19-04	Amend	7-1-04	445-050-0080	2-15-04	Amend	2-1-04
441-065-0270	11-26-03	Amend(T)	1-1-04	445-050-0090	2-15-04	Amend	2-1-04
441-065-0270	5-19-04	Amend	7-1-04	445-050-0155	2-15-04	Amend	2-1-04
441-075-0020	11-26-03	Amend(T)	1-1-04	459-001-0000	6-15-04	Amend	7-1-04
441-075-0020	5-19-04	Amend	7-1-04	459-005-0001	11-20-03	Amend	1-1-04
441-095-0030	11-26-03	Amend(T)	1-1-04	459-005-0001	12-15-03	Amend	1-1-04
441-095-0030	5-19-04	Amend	7-1-04	459-005-0001	5-21-04	Amend(T)	5-1-04
441-175-0002	11-26-03	Adopt(T)	1-1-04	459-005-0001	6-15-04	Amend	7-1-04
441-175-0002	5-19-04	Adopt	7-1-04	459-005-0001(T)	11-20-03	Repeal	1-1-04
441-175-0010	1-1-04	Amend	2-1-04	459-005-0055	2-18-04	Amend	4-1-04
441-175-0015	11-26-03	Amend(T)	1-1-04	459-005-0250	1-1-04	Adopt	1-1-04
441-175-0015	5-19-04	Amend	7-1-04	459-005-0320	1-22-04	Repeal	3-1-04
441-175-0035	1-1-04	Repeal	2-1-04	459-007-0001	12-15-03	Amend	1-1-04
441-175-0055	1-1-04	Amend	2-1-04	459-007-0001(T)	12-15-03	Repeal	1-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	459-007-0003	12-15-03	Adopt	1-1-04
441-175-0060	5-19-04	Amend	7-1-04	459-007-0005	4-15-04	Adopt	5-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	459-007-0030	4-15-04	Repeal	5-1-04
441-175-0080	5-19-04	Amend	7-1-04	459-007-0040	12-15-03	Amend	1-1-04
441-175-0085	11-26-03	Amend(T)	1-1-04	459-007-0040(T)	12-15-03	Repeal	1-1-04
441-175-0085	5-19-04	Amend	7-1-04	459-007-0050	12-15-03	Amend	1-1-04
441-175-0100	11-26-03	Amend(T)	1-1-04	459-007-0050	6-15-04	Amend	7-1-04
441-175-0100	5-19-04	Amend	7-1-04	459-007-0050(T)	12-15-03	Repeal	1-1-04
441-175-0120	11-26-03	Amend(T)	1-1-04	459-007-0060	12-15-03	Amend	1-1-04
441-175-0120	5-19-04	Amend	7-1-04	459-007-0060(T)	12-15-03	Repeal	1-1-04
441-175-0130	11-26-03	Amend(T)	1-1-04	459-007-0070	4-1-04	Amend	1-1-04
441-175-0130	1-1-04	Amend	2-1-04	459-007-0080	4-1-04	Amend	1-1-04
441-175-0130	5-19-04	Amend	7-1-04	459-007-0090	4-1-04	Amend	1-1-04
441-175-0160	11-26-03	Amend(T)	1-1-04	459-007-0095	12-15-03	Adopt	1-1-04
441-175-0160	5-19-04	Amend	7-1-04	459-007-0100	12-15-03	Repeal	1-1-04
441-175-0165	11-26-03	Amend(T)	1-1-04	459-007-0210	4-15-04	Repeal	5-1-04
441-175-0165	5-19-04	Amend	7-1-04	459-007-0300	4-15-04	Amend	5-1-04
441-175-0171	11-26-03	Amend(T)	1-1-04	459-007-0510	4-15-04	Amend	5-1-04
441-175-0171	5-19-04	Amend	7-1-04	459-007-0520	4-15-04	Repeal	5-1-04
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441-195-0020	5-19-04	Amend	7-1-04	459-009-0110	1-1-04	Repeal	2-1-04
441-195-0030	5-19-04	Amend	7-1-04	459-010-0055	7-1-04	Amend	7-1-04
441-195-0035	1-1-04	Repeal	2-1-04	459-011-0100	1-22-04	Amend	3-1-04
441-730-0030	1-1-04	Amend	2-1-04	459-011-0110	1-22-04	Amend	3-1-04
441-740-0030	1-1-04	Adopt	2-1-04	459-013-0280	7-1-04	Adopt	7-1-04
441-810-0200	1-1-04	Adopt	2-1-04	459-013-0280	7-1-04	Adopt(T)	5-1-04
441-810-0210	1-1-04	Adopt	2-1-04	459-013-0300	12-15-03	Adopt	1-1-04
441-810-0220	1-1-04	Adopt	2-1-04	459-017-0060	12-15-03	Amend(T)	1-1-04
441-810-0230	1-1-04	Adopt	2-1-04	459-017-0060	6-15-04	Amend	7-1-04
441-810-0240	1-1-04	Adopt	2-1-04	459-035-0050	1-1-04	Amend	1-1-04
441-810-0250	1-1-04	Adopt	2-1-04	459-045-0001	11-20-03	Amend	1-1-04
441-810-0260	1-1-04	Adopt	2-1-04	459-045-0001(T)	11-20-03	Repeal	1-1-04
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441-860-0050	1-1-04	Amend	2-1-04	459-060-0001	12-15-03	Amend	1-1-04
441-880-0050	1-1-04	Adopt	2-1-04	459-060-0010	12-15-03	Amend	1-1-04
443-015-0010	5-1-04	Amend	6-1-04	459-060-0020	12-15-03	Amend	1-1-04
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459-075-0030	1-1-04	Adopt	2-1-04	461-135-0701	4-1-04	Amend	5-1-04
459-075-0100	1-22-04	Adopt	3-1-04	461-135-0705	4-1-04	Amend	5-1-04
459-075-0150	2-18-04	Adopt	4-1-04	461-135-0730	1-1-04	Amend	2-1-04
459-080-0010	1-1-04	Adopt	1-1-04	461-135-0730	4-1-04	Amend(T)	5-1-04
459-080-0100	1-22-04	Adopt	3-1-04	461-135-0780	1-1-04	Amend	2-1-04
459-080-0150	6-21-04	Adopt(T)	7-1-04	461-135-0830	1-1-04	Amend	2-1-04
459-080-0200	1-1-04	Adopt(T)	1-1-04	461-135-0832	1-1-04	Amend	2-1-04
459-080-0200	5-19-04	Adopt	7-1-04	461-135-0845	2-5-04	Amend(T)	3-1-04
459-080-0500	1-1-04	Adopt	1-1-04	461-135-0847	1-1-04	Adopt	2-1-04
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461-101-0010	4-1-04	Amend	5-1-04	461-135-1120	2-19-04	Amend(T)	4-1-04
461-110-0330	1-1-04	Amend	2-1-04	461-135-1130	12-1-03	Amend(T)	1-1-04
461-110-0350	12-17-03	Amend(T)	2-1-04	461-135-1130	1-1-04	Amend	2-1-04
461-110-0350	4-1-04	Amend	5-1-04	461-135-1130	1-1-04	Amend	2-1-04
461-110-0390	4-1-04	Amend	5-1-04	461-135-1130	2-19-04	Amend(T)	4-1-04
461-110-0630	4-1-04	Amend	5-1-04	461-135-1130	4-1-04	Amend	5-1-04
461-110-0750	4-1-04	Amend	5-1-04	461-135-1130	4-1-04	Amend(T)	5-1-04
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461-115-0705	1-1-04	Amend	2-1-04	461-135-1220	4-1-04	Amend	5-1-04
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461-120-0125	5-11-04	Amend(T)	6-1-04	461-145-0040	4-1-04	Amend	5-1-04
461-120-0125(T)	1-1-04	Suspend	2-1-04	461-145-0050	4-1-04	Amend	5-1-04
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461-120-0345	1-1-04	Amend	2-1-04	461-145-0320	4-1-04	Amend	5-1-04
461-120-0345	1-1-04	Amend	2-1-04	461-145-0360	4-1-04	Amend	5-1-04
461-120-0345	4-1-04	Amend	5-1-04	461-145-0530	4-1-04	Amend	5-1-04
461-120-0510	4-1-04	Amend	5-1-04	461-150-0020	4-1-04	Amend(T)	5-1-04
461-125-0510	4-1-04	Amend	5-1-04	461-155-0010	4-1-04	Amend	5-1-04
461-125-0510	6-1-04	Amend(T)	7-1-04	461-155-0020	1-1-04	Amend	2-1-04
461-125-0600	4-1-04	Repeal	5-1-04	461-155-0030	1-1-04	Amend	2-1-04
461-125-0610	4-1-04	Repeal	5-1-04	461-155-0035	1-1-04	Amend	2-1-04
461-125-0650	4-1-04	Repeal	5-1-04	461-155-0150	1-1-04	Amend	2-1-04
461-125-0660	4-1-04	Repeal	5-1-04	461-155-0150	1-1-04	Amend	2-1-04
461-125-0690	4-1-04	Repeal	5-1-04	461-155-0150	4-1-04	Amend	5-1-04
461-125-0890	4-1-04	Repeal	5-1-04	461-155-0210	4-1-04	Amend	5-1-04
461-125-0910	4-1-04	Repeal	5-1-04	461-155-0225	2-13-04	Amend(T)	3-1-04
461-125-0930	4-1-04	Repeal	5-1-04	461-155-0225	4-1-04	Amend	5-1-04
461-135-0010	1-1-04	Amend	2-1-04	461-155-0235	3-1-04	Amend(T)	4-1-04
461-135-0180	1-1-04	Repeal	2-1-04	461-155-0235	4-1-04	Amend	5-1-04
461-135-0301	12-1-03	Amend(T)	1-1-04	461-155-0250	1-1-04	Amend	2-1-04
461-135-0301	4-1-04	Amend	5-1-04	461-155-0250	4-1-04	Amend	5-1-04
461-135-0301	5-1-04	Amend(T)	6-1-04	461-155-0270	1-1-04	Amend	2-1-04
461-135-0301(T)	4-1-04	Repeal	5-1-04	461-155-0290	4-1-04	Amend	5-1-04
461-135-0400	1-1-04	Amend	2-1-04	461-155-0291	4-1-04	Amend	5-1-04
461-135-0400	4-1-04	Amend	5-1-04	461-155-0295	4-1-04	Amend	5-1-04
461-135-0401	1-1-04	Amend	2-1-04	461-155-0300	1-1-04	Amend	2-1-04
461-135-0401	4-1-04	Amend	5-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-135-0700	1-1-04	Amend(T)	2-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-135-0700	4-1-04	Amend	5-1-04	461-155-0526	4-1-04	Amend	5-1-04

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461-160-0015	4-1-04	Amend	5-1-04	471-030-0130	1-4-04	Repeal	2-1-04
461-160-0060	4-1-04	Amend	5-1-04	471-030-0135	1-4-04	Repeal	2-1-04
461-160-0500	4-1-04	Amend	5-1-04	471-030-0140	1-4-04	Repeal	2-1-04
461-160-0510	4-1-04	Repeal	5-1-04	471-030-0145	1-4-04	Repeal	2-1-04
461-160-0520	4-1-04	Repeal	5-1-04	471-031-0076	12-14-03	Amend	1-1-04
461-160-0550	4-1-04	Amend	5-1-04	471-031-0077	12-14-03	Adopt	1-1-04
461-160-0560	4-1-04	Amend	5-1-04	471-031-0140	12-14-03	Amend	1-1-04
461-160-0580	1-1-04	Amend	2-1-04	471-031-0141	12-14-03	Amend	1-1-04
461-160-0620	1-1-04	Amend	2-1-04	471-031-0142	12-14-03	Adopt	1-1-04
461-165-0030	1-1-04	Amend	2-1-04	471-040-0040	5-4-04	Amend(T)	6-1-04
461-165-0180	5-1-04	Amend	6-1-04	471-041-0060	5-4-04	Amend(T)	6-1-04
461-165-0400	3-1-04	Repeal	4-1-04	471-060-0005	1-4-04	Amend	2-1-04
461-170-0010	1-1-04	Amend	2-1-04	543-050-0000	1-1-04	Repeal	1-1-04
461-175-0200	1-1-04	Amend	2-1-04	543-050-0020	1-1-04	Repeal	1-1-04
461-180-0070	1-1-04	Amend	2-1-04	543-050-0030	1-1-04	Repeal	1-1-04
461-180-0105	12-1-03	Amend(T)	1-1-04	543-050-0040	1-1-04	Repeal	1-1-04
461-180-0105	1-1-04	Amend	2-1-04	543-050-0050	1-1-04	Repeal	1-1-04
461-190-0110	1-1-04	Amend	2-1-04	543-060-0000	1-1-04	Adopt	1-1-04
461-190-0161	1-1-04	Amend	2-1-04	543-060-0010	1-1-04	Adopt	1-1-04
461-190-0191	1-1-04	Repeal	2-1-04	543-060-0020	1-1-04	Adopt	1-1-04
461-190-0211	1-1-04	Amend	2-1-04	543-060-0030	1-1-04	Adopt	1-1-04
461-190-0360	1-1-04	Amend	2-1-04	543-060-0040	1-1-04	Adopt	1-1-04
461-193-0560	1-1-04	Amend	2-1-04	543-060-0060	1-1-04	Adopt	1-1-04
461-195-0501	1-1-04	Amend	2-1-04	571-020-0120	5-17-04	Amend	6-1-04
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461-195-0551	4-1-04	Amend	5-1-04	571-060-0005	7-1-04	Amend	6-1-04
461-195-0561	1-1-04	Amend	2-1-04	573-001-0000	4-5-04	Amend	5-1-04
461-195-0601	4-1-04	Amend	5-1-04	573-001-0015	4-5-04	Amend	5-1-04
461-195-0621	4-1-04	Amend	5-1-04	573-020-0000	4-5-04	Repeal	5-1-04
462-110-0030	4-8-04	Amend	5-1-04	573-020-0005	4-5-04	Repeal	5-1-04
462-120-0020	3-3-04	Amend	4-1-04	573-020-0010	4-5-04	Repeal	5-1-04
462-120-0040	4-8-04	Amend	5-1-04	573-020-0015	4-5-04	Repeal	5-1-04
462-140-0070	4-8-04	Amend	5-1-04	573-020-0021	4-5-04	Repeal	5-1-04
462-140-0410	4-8-04	Amend	5-1-04	573-020-0024	4-5-04	Repeal	5-1-04
462-140-0420	4-8-04	Amend	5-1-04	573-020-0025	4-5-04	Repeal	5-1-04
462-140-0480	4-8-04	Amend	5-1-04	573-020-0030	4-5-04	Repeal	5-1-04
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462-170-0030	4-8-04	Amend	5-1-04	573-020-0037	4-5-04	Repeal	5-1-04
462-170-0050	4-8-04	Amend	5-1-04	573-020-0049	4-5-04	Repeal	5-1-04
462-180-0010	4-8-04	Amend	5-1-04	573-020-0052	4-5-04	Repeal	5-1-04
462-180-0060	4-8-04	Amend	5-1-04	573-020-0060	4-5-04	Repeal	5-1-04
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471-015-0010	12-14-03	Amend	1-1-04	573-020-0105	4-5-04	Repeal	5-1-04
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573-042-0005	4-5-04	Amend	5-1-04	580-010-0033	12-3-03	Amend	1-1-04
573-050-0005	4-5-04	Amend	5-1-04	580-010-0035	12-3-03	Amend	1-1-04
573-050-0010	4-5-04	Amend	5-1-04	580-010-0037	12-3-03	Amend	1-1-04
573-050-0020	4-5-04	Amend	5-1-04	580-010-0040	12-3-03	Amend	1-1-04
573-050-0025	4-5-04	Amend	5-1-04	580-010-0041	12-3-03	Amend	1-1-04
573-050-0030	4-5-04	Amend	5-1-04	580-010-0045	12-3-03	Amend	1-1-04
573-050-0035	4-5-04	Amend	5-1-04	580-020-0006	12-1-03	Adopt(T)	1-1-04
573-050-0040	4-5-04	Amend	5-1-04	580-020-0006	4-8-04	Adopt	5-1-04
573-050-0045	4-5-04	Amend	5-1-04	580-021-0041	4-6-04	Adopt(T)	5-1-04
573-070-0001	4-5-04	Amend	5-1-04	580-021-0044	12-1-03	Adopt(T)	1-1-04
573-070-0004	4-5-04	Amend	5-1-04	580-021-0044	4-8-04	Adopt	5-1-04
573-070-0011	4-5-04	Amend	5-1-04	580-040-0035	12-24-03	Amend	2-1-04
573-070-0067	4-5-04	Amend	5-1-04	580-040-0040	6-15-04	Amend	7-1-04
573-070-0068	4-5-04	Amend	5-1-04	580-040-0300	6-9-04	Adopt	7-1-04
573-075-0000	4-5-04	Adopt	5-1-04	580-040-0301	6-9-04	Adopt	7-1-04
573-075-0010	4-5-04	Adopt	5-1-04	580-040-0302	6-9-04	Adopt	7-1-04
573-075-0020	4-5-04	Adopt	5-1-04	580-040-0303	6-9-04	Adopt	7-1-04
573-075-0030	4-5-04	Adopt	5-1-04	580-040-0304	6-9-04	Adopt	7-1-04
573-075-0040	4-5-04	Adopt	5-1-04	580-040-0305	6-9-04	Adopt	7-1-04
573-075-0050	4-5-04	Adopt	5-1-04	580-040-0306	6-9-04	Adopt	7-1-04
573-075-0060	4-5-04	Adopt	5-1-04	580-040-0307	6-9-04	Adopt	7-1-04
573-075-0070	4-5-04	Adopt	5-1-04	580-040-0308	6-9-04	Adopt	7-1-04
573-075-0080	4-5-04	Adopt	5-1-04	580-040-0309	6-9-04	Adopt	7-1-04
573-075-0090	4-5-04	Adopt	5-1-04	580-040-0310	6-9-04	Adopt	7-1-04
573-075-0100	4-5-04	Adopt	5-1-04	580-040-0311	6-9-04	Adopt	7-1-04
573-075-0110	4-5-04	Adopt	5-1-04	580-050-0000	6-9-04	Adopt(T)	7-1-04
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573-075-0130	4-5-04	Adopt	5-1-04	580-050-0005	6-9-04	Amend(T)	7-1-04
573-075-0140	4-5-04	Adopt	5-1-04	580-050-0010	6-9-04	Amend(T)	7-1-04
573-075-0150	4-5-04	Adopt	5-1-04	580-050-0015	6-9-04	Amend(T)	7-1-04
573-075-0160	4-5-04	Adopt	5-1-04	580-050-0020	6-9-04	Amend(T)	7-1-04
573-075-0170	4-5-04	Adopt	5-1-04	580-050-0025	6-9-04	Amend(T)	7-1-04
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580-050-0270	6-9-04	Adopt(T)	7-1-04	582-020-0110	1-30-04	Amend	3-1-04
580-050-0280	6-9-04	Adopt(T)	7-1-04	582-020-0120	1-30-04	Amend	3-1-04
580-050-0290	6-9-04	Adopt(T)	7-1-04	582-020-0125	1-30-04	Adopt	3-1-04
580-050-0300	6-9-04	Adopt(T)	7-1-04	582-030-0000	3-12-04	Amend	4-1-04
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581-045-0065	1-1-04	Amend	2-1-04	584-040-0005	3-17-04	Amend(T)	5-1-04
581-045-0068	1-1-04	Amend	2-1-04	584-060-0171	5-14-04	Amend	6-1-04
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582-010-0005	12-31-03	Amend	2-1-04	584-100-0006	3-17-04	Adopt	5-1-04
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582-020-0060	1-30-04	Amend	3-1-04	584-100-0051	3-17-04	Adopt	5-1-04
582-020-0070	1-30-04	Amend	3-1-04	584-100-0056	3-17-04	Adopt	5-1-04
582-020-0080	1-30-04	Amend	3-1-04	584-100-0061	3-17-04	Adopt	5-1-04
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635-042-0022	3-29-04	Amend(T)	5-1-04	635-066-0010	1-1-04	Amend	1-1-04
635-042-0110	2-13-04	Amend	3-1-04	635-067-0000	1-1-04	Amend	1-1-04
635-042-0130	1-1-04	Amend(T)	2-1-04	635-067-0015	1-1-04	Amend	1-1-04
635-042-0130	3-18-04	Amend(T)	5-1-04	635-067-0024	1-1-04	Amend	1-1-04
635-042-0135	1-1-04	Amend(T)	2-1-04	635-067-0028	1-1-04	Adopt	1-1-04
635-042-0135	2-2-04	Amend(T)	3-1-04	635-067-0029	1-1-04	Adopt	1-1-04
635-042-0145	2-13-04	Amend	3-1-04	635-067-0032	1-1-04	Amend	1-1-04
635-042-0145	3-12-04	Amend(T)	4-1-04	635-067-0034	1-1-04	Amend	1-1-04
635-042-0145	3-18-04	Amend(T)	5-1-04	635-067-0041	1-1-04	Adopt	1-1-04
635-042-0145	4-12-04	Amend(T)	5-1-04	635-068-0000	1-19-04	Amend	1-1-04
635-042-0145	5-6-04	Amend(T)	6-1-04	635-069-0000	2-2-04	Amend	1-1-04
635-042-0145	5-20-04	Amend(T)	7-1-04	635-070-0000	12-24-03	Amend(T)	2-1-04
635-042-0160	2-13-04	Amend	3-1-04	635-070-0000	2-2-04	Amend(T)	3-1-04
635-042-0160	3-12-04	Amend(T)	4-1-04	635-070-0000	4-1-04	Amend	1-1-04
635-042-0160	3-18-04	Amend(T)	5-1-04	635-070-0005	2-2-04	Amend(T)	3-1-04
635-042-0160	4-12-04	Amend(T)	5-1-04	635-070-0010	12-24-03	Amend(T)	2-1-04
635-042-0160	5-6-04	Amend(T)	6-1-04	635-071-0000	1-1-04	Amend	1-1-04
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635-072-0000	1-1-04	Amend	1-1-04	644-030-0030	1-8-04	Adopt	2-1-04
635-073-0000	12-24-03	Amend(T)	2-1-04	644-030-0040	1-8-04	Adopt	2-1-04
635-073-0000	2-2-04	Amend	1-1-04	645-010-0020	1-16-04	Amend	2-1-04
635-073-0060	12-24-03	Amend(T)	2-1-04	645-030-0010	1-16-04	Adopt	2-1-04
635-073-0070	1-1-04	Amend	1-1-04	645-030-0020	1-16-04	Adopt	2-1-04
635-073-0090	1-1-04	Amend	1-1-04	645-030-0030	1-16-04	Adopt	2-1-04
635-075-0005	1-1-04	Amend	1-1-04	645-030-0040	1-16-04	Adopt	2-1-04
635-075-0015	1-1-04	Amend	1-1-04	646-010-0030	1-16-04	Adopt	2-1-04
635-075-0020	1-1-04	Amend	1-1-04	646-030-0010	1-16-04	Adopt	2-1-04
635-075-0029	1-1-04	Amend	1-1-04	646-030-0020	1-16-04	Adopt	2-1-04
635-078-0001	1-1-04	Amend	1-1-04	646-030-0020	4-8-04	Amend	5-1-04
635-078-0005	1-1-04	Amend	1-1-04	646-030-0030	1-16-04	Adopt	2-1-04
635-078-0008	1-1-04	Amend	1-1-04	646-030-0040	1-16-04	Adopt	2-1-04
635-080-0030	1-1-04	Amend	1-1-04	647-010-0010	6-1-04	Amend	6-1-04
635-080-0031	1-1-04	Amend	1-1-04	647-010-0020	1-16-04	Amend	2-1-04
635-100-0136	5-1-04	Amend	6-1-04	647-015-0010	1-16-04	Adopt	2-1-04
635-120-0001	3-5-04	Amend	4-1-04	647-015-0020	1-16-04	Adopt	2-1-04
635-120-0005	3-5-04	Amend	4-1-04	647-015-0030	1-16-04	Adopt	2-1-04
635-120-0010	3-5-04	Amend	4-1-04	655-015-0010	1-16-04	Adopt	2-1-04
635-120-0015	3-5-04	Amend	4-1-04	655-015-0020	1-16-04	Adopt	2-1-04
635-120-0020	3-5-04	Amend	4-1-04	655-015-0030	1-16-04	Adopt	2-1-04
635-200-0050	5-1-04	Amend	6-1-04	656-030-0010	1-1-04	Adopt	1-1-04
635-300-0001	5-1-04	Amend	6-1-04	656-030-0020	1-1-04	Adopt	1-1-04
635-425-0020	5-1-04	Amend	6-1-04	656-030-0030	1-1-04	Adopt	1-1-04
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635-500-1830	12-15-03	Amend	1-1-04	657-030-0010	1-15-04	Adopt	1-1-04
635-500-1850	12-15-03	Amend	1-1-04	657-030-0020	1-15-04	Adopt	1-1-04
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643-030-0020	1-16-04	Adopt	3-1-04	660-006-0015	5-7-04	Amend	6-1-04
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660-014-0000	5-17-04	Amend	7-1-04	679-010-0010	1-20-04	Amend	3-1-04
660-014-0010	5-17-04	Amend	7-1-04	679-010-0030	1-20-04	Amend	3-1-04
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660-014-0030	5-17-04	Amend	7-1-04	679-010-0060	1-20-04	Adopt	3-1-04
660-014-0040	5-17-04	Amend	7-1-04	679-030-0010	1-20-04	Adopt	3-1-04
660-016-0005	5-7-04	Amend	6-1-04	679-030-0020	1-20-04	Adopt	3-1-04
660-016-0010	5-7-04	Amend	6-1-04	679-030-0030	1-20-04	Adopt	3-1-04
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660-023-0140	5-7-04	Amend	6-1-04	690-014-0020	7-1-04	Amend	7-1-04
660-023-0190	5-7-04	Amend	6-1-04	690-014-0030	7-1-04	Amend	7-1-04
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690-502-0160	12-4-03	Am. & Ren.	1-1-04	734-051-0240	3-1-04	Am. & Ren.	4-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	734-051-0250	3-1-04	Am. & Ren.	4-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	734-051-0260	3-1-04	Am. & Ren.	4-1-04
690-502-0160	12-4-03	Amend	1-1-04	734-051-0270	3-1-04	Am. & Ren.	4-1-04
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690-502-0215	6-15-04	Adopt	7-1-04	734-051-0290	3-1-04	Am. & Ren.	4-1-04
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695-020-0020	4-12-04	Amend	5-1-04	734-051-0310	3-1-04	Am. & Ren.	4-1-04
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695-020-0058	4-12-04	Repeal	5-1-04	734-051-0340	3-1-04	Repeal	4-1-04
695-020-0092	1-26-04	Amend	3-1-04	734-051-0350	3-1-04	Repeal	4-1-04
695-020-0093	1-26-04	Amend	3-1-04	734-051-0360	3-1-04	Am. & Ren.	4-1-04
695-020-0094	1-26-04	Amend	3-1-04	734-051-0370	3-1-04	Am. & Ren.	4-1-04
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695-020-0098	1-26-04	Adopt	3-1-04	734-051-0410	3-1-04	Repeal	4-1-04
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735-040-0061	1-1-04	Amend(T)	1-1-04	735-062-0020	1-1-04	Amend	1-1-04
735-040-0080	1-1-04	Amend(T)	1-1-04	735-062-0020	3-25-04	Amend	5-1-04
735-040-0095	1-1-04	Amend(T)	1-1-04	735-062-0020(T)	3-25-04	Repeal	5-1-04
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741-025-0060	5-20-04	Adopt	7-1-04	801-030-0020	1-1-04	Amend	2-1-04
741-025-0070	5-20-04	Adopt	7-1-04	801-040-0070	1-1-04	Amend	2-1-04
741-025-0080	5-20-04	Adopt	7-1-04	801-040-0090	1-1-04	Amend	2-1-04
741-050-0010	3-24-04	Repeal	5-1-04	801-040-0100	1-1-04	Amend	2-1-04
741-050-0020	3-24-04	Repeal	5-1-04	801-040-0160	1-1-04	Amend	2-1-04
741-050-0030	3-24-04	Repeal	5-1-04	801-050-0080	1-1-04	Amend	2-1-04
741-050-0040	3-24-04	Repeal	5-1-04	806-001-0004	5-5-04	Amend	6-1-04
741-050-0050	3-24-04	Repeal	5-1-04	806-001-0005	5-5-04	Amend	6-1-04

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806-010-0037	3-2-04	Adopt	4-1-04	808-008-0430	1-1-04	Amend(T)	2-1-04
806-010-0045	5-5-04	Amend	6-1-04	808-008-0440	1-1-04	Amend(T)	2-1-04
806-010-0060	3-2-04	Amend	4-1-04	808-008-0460	1-1-04	Amend(T)	2-1-04
806-010-0080	5-5-04	Amend	6-1-04	808-008-0500	1-1-04	Amend(T)	2-1-04
806-010-0145	5-5-04	Amend	6-1-04	808-008-0510	1-1-04	Adopt(T)	2-1-04
806-020-0080	1-28-04	Amend	3-1-04	808-008-0520	1-1-04	Adopt(T)	2-1-04
808-001-0020	6-11-04	Amend(T)	7-1-04	808-009-0020	2-1-04	Amend	3-1-04
808-002-0100	2-1-04	Amend	3-1-04	809-001-0005	4-6-04	Amend	5-1-04
808-002-0200	2-1-04	Amend	3-1-04	809-001-0035	4-6-04	Adopt(T)	5-1-04
808-002-0210	2-1-04	Adopt	3-1-04	811-001-0005	6-7-04	Amend	7-1-04
808-002-0220	2-1-04	Amend	3-1-04	811-010-0085	12-11-03	Amend	1-1-04
808-002-0298	2-1-04	Adopt	3-1-04	811-010-0085	6-7-04	Amend	7-1-04
808-002-0448	2-1-04	Repeal	3-1-04	811-010-0086	6-7-04	Amend	7-1-04
808-002-0500	2-1-04	Amend	3-1-04	811-010-0095	12-11-03	Amend	1-1-04
808-002-0540	1-1-04	Amend(T)	2-1-04	811-015-0010	12-11-03	Amend	1-1-04
808-002-0620	2-1-04	Amend	3-1-04	811-035-0005	12-11-03	Amend	1-1-04
808-002-0665	2-1-04	Amend	3-1-04	811-035-0015	12-11-03	Amend	1-1-04
808-002-0880	2-1-04	Amend	3-1-04	812-001-0000	3-1-04	Amend	4-1-04
808-002-0890	2-1-04	Adopt	3-1-04	812-001-0015	3-1-04	Amend	4-1-04
808-002-0920	2-1-04	Amend	3-1-04	812-001-0020	12-5-03	Amend	1-1-04
808-003-0010	2-1-04	Amend	3-1-04	812-001-0020	12-9-03	Amend(T)	1-1-04
808-003-0015	2-1-04	Amend	3-1-04	812-001-0020	1-1-04	Amend(T)	2-1-04
808-003-0018	2-1-04	Amend	3-1-04	812-001-0020	3-1-04	Amend	4-1-04
808-003-0030	2-1-04	Amend	3-1-04	812-001-0020	6-1-04	Amend	7-1-04
808-003-0035	2-1-04	Amend	3-1-04	812-001-0020	6-1-04	Amend(T)	7-1-04
808-003-0040	12-1-03	Amend(T)	1-1-04	812-001-0020(T)	3-1-04	Repeal	4-1-04
808-003-0040	2-1-04	Amend	3-1-04	812-001-0022	1-1-04	Adopt(T)	2-1-04
808-003-0040(T)	2-1-04	Repeal	3-1-04	812-001-0022	3-1-04	Adopt	4-1-04
808-003-0045	2-1-04	Amend	3-1-04	812-001-0022	6-1-04	Amend	7-1-04
808-003-0050	2-1-04	Amend	3-1-04	812-001-0022(T)	3-1-04	Repeal	4-1-04
808-003-0055	2-1-04	Amend	3-1-04	812-002-0130	12-5-03	Adopt	1-1-04
808-003-0060	2-1-04	Amend	3-1-04	812-002-0200	12-5-03	Amend	1-1-04
808-003-0065	2-1-04	Amend	3-1-04	812-002-0240	12-5-03	Repeal	1-1-04
808-003-0070	2-1-04	Amend	3-1-04	812-002-0240(T)	12-5-03	Repeal	1-1-04
808-003-0080	2-1-04	Amend	3-1-04	812-002-0380	2-2-04	Amend	3-1-04
808-003-0081	2-1-04	Amend	3-1-04	812-002-0420	12-5-03	Amend	1-1-04
808-003-0085	2-1-04	Amend	3-1-04	812-002-0420(T)	12-5-03	Repeal	1-1-04
808-003-0112	2-1-04	Adopt	3-1-04	812-002-0440	12-5-03	Amend	1-1-04
808-003-0125	2-1-04	Amend	3-1-04	812-002-0530	6-1-04	Amend	7-1-04
808-003-0130	2-1-04	Amend	3-1-04	812-002-0540	12-5-03	Amend	1-1-04
808-004-0210	1-1-04	Adopt	2-1-04	812-002-0540(T)	12-5-03	Repeal	1-1-04
808-004-0320	2-1-04	Amend	3-1-04	812-003-0000	12-5-03	Amend	1-1-04
808-004-0400	2-1-04	Amend	3-1-04	812-003-0000	7-1-04	Amend	4-1-04
808-005-0020	2-1-04	Amend	3-1-04	812-003-0000(T)	12-5-03	Repeal	1-1-04
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808-008-0050	1-1-04	Adopt	2-1-04	812-003-0015	6-1-04	Amend	7-1-04
808-008-0060	1-1-04	Amend(T)	2-1-04	812-003-0020	12-5-03	Amend	1-1-04
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808-008-0280	1-1-04	Amend(T)	2-1-04	812-004-0110	12-5-03	Adopt	1-1-04
808-008-0290	1-1-04	Adopt(T)	2-1-04	812-004-0110	1-1-04	Amend(T)	2-1-04
808-008-0400	1-1-04	Amend(T)	2-1-04	812-004-0110	3-1-04	Amend	4-1-04
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812-004-0210	12-5-03	Adopt	1-1-04	813-350-0030	4-8-04	Amend	5-1-04
812-004-0250	1-1-04	Amend(T)	2-1-04	813-350-0030(T)	4-8-04	Repeal	5-1-04
812-004-0250	3-1-04	Amend	4-1-04	818-012-0040	6-1-04	Amend	7-1-04
812-004-0250(T)	3-1-04	Repeal	4-1-04	818-012-0075	6-1-04	Amend	7-1-04
812-004-0320	12-5-03	Amend	1-1-04	818-012-0110	6-1-04	Adopt	7-1-04
812-004-0340	12-5-03	Amend	1-1-04	818-021-0010	6-1-04	Amend	7-1-04
812-004-0400	12-5-03	Amend	1-1-04	818-021-0011	6-1-04	Amend	7-1-04
812-004-0440	1-1-04	Amend(T)	2-1-04	818-021-0020	6-1-04	Amend	7-1-04
812-004-0440	3-1-04	Amend	4-1-04	818-021-0025	6-1-04	Amend	7-1-04
812-004-0440(T)	3-1-04	Repeal	4-1-04	818-035-0030	6-1-04	Amend	7-1-04
812-004-0535	12-5-03	Amend	1-1-04	818-035-0080	6-1-04	Amend	7-1-04
812-004-0535	3-1-04	Amend	4-1-04	818-042-0010	6-1-04	Amend	7-1-04
812-004-0540	3-1-04	Amend	4-1-04	818-042-0020	6-1-04	Amend	7-1-04
812-004-0550	3-1-04	Amend	4-1-04	818-042-0070	6-1-04	Amend	7-1-04
812-005-0005	12-5-03	Amend	1-1-04	818-042-0080	6-1-04	Amend	7-1-04
812-006-0020	12-5-03	Amend	1-1-04	820-010-0010	1-26-04	Amend	3-1-04
812-008-0050	3-1-04	Amend	4-1-04	820-010-0200	1-26-04	Amend	3-1-04
812-009-0100	3-1-04	Amend	4-1-04	820-010-0225	1-26-04	Amend	3-1-04
812-009-0120	3-1-04	Amend	4-1-04	820-010-0450	1-26-04	Amend	3-1-04
812-010-0020	12-5-03	Amend	1-1-04	820-010-0500	1-26-04	Amend	3-1-04
812-010-0020	6-1-04	Amend	7-1-04	820-010-0623	1-26-04	Adopt	3-1-04
812-010-0030	12-5-03	Amend	1-1-04	820-015-0026	1-26-04	Amend	3-1-04
812-010-0050	12-5-03	Adopt	1-1-04	836-005-0107	5-7-04	Amend	6-1-04
812-010-0050	6-1-04	Amend	7-1-04	836-009-0007	12-19-03	Amend	1-1-04
812-010-0060	12-5-03	Amend	1-1-04	836-011-0000	12-3-03	Amend	1-1-04
812-010-0060	6-1-04	Amend	7-1-04	836-031-0755	1-1-04	Amend	2-1-04
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812-010-0140	12-5-03	Amend	1-1-04	836-031-0855	11-26-03	Adopt(T)	1-1-04
812-010-0140	6-1-04	Amend	7-1-04	836-031-0855	5-15-04	Adopt	6-1-04
812-010-0240	12-5-03	Repeal	1-1-04	836-042-0045	1-1-04	Amend	1-1-04
812-010-0280	12-5-03	Amend	1-1-04	836-051-0101	1-1-04	Amend	2-1-04
812-010-0290	12-5-03	Adopt	1-1-04	836-051-0106	1-1-04	Adopt	2-1-04
812-010-0400	12-5-03	Amend	1-1-04	836-051-0700	6-14-04	Adopt	7-1-04
812-010-0420	12-5-03	Amend	1-1-04	836-052-0700	2-3-04	Amend	3-1-04
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812-010-0430	12-5-03	Amend	1-1-04	836-071-0180	12-19-03	Amend	1-1-04
812-010-0440	12-5-03	Amend	1-1-04	837-012-0645	1-14-04	Amend	2-1-04
812-010-0440	6-1-04	Amend	7-1-04	837-012-0720	1-14-04	Amend	2-1-04
812-010-0460	12-5-03	Amend	1-1-04	837-012-0830	1-14-04	Amend	2-1-04
812-010-0460	6-1-04	Amend	7-1-04	837-012-0850	1-14-04	Amend	2-1-04
812-010-0500	12-5-03	Amend	1-1-04	837-012-1210	1-14-04	Amend	2-1-04
812-010-0500	6-1-04	Amend	7-1-04	837-012-1220	1-14-04	Amend	2-1-04
812-010-0510	12-5-03	Adopt	1-1-04	837-012-1260	1-14-04	Amend	2-1-04
812-010-0510	6-1-04	Amend	7-1-04	837-012-1290	1-14-04	Amend	2-1-04
812-010-0520	12-5-03	Adopt	1-1-04	837-012-1300	1-14-04	Amend	2-1-04
812-010-0520	6-1-04	Amend	7-1-04	837-012-1320	1-14-04	Amend	2-1-04
813-003-0005	5-20-04	Adopt(T)	7-1-04	837-012-1340	1-14-04	Amend	2-1-04
813-003-0010	5-20-04	Adopt(T)	7-1-04	837-030-0130	1-14-04	Amend	2-1-04
813-003-0020	5-20-04	Adopt(T)	7-1-04	837-030-0220	1-14-04	Amend	2-1-04
813-003-0030	5-20-04	Adopt(T)	7-1-04	837-030-0230	1-14-04	Amend	2-1-04
813-003-0040	5-20-04	Adopt(T)	7-1-04	837-030-0240	1-14-04	Amend	2-1-04
813-003-0050	5-20-04	Adopt(T)	7-1-04	837-030-0250	1-14-04	Amend	2-1-04
813-003-0060	5-20-04	Adopt(T)	7-1-04	837-030-0280	1-14-04	Amend	2-1-04
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839-001-0420	1-1-04	Amend	2-1-04	850-010-0225	6-10-04	Amend	7-1-04
839-001-0470	1-1-04	Amend	2-1-04	850-010-0226	12-5-03	Amend	1-1-04
839-001-0490	1-1-04	Adopt	2-1-04	850-010-0226	6-10-04	Amend	7-1-04
839-016-0700	1-5-04	Amend	2-1-04	851-001-0005	5-4-04	Amend	6-1-04
839-016-0700	4-15-04	Amend	5-1-04	851-001-0006	5-4-04	Amend	6-1-04
839-016-0750	5-1-04	Amend	6-1-04	851-001-0007	5-4-04	Amend	6-1-04
839-016-0750	5-19-04	Amend	7-1-04	851-001-0015	5-4-04	Amend	6-1-04
839-016-0750	5-24-04	Amend	7-1-04	851-001-0020	5-4-04	Amend	6-1-04
839-017-0004	1-1-04	Amend	2-1-04	851-001-0030	5-4-04	Adopt	6-1-04
839-017-0500	1-1-04	Adopt	2-1-04	851-002-0040	2-26-04	Amend	4-1-04
839-017-0505	1-1-04	Adopt	2-1-04	851-021-0010	12-9-03	Amend	1-1-04
839-017-0510	1-1-04	Adopt	2-1-04	851-031-0010	12-9-03	Amend	1-1-04
839-017-0515	1-1-04	Adopt	2-1-04	851-047-0000	2-26-04	Amend	4-1-04
839-017-0520	1-1-04	Adopt	2-1-04	851-047-0010	2-26-04	Amend	4-1-04
839-020-0027	1-1-04	Adopt	2-1-04	851-047-0020	2-26-04	Amend	4-1-04
839-020-0030	1-1-04	Amend	2-1-04	851-047-0030	2-26-04	Amend	4-1-04
839-020-0115	1-1-04	Amend	2-1-04	851-047-0040	2-26-04	Amend	4-1-04
839-020-0125	1-1-04	Amend	2-1-04	851-050-0000	5-12-04	Amend	6-1-04
839-020-0150	2-1-04	Amend	2-1-04	851-050-0004	5-12-04	Amend	6-1-04
845-003-0590	2-10-04	Amend	1-1-04	851-050-0006	5-12-04	Amend	6-1-04
845-003-0670	12-1-03	Amend	1-1-04	851-050-0131	12-9-03	Amend	1-1-04
845-005-0304	1-1-04	Amend	2-1-04	851-050-0131	2-26-04	Amend	4-1-04
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845-005-0445	6-29-04	Amend	7-1-04	851-050-0133	12-23-03	Amend(T)	2-1-04
845-006-0335	4-9-04	Amend	5-1-04	851-050-0133	5-12-04	Repeal	6-1-04
845-006-0347	5-19-04	Amend	7-1-04	851-050-0134	12-23-03	Amend(T)	2-1-04
845-006-0430	4-1-04	Amend	5-1-04	851-050-0134	5-12-04	Repeal	6-1-04
845-006-0441	12-1-03	Amend	1-1-04	851-050-0138	5-12-04	Amend	6-1-04
845-007-0015	6-1-04	Amend	4-1-04	851-050-0140	5-12-04	Amend	6-1-04
845-009-0015	12-1-03	Amend	1-1-04	851-050-0145	12-23-03	Amend(T)	2-1-04
845-015-0140	3-21-04	Amend	3-1-04	851-050-0145	5-12-04	Repeal	6-1-04
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847-010-0063	4-22-04	Amend	6-1-04	851-050-0162	5-12-04	Adopt	6-1-04
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847-020-0180	1-27-04	Amend	3-1-04	851-061-0030	2-12-04	Amend	3-1-04
847-035-0030	1-27-04	Amend	3-1-04	851-061-0040	2-12-04	Amend	3-1-04
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850-010-0130	2-11-04	Amend	3-1-04	851-061-0130	2-12-04	Adopt	3-1-04
850-010-0210	6-10-04	Amend	7-1-04	851-062-0005	2-12-04	Adopt	3-1-04
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851-062-0020	2-12-04	Amend	3-1-04	860-021-0200	6-2-04	Amend	7-1-04
851-062-0040	2-12-04	Repeal	3-1-04	860-024-0020	11-28-03	Amend	1-1-04
851-062-0050	2-12-04	Amend	3-1-04	860-024-0021	11-28-03	Amend	1-1-04
851-062-0055	2-12-04	Adopt	3-1-04	860-027-0048	12-11-03	Adopt	1-1-04
851-062-0060	2-12-04	Repeal	3-1-04	860-027-0300	3-24-04	Amend(T)	5-1-04
851-062-0070	2-12-04	Amend	3-1-04	860-028-0195	4-21-04	Adopt	6-1-04
851-062-0070	2-20-04	Amend	4-1-04	860-028-0895	11-28-03	Adopt(T)	1-1-04
851-062-0075	2-12-04	Adopt	3-1-04	860-032-0510	1-15-04	Adopt	2-1-04
851-062-0080	2-12-04	Amend	3-1-04	860-032-0520	1-15-04	Adopt	2-1-04
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851-062-0110	2-12-04	Amend	3-1-04	860-034-0140	1-9-04	Amend(T)	2-1-04
851-062-0120	2-12-04	Amend	3-1-04	860-034-0140	6-2-04	Amend	7-1-04
851-062-0130	2-12-04	Amend	3-1-04	860-035-0010	1-15-04	Repeal	2-1-04
851-063-0010	2-12-04	Amend	3-1-04	860-035-0020	1-15-04	Repeal	2-1-04
851-063-0020	2-12-04	Amend	3-1-04	860-035-0030	1-15-04	Repeal	2-1-04
851-063-0030	2-12-04	Amend	3-1-04	860-035-0040	1-15-04	Repeal	2-1-04
851-063-0040	2-12-04	Amend	3-1-04	860-035-0050	1-15-04	Repeal	2-1-04
851-063-0050	2-12-04	Amend	3-1-04	860-035-0060	1-15-04	Repeal	2-1-04
851-063-0060	2-12-04	Amend	3-1-04	860-035-0070	1-15-04	Repeal	2-1-04
851-063-0070	2-12-04	Amend	3-1-04	860-035-0080	1-15-04	Repeal	2-1-04
851-063-0080	2-12-04	Amend	3-1-04	860-035-0090	1-15-04	Repeal	2-1-04
851-063-0100	2-12-04	Amend	3-1-04	860-035-0100	1-15-04	Repeal	2-1-04
852-001-0001	3-8-04	Amend	4-1-04	860-035-0110	1-15-04	Repeal	2-1-04
852-001-0002	3-8-04	Amend	4-1-04	860-035-0120	1-15-04	Repeal	2-1-04
852-001-0005	5-20-04	Repeal	7-1-04	860-035-0130	1-15-04	Repeal	2-1-04
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852-001-0015	5-20-04	Repeal	7-1-04	860-036-0010	4-9-04	Amend	5-1-04
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855-021-0050	6-1-04	Amend	7-1-04	860-036-0420	4-9-04	Adopt	5-1-04
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855-043-0200	5-24-04	Repeal	7-1-04	860-036-0757	12-10-03	Adopt(T)	1-1-04
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860-037-0010	1-29-04	Amend	3-1-04	860-037-0520	1-29-04	Amend	3-1-04
860-037-0015	1-29-04	Amend	3-1-04	860-037-0525	1-29-04	Amend	3-1-04
860-037-0020	1-29-04	Amend	3-1-04	860-037-0530	1-29-04	Amend	3-1-04
860-037-0025	1-29-04	Amend	3-1-04	860-037-0535	1-29-04	Amend	3-1-04
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860-037-0035	6-2-04	Amend	7-1-04	860-037-0547	4-9-04	Adopt	5-1-04
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860-037-0050	1-29-04	Amend	3-1-04	860-037-0560	1-29-04	Amend	3-1-04
860-037-0055	1-29-04	Amend	3-1-04	860-037-0565	1-29-04	Amend	3-1-04
860-037-0060	1-29-04	Amend	3-1-04	860-037-0567	1-29-04	Adopt	3-1-04
860-037-0065	1-29-04	Amend	3-1-04	860-037-0570	12-10-03	Adopt(T)	1-1-04
860-037-0067	1-29-04	Adopt	3-1-04	860-037-0570	4-9-04	Adopt	5-1-04
860-037-0070	1-29-04	Amend	3-1-04	860-037-0605	1-29-04	Amend	3-1-04
860-037-0075	1-29-04	Amend	3-1-04	860-037-0610	1-29-04	Amend	3-1-04
860-037-0080	1-29-04	Amend	3-1-04	860-037-0615	1-29-04	Amend	3-1-04
860-037-0101	1-29-04	Adopt	3-1-04	860-037-0620	1-29-04	Amend	3-1-04
860-037-0105	1-29-04	Amend	3-1-04	860-037-0625	1-29-04	Amend	3-1-04
860-037-0110	1-29-04	Amend	3-1-04	860-037-0630	1-29-04	Amend	3-1-04
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860-037-0120	1-29-04	Amend	3-1-04	860-038-0580	12-11-03	Amend	1-1-04
860-037-0125	1-29-04	Amend	3-1-04	863-001-0007	5-3-04	Amend	6-1-04
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860-037-0215	1-29-04	Amend	3-1-04	863-015-0020	5-3-04	Amend	6-1-04
860-037-0220	1-29-04	Amend	3-1-04	863-015-0025	5-3-04	Amend	6-1-04
860-037-0225	1-29-04	Amend	3-1-04	863-015-0050	5-3-04	Amend	6-1-04
860-037-0230	1-29-04	Amend	3-1-04	863-015-0055	1-15-04	Amend(T)	2-1-04
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860-037-0245	1-29-04	Amend	3-1-04	863-015-0080	1-1-04	Amend(T)	2-1-04
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860-037-0308	12-10-03	Adopt(T)	1-1-04	863-015-0180	5-3-04	Amend	6-1-04
860-037-0308	4-9-04	Adopt	5-1-04	863-015-0200	1-1-04	Amend(T)	2-1-04
860-037-0309	12-10-03	Adopt(T)	1-1-04	863-015-0200	5-3-04	Amend	6-1-04
860-037-0309	4-9-04	Adopt	5-1-04	863-015-0270	5-3-04	Repeal	6-1-04
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860-037-0407	12-10-03	Adopt(T)	1-1-04	863-050-0020	5-3-04	Amend	6-1-04
860-037-0407	4-9-04	Adopt	5-1-04	863-050-0025	1-1-04	Amend	2-1-04
860-037-0410	1-29-04	Amend	3-1-04	863-050-0035	1-15-04	Adopt(T)	2-1-04
860-037-0415	1-29-04	Amend	3-1-04	863-050-0035	5-3-04	Adopt	6-1-04
860-037-0425	1-29-04	Amend	3-1-04	863-050-0040	1-1-04	Adopt	2-1-04
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863-050-0110	1-1-04	Repeal	2-1-04	918-306-0370	4-1-04	Repeal	5-1-04
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863-050-0115	5-3-04	Amend	6-1-04	918-306-0390	4-1-04	Amend	5-1-04
863-050-0150	1-1-04	Amend	2-1-04	918-306-0400	4-1-04	Amend	5-1-04
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877-020-0020	12-1-03	Amend	1-1-04	918-309-0040	4-1-04	Amend	5-1-04
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918-030-0900	4-1-04	Adopt	3-1-04	918-460-0015	4-1-04	Amend	5-1-04
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