

# RESUBSCRIPTION ISSUE

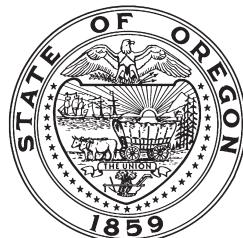
# OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

**Volume 46, No. 10**  
**October 1, 2007**

For August 16, 2007–September 14, 2007

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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, Opinions of the Attorney General, and orders issued by the Director of the Department of Revenue.

## Background on Oregon Administrative Rules

ORS 183.310(9) defines “rule” as “any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.” Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General’s Administrative Law Manual*. The Administrative Rules Unit, 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 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” 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 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, Julie.A.Yamaka@state.or.us

## 2006–2007 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 97301. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following publication deadlines.

## Submission Deadline — Publishing Date

December 15, 2006	January 1, 2007
January 12, 2007	February 1, 2007
February 15, 2007	March 1, 2007
March 15, 2007	April 1, 2007
April 13, 2007	May 1, 2007
May 15, 2007	June 1, 2007
June 15, 2007	July 1, 2007
July 13, 2007	August 1, 2007
August 15, 2007	September 1, 2007
September 14, 2007	October 1, 2007
October 15, 2007	November 1, 2007
November 15, 2007	December 1, 2007

## Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an “Appointment of Agency Rules Coordinator” form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a “Delegation of Rulemaking Authority” form, ARC 915-2005. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms ARC 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97301, or are downloadable from the Oregon State Archives Website.

## Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97301; (503) 373-0701. The Archives Division charges for such copies.

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 07 - 11

### DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN MALHEUR COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS.

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause local adverse natural and economic disaster conditions in the Malheur County. Projected weather patterns are not expected to significantly alleviate these conditions and drought conditions are continuing. These conditions are expected to have significant economic impact on the Malheur County's agricultural, livestock, and natural resources.

Current conditions are being addressed by state agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Emergency Management.

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of the Malheur County, I am therefore declaring a "state of drought emergency" in the Malheur County and directing the following activities;

#### IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate conditions and effect agricultural recovery in the Malheur County.
2. The Department of Water Resources is directed to coordinate and provide assistance and regulation for the Malheur County as it determines is necessary in accordance with ORS 536.700 to 536.780.
3. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in the Malheur County.
4. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist affected political subdivisions in the Malheur County.
5. This Executive Order expires on December 31, 2007

Done at Salem, Oregon this 24th day of August, 2007.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 07 - 12

### GOVERNOR'S PROCESS FOR CALCULATING THE ESSENTIAL BUDGET LEVEL FOR THE COMMUNITY COLLEGE SUPPORT FUND

The State's calculation of the "essential budget level" for the Community College Support Fund is not developed to a level of detail that captures the true costs of the system, and it does not support effective decision-making. The Governor and the Legislature need additional detailed and timely information about the reasonable assump-

tions of its essential budget level for Oregon's community colleges in order to adequately plan future budgets.

Oregon's current process for calculating the essential budget level for the K-12 and Oregon University Systems utilizes a database initiative (DBI) that provides the detailed information necessary for budget planning. The Community College Support Fund requires a similar process. The Department of Community College and Workforce Development is working to develop and implement a database initiative capacity similar to that used by the Department of Education for K-12 financial data. The DBI model will provide to the Community College Support Fund the level of detailed financial information necessary for sound budget planning.

#### IT IS HEREBY ORDERED AND DIRECTED:

1. No later than May 1, and December 1, of each even-numbered year, the Oregon Department of Administrative Services (DAS) shall calculate the essential budget level (EBL) for the Community College Support Fund for the upcoming biennium. That forecast shall consider and include:
  - a. Projected changes in the cost of personal services including salary and compensation changes negotiated and/or approved by the college districts, changes in health benefit costs, changes in retirement program costs and staff turnover;
  - b. Projected increases in the cost of services and supplies and capital outlay based on the methodology included in the DAS Budget Instructions;
  - c. Adjustments resulting from legislatively approved phase-ins, phase-outs and one-time expenditures;
  - d. Forecasted local revenues for community colleges as provided by the Department of Administrative Services, Legislative Fiscal Office, Legislative Revenue Office and Department of Revenue;
  - e. Projected tuition revenues based on an economic indicator (e.g. change in median family income);
  - f. Projected revenues available to community colleges from other local, state and federal sources.
2. The required calculation of an EBL for the Community College Support Fund using the factors listed above is dependent upon successful implementation of the Database Initiative project by the Department of Community Colleges and Workforce Development.
3. The Department of Administrative Services shall form and chair a "Community College Forecast Committee" to review the statewide budget forecasts. This committee shall consist of representatives from the Office of the Governor, the Department of Community Colleges and Workforce Development, the Legislative Fiscal Office, the Legislative Revenue Office, the Legislative Assembly and stakeholders from community colleges and labor unions. This committee shall meet in each even-numbered year prior to each EBL calculation and at other times as may be determined to be appropriate.

Done at Salem, Oregon this 28th day of August, 2007.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 07 - 13

### POST-SECONDARY QUALITY EDUCATION COMMISSION

Oregon's economic future depends on a well-educated and well-trained workforce and citizenry. Oregon's community colleges are the primary providers of workforce training for both emerging and adult workers. Oregon's community colleges provide an entry point for students interested in workforce training, professional certificates or two or four-year degrees. Oregon's Universities provide access to four-year and advanced degrees, in addition to providing vital research used by Oregon businesses.

State support for the post-secondary education system in Oregon has steadily eroded since the passage of Ballot Measure 5 in 1990.

State funding for the post-secondary system comes primarily from the State general fund and student tuition. These sources are volatile, and state funding for the post-secondary education system needs stability.

State policymakers do not have adequate tools to allow them to determine the reasonable costs of providing a quality post-secondary education for Oregonians. In conjunction with the Governor's office, members of the education community are working to lay the foundation for understanding the needs of the post-secondary education system.

#### THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. The Post-secondary Quality Education Commission is hereby created to help direct the work necessary to complete a Post-secondary Quality Education Model to be used by state policymakers.

2. The Commission members shall be appointed by the Governor, after consultation with the Commissioner of Community Colleges and the Chancellor of the Oregon University System. Members shall serve at the pleasure of the Governor.

3. The chair shall be appointed by the Governor, after consultation with the Commissioner of Community Colleges and the Chancellor of the Oregon University System.

4. The Commission shall meet at the call of the chair. A majority of the members of the Commission shall constitute a quorum to do business.

5. The Oregon Department of Community Colleges and Workforce Development and the Oregon University System shall jointly staff the Commission.

6. Members of the Commission shall receive no compensation for their activities as members of the Commission, but may be reimbursed for travel expenses incurred in the attending Commission business pursuant to ORS 292.495(2).

7. The Commission shall:

a. Identify key issues to address in completing a model that identifies the particular needs of Community College and University students;

b. Study the impact of the use of part-time faculty and graduate student employees on program quality and student success, and recommend a consistent definition to describe adjunct, contingent and part-time faculty;

c. Determine the key values encompassing the mission of post-secondary education in Oregon including access to education, educational quality, student success, professional compensation,

research, service, innovation, technical/career and adult basic education;

d. Solicit input from educators, education policy experts and others about the elements of the model;

e. Solicit public input regarding educational priorities for use in developing the model;

f. Develop the model based on research, data, public input and experience; and

g. Communicate with stakeholders regarding model development.

8. The Commission may establish subcommittees as necessary to assist in carrying out its work.

9. The Commission shall implement a work plan that will allow for completion of the model pilot in sufficient time to be used by the Governor in developing the 2009–11 Governor's Recommended Budget for the Postsecondary portions of the Education Enterprise.

Done at Salem, Oregon this 28th day of August, 2007.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 07 - 14

### INVOCATION OF EMERGENCY CONFLAGRATION ACT FOR GW FIRE IN DESCHUTES COUNTY

Pursuant to my authority as Governor of the State of Oregon, I find that:

A wildfire known as the "GW Fire" is burning in Deschutes County. The fire is currently burning approximately 7300 acres and is approximately five percent contained. Numerous structures are threatened and Black Butte Ranch has been evacuated.

The resources necessary for protection of life and property from the GW Fire are beyond local capabilities. Assistance with life, safety, and structural fire protection was requested by the Deschutes County Fire Defense Chief. The State Fire Marshal concurs with that request.

In accordance with ORS 476.510–476-610, I have determined that a threat to life, safety, and property exists due to the fire known as the GW Fire in Deschutes County and the threat exceeds the firefighting capabilities of local firefighting personnel and equipment. Accordingly, I have invoked the Emergency Conflagration Act.

These findings were made at 8:28 p.m. on September 3, 2007 and I now confirm them with this Executive Order.

#### NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon State Police and the Office of State Fire Marshal shall mobilize fire resources statewide and coordinate with all appropriate Fire Defense Chiefs for the use of personnel and equipment in accordance with the Emergency Conflagration Act to suppress and contain this fire.

## **EXECUTIVE ORDERS**

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2. This emergency is declared only for the GW Fire in Deschutes County.

3. This order was made by verbal proclamation at 8:28 p.m. the 3rd day of September, 2007 and signed this 4th day of September, 2007, in Salem, Oregon.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### REQUEST FOR PUBLIC COMMENT RECOMMENDATION FOR NO FURTHER ACTION ON HOY RESIDENCE (FORMER) TOLEDO

**COMMENTS DUE:** October 31, 2007

**PROJECT LOCATION:** 1429 South Bay Road, Toledo, Oregon  
**PROPOSAL:** DEQ is recommending no further cleanup action at the Hoy Residence (Former) Site. This notification is required by ORS 465.320.

**HIGHLIGHTS:** An above-ground storage tank leaked in 2004 and the leak was not discovered for some time because the site was vacant. A subsequent investigation found contamination of diesel fuel and heavy-range organics in soil at the site above DEQ's risk-based standards.

During the summer of 2006, approximately 139 cubic yards of soil were removed from the site. Subsequent sampling showed that remaining soil does not contain petroleum contaminants. Sampling of groundwater from nearby wells did not show any effect of contamination. In the absence of unacceptable risks, DEQ recommends that no further action be required.

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street. Written comments must be received by October 31, 2007. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at sadofsky.seth@deq.state.or.us. Questions may also be directed to Seth Sadofsky at the Eugene address or by calling him at 1-800-844-8467 ext 7329. The TTY number for the hearing impaired is 541-687-5603. DEQ will consider all public comments before taking final actions on this matter.

### PROPOSED NO FURTHER ACTION AND CRL/INVENTORY DELISTING, TUBE SPECIALTIES SITE — TAX LOT #800, PORTLAND, OREGON

**COMMENTS DUE:** October 31, 2007

**PROJECT LOCATION:** 5153 NE 148th Avenue in 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 a No Further Action determination and delisting of Tax Lot #800 from the Confirmed Release List and Inventory List. The delisting and No Further Action determination would not apply to the eastern Tax Lot #400 where contaminated soil and groundwater are undergoing remediation.

**HIGHLIGHTS:** The Tube Specialties site consists of two tax lots numbered 400 and 800. Tax lot #400 is the eastern lot where a cluster of interconnected building have existed since as early as 1964 and have been used in recent times by metal fabrication businesses. Tax lot #800 is an undeveloped lot that appears to have historically been used for orchard land, and since approximately 1996 for storage of vehicles or metal parts.

Environmental investigations were initiated at the Tube Specialties site due to detection of chlorinated volatile organic compounds (VOCs) in a City groundwater monitoring well near the site and historical use of solvents at the site for parts cleaning. Solvent contamination was found in soil and/or groundwater in the proximity of two septic leach fields used during the 1960s and 1970s and located on Tax lot #400. Investigations conducted since 2003 confirmed the leach fields as likely sources of contamination and determined the approximate extent of soil and shallow groundwater contamination. Interim cleanup measures were initiated for Tax lot 400 this summer.

Soil samples were collected from Tax Lot 800 to evaluate potential contamination associated with pesticide, arsenic, and lead use in the orchard. The pesticide DDT was found in one sample at a concentration below all DEQ occupational risk-based concentrations (RBCs). Arsenic was found at concentrations within the range of natural background. Lead was found at concentrations greater than

background but far below RBCs. DEQ concludes, therefore, that environmental conditions on Tax Lot #800 do not pose an unacceptable risk to human health and the environment, and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** DEQ's Staff Report memo for Tax Lot #800 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 October 31, 2007. 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 October 31, 2007 deadline. In the absence of comments, DEQ will issue the No Further Action determination and remove listing for Tax Lot #800.

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR THE FORMER GENERAL BATTERY SITE, PORTLAND, OREGON

**COMMENTS DUE:** October 31, 2007

**PROJECT LOCATION:** 4949 SE 25th Avenue, Portland, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rule, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a conditional "No Further Action" (NFA) determination proposed for the former General Battery site in Portland, Oregon. This proposed NFA determination is based on approval of the investigation and remedial measures conducted to date.

**HIGHLIGHTS:** The site is located in an industrial area along SE 25th Avenue, between SE Schiller Street and SE Raymond Street in Portland. The property has been industrial since construction in 1950. General Battery manufactured, stored and distributed lead/acid batteries on site from 1964 to approximately 1984. In 1989, Interesting Exhibits purchased the property and currently designs and constructs specialized displays at the site. Previous investigations have shown that groundwater beneath the property is impacted by lead in the southwestern portion of the site. However, based on a review of water use documentation, DEQ has concluded that current and future beneficial uses of water will not be impacted by site environmental conditions. DEQ will require an Easement and Equitable Servitude be completed for the property establishing use controls to ensure the current and future workers are not exposed to contaminated soil or groundwater at the property.

**HOW TO COMMENT:** You may review the administrative record for the proposed NFA at DEQ's Northwest Region Gresham Office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030. For an appointment to review these files call 503-667-8414 x55012; toll free at (800)452-4011; or TTY at 503-229-5471. Please send written comments to Janelle Waggy, Project Manager, at the address listed above or via email at WAGGY.Janelle@deq.state.or.us. DEQ must receive written comments by 5 p.m. on October 31, 2007. 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 language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5696, or toll free in Oregon

## OTHER NOTICES

at (800)452-4011. People with hearing impairments may call DEQ's TTY number 503-229-5471.

**THE NEXT STEP:** DEQ will consider all public comments received by the October 31, 2007 deadline. In the absence of comments, DEQ will issue the conditional No Further Action determination.

### PROPOSED CLOSEOUT AT ARNDT FARM SITE

**COMMENTS DUE:** October 30, 2007

**PROJECT LOCATION:** 3849 NE 158th Avenue, Portland, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action completed at Arndt Farm and DEQ's proposal to issue a no further action (NFA) determination for the site.

**HIGHLIGHTS:** The 5-acre site is located in northeast Portland in an area of mixed residential, industrial, and agricultural use, and has been used since at least 1935 as a vegetable farm. Prior to 1935 it appears to have been undeveloped. Structures at the site include a equipment shed, processing building, and pump house for an on-site well. Three underground storage tanks (USTs) used for fueling equipment were removed from the site in 2006. A No Further Action

(NFA) determination was issued for the tank cleanup by DEQ's UST Program in 2007. Soil sampling was completed around the farm buildings and within the cultivated fields in 2006 and 2007, during which elevated dieldrin and DDT compounds exceeding DEQ's risk-based screening values were detected in a few samples. Elevated detections were limited to around a loading dock and pesticide mixing area at the processing barn. A total of 180 tons of soil were excavated in two separate events (November 2006 and June 2007) and transported to Hillsboro Landfill for disposal. Sampling has shown remaining contamination at the site to be at levels acceptable to occupational site users. Current site zoning is industrial, and the site is expected to be redeveloped for industrial use. Based on this information, DEQ proposes to issue a no further action determination for the Arndt Farm site.

**HOW TO COMMENT:** To review project records, contact Dawn Weinberger at (503) 229-6729. The DEQ project manager is Dan Hailey (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by October 30, 2007. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and make a final decision after consideration of these 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 indicated.

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

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

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

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

## Appraiser Certification and Licensure Board Chapter 161

**Rule Caption:** Proposed changes regarding budget, license fees, licensing of Appraisers and supervision of Registered Appraiser Assistants.

**Date:** 10-22-07      **Time:** 9 a.m.      **Location:**  
Parks & Rec. Dept.  
725 Summer St. NE  
Rm. 124A  
Salem, OR

**Hearing Officer:** Craig Zell

**Stat. Auth.:** ORS 183.355(1)(a), 674.305(7) & 674.310(2)

**Other Auth.:** Title XI of the Federal Financial Reform, Recovery and Enforcement Act of 1989 (12 USC 3310 et seq.)

**Stats. Implemented:** ORS 674.305(7) & 674.310(2)

**Proposed Amendments:** 161-003-0020, 161-006-0025, 161-010-0055, 161-010-0085, 161-015-0030, 161-025-0025

**Last Date for Comment:** 10-22-07, Close of hearing

**Summary:** The Board proposes amendments to Oregon Administrative Rules Chapter 161, Division 3 regarding fees, Division 6 regarding the Board's budget, Division 10 regarding licensure and certification requirements; Division 15 regarding application and examination process; and Division 25 regarding scope of practice and procedures.

**Rules Coordinator:** Karen Turnbow

**Address:** Appraiser Certification and Licensure Board, 3000 Market St. NE, Suite 541, Salem, OR 97301

**Telephone:** (503) 485-2555

## Board of Nursing Chapter 851

**Rule Caption:** Addition to the Section "Conduct Derogatory to the Standards of Nursing Defined."

**Date:** 11-15-07      **Time:** 9 a.m.      **Location:**  
17938 SW Upper Boones  
Ferry Rd.  
Portland, OR 97224

**Hearing Officer:** Saundra Theis, Board President

**Stat. Auth.:** ORS 678.111

**Stats. Implemented:** ORS 678.111

**Proposed Amendments:** 851-045-0015

**Last Date for Comment:** 11-13-07, 5 p.m.

**Summary:** These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse. This rule amendment specifically makes an addition to the section which covers, "Conduct Derogatory to the Standards of Nursing Defined."

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

**Telephone:** (971) 673-0638

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**Rule Caption:** Advanced Practice Formulary Updated.

**Date:** 11-15-07      **Time:** 9 a.m.      **Location:**  
17938 SW Upper Boones  
Ferry Road  
Portland, OR 97224

**Hearing Officer:** Saundra Theis, Board President

**Stat. Auth.:** ORS 678.385, 678.390

**Stats. Implemented:** ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

**Proposed Amendments:** 851-056-0012

**Last Date for Comment:** 11-13-07, 5 p.m.

**Summary:** The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the October and November 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

**Telephone:** (971) 673-0638

## Board of Pharmacy Chapter 855

**Rule Caption:** Adopt new rules, and renumber and amend existing rules regarding pharmacists and compounding of drugs.

**Date:** 11-1-07      **Time:** 8 a.m.      **Location:**  
Oregon State Library  
Rm. 103  
250 Winter Street NE  
Salem, OR 97301

**Hearing Officer:** Ann Zweber

**Stat. Auth.:** ORS 689.205

**Stats. Implemented:** ORS 689.151, 689.155, 689.225, 689.255, 689.265, 689.275, 689.305, 689.315, 689.405, 689.505, 689.508, 689.605, 689.645

**Proposed Adoptions:** 855-019-0100, 855-019-0110, 855-019-0150, 855-019-0220, 855-019-0240, 855-019-0250, 855-019-0300, 855-045-0200, 855-045-0210, 855-045-0220, 855-045-0230, 855-045-0250, 855-045-0260, 855-045-0270

**Proposed Amendments:** 855-041-0020, 855-041-0060, 855-041-0086, 855-041-0300

**Proposed Repeals:** 855-019-0007, 855-019-0020, 855-019-0035

**Proposed Ren. & Amends:** 855-019-0005 to 855-019-0120, 855-019-0010 to 855-019-0125, 855-019-0015 to 855-019-0130, 855-019-0025 to 855-019-0140, 855-019-0030 to 855-019-0130, 855-019-0040 to 855-019-0170, 855-019-0050 to 855-019-0320, 855-019-0055 to 855-019-0310, 855-041-0050 to 855-041-0017, 855-041-0063 to 855-045-0240, 855-041-0085 to 855-019-0210, 855-041-0100 to 855-019-0230, 855-041-0210 to 855-019-0200, 855-041-0400 to 855-019-0260, 855-041-0500 to 855-019-0270,

## NOTICES OF PROPOSED RULEMAKING

855-041-0510 to 855-019-0280, 855-041-0520 to 855-019-0290,  
855-042-0020 to 855-019-0160

**Last Date for Comment:** 11-1-07, 5 p.m.

**Summary:** Amendments to Divisions 19 and 41 reorganize rules so that those pertaining to pharmacists are all in Division 19, while those pertaining to pharmacies remain in Division 41. In conjunction with this reorganization, outdated material is being deleted and rules in Division 19 have been rewritten, and new rules are being adopted, to reflect current national licensing procedures, current pharmacy practices and Board policies.

Division 45 is a new division that includes those aspects of the United States Pharmacopeia guidelines for sterile and nonsterile compounding that the Board and its advisory group feel should be mandatory for Oregon compounding pharmacists and pharmacies.

Copies of the full text of proposed rules can be obtained from the Board's web site, [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us), under "What's New", or by calling the Board office (971) 673-0001.

**Rules Coordinator:** Karen MacLean

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

**Telephone:** (971) 673-0001

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**Rule Caption:** Adopt rule regarding background checks, amends rules regarding nonprescription drug outlets, repeals DMSO rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
11-1-07	8 a.m.	Oregon State Library Rm. 103 250 Winter Street NE Salem, OR 97301

**Hearing Officer:** Ann Zweber

**Stat. Auth.:** ORS 183.534, 689.205

**Other Auth.:** 2003 ch. 102, sec. 2 OL & 2005 ch. 730, sec. 68 OL

**Stats. Implemented:** ORS 689.151, 689.155, 689.207, 689.305, 689.405

**Proposed Adoptions:** 855-010-0045

**Proposed Amendments:** 855-006-0005, 855-035-0005, 855-035-0020

**Proposed Repeals:** 855-055-0005, 855-055-0010, 855-055-0015, 855-055-0020

**Last Date for Comment:** 11-1-07, 5 p.m.

**Summary:** • A definition of "consultant pharmacist" is added to Division 6, as this term now occurs in several divisions in Chapter 855. The definition of unprofessional conduct is revised to include issues currently included in the almost identical definition in Division 19 which is being deleted in the revisions to Division 19 (separate Notice of Proposed Rulemaking).

• The 2005 legislature gave the Board authority to conduct criminal history background checks on persons applying for new or renewal of, licensure and registration and for persons under investigation. The new rule in Division 10 implements the statute.

• A new category of nonprescription drug outlets is created in Division 35 to accommodate the need for the Oregon Food Bank and the Regional Food Banks to legally distribute donated nonprescription drugs to needy individuals and charitable organizations.

• Division 55 regarding DMSO is repealed as the Board no longer has statutory authority to regulate that substance.

Copies of the full text of proposed rules can be obtained from the Board's web site, [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us), under "What's New", or by calling the Board office (971) 673-0001.

**Rules Coordinator:** Karen MacLean

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

**Telephone:** (971) 673-0001

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

**Rule Caption:** Implementing statutory requirements that employers provide leave to victims of certain crimes for certain purposes.

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

**Other Auth.:** SB 946, OR Legislature 2007

**Stats. Implemented:** OL 2007, Ch. 180

**Proposed Adoptions:** 839-009-0325, 839-009-0330, 839-009-0335, 839-009-0340, 839-009-0345, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0365

**Last Date for Comment:** 11-16-07

**Summary:** The proposed rules would implement and clarify newly enacted statutory provisions requiring employers to provide reasonable leave to eligible employees who are victims of certain crimes, to be used for certain purposes.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Implementing statutory amendments requiring employers to provide rest periods for employees to express breast milk.

**Stat. Auth.:** OL 2007, Ch. 144, sec. 1 (11)

**Other Auth.:** HB 2372, Oregon Legislature 2007

**Stats. Implemented:** OL 2007, Ch. 144

**Proposed Adoptions:** 839-020-0051, 839-020-0052, 839-020-0053

**Proposed Amendments:** 839-020-0050

**Last Date for Comment:** 11-16-07

**Summary:** The proposed rules would implement and clarify newly enacted statutory provisions requiring employers to provide rest periods to employees needing to express breast milk during work time, to feed their infants.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Implementing statutory changes to references to persons with disabilities.

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

**Other Auth.:** SB 88, Oregon Legislature 2007

**Stats. Implemented:** OL 2007, Ch. 70, sec. 289, 290, 291, 292, 293, 294, 295, 296, 297, 298

**Proposed Amendments:** 839-006-0200, 839-006-0205, 839-006-0244, 839-006-0255, 839-006-0270, 839-006-0275, 839-006-0290, 839-006-0300, 839-006-0330, 839-006-0335, 839-006-0400, 839-006-0405, 839-006-0410, 839-006-0415, 839-006-0425

**Last Date for Comment:** 11-16-07

**Summary:** The proposed rule amendments would implement statutory changes of the term "disabled person" to "person with a disability" and other similar changes.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Implementing statutory amendments to OFLA, injured worker and discrimination law; clarifying rule amendments.

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

**Other Auth.:** HB 2247, 2460, 2485, 2635, SB 2, OL 2007

**Stats. Implemented:** OL 2007, Ch. 365, sec. 11, 12 & 13; Ch. 633, 635, 777 sec. 1

**Proposed Amendments:** 839-009-0200, 839-009-0210, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0280, 839-009-0320, 839-006-0117, 839-006-0131, 839-006-0136

**Last Date for Comment:** 11-16-07

**Summary:** The proposed rules would implement newly enacted statutory amendments to the Oregon Family Leave Act (OFLA):

## NOTICES OF PROPOSED RULEMAKING

Prohibiting worker's compensation absence from running concurrently with an OFLA absence (HB 2460);

Making grandparents and grandchildren family members for purposes of OFLA (HB 2635);

Clarifying that it is unlawful to discriminate or retaliate against an employee for invoking OFLA (HB 2635);

Entitling employees to use accrued paid sick leave for OFLA (HB 2485).

The proposed rules would implement newly enacted statutory amendments to injured worker law providing that nurse practitioners may release injured workers for reemployment or reinstatement (HB 2247).

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Proposed adoption of rules to implement newly enacted public employer hiring preferences for veterans.

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

**Other Auth.:** SB822, 2007 Oregon Legislature

**Stats. Implemented:** Chapter 525, OL 2007

**Proposed Adoptions:** 839-006-0435, 839-006-0440, 839-006-0445

**Last Date for Comment:** 11-16-07

**Summary:** The proposed adopted rules would implement newly enacted employment related preferences for veterans, which will be required of public employers in Oregon.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Amends and clarifies rules relating to Farm Labor Contractors.

**Stat. Auth.:** ORS 658.407

**Other Auth.:** SB 202 (2007 Legislature)

**Stats. Implemented:** ORS 658.405 – 658.503

**Proposed Amendments:** 839-015-0140, 839-015-0508

**Last Date for Comment:** 10-25-07

**Summary:** The proposed rule amendments conform existing rules pertaining to farm labor contractors to the provisions of SB 202 (2007 Legislature) which require farm labor contractors (in addition to forest labor contractors) to provide proof of required workers' compensation insurance as a condition of licensure. The proposed rules also clarify that if a farm labor contractor applicant is relying on workers' compensation coverage from a jurisdiction other than Oregon, the coverage must satisfy Oregon's coverage requirements under ORS chapter 656 (relating to Workers' Compensation). The proposed rule amendments additionally amend the violations for which civil penalties may be assessed against farm labor contractors to include failing to provide workers' compensation insurance coverage in violation of the law. The agency is further proposing to clarify the current violation of failing to examine a contractor's license or temporary permit as required by a person using the contractor to include determining that the license has not expired and that the photo on the license appears to be of the individual acting as a farm labor contractor.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Amends and clarifies rules relating to sub-minimum wages, meal periods and recordkeeping provisions.

**Stat. Auth.:** ORS 651.060(4), 653.030, 653.261

**Other Auth.:** SB 83 & 403 (2007 Legislature)

**Stats. Implemented:** ORS 653.030, 653.261

**Proposed Amendments:** 839-020-0012, 839-020-0015, 839-020-0050, 839-020-0080, 839-020-0260, 839-020-1010

**Last Date for Comment:** 10-25-07

**Summary:** The proposed rule amendments eliminate outdated, inappropriate and unnecessary references to sex and disabled persons in existing rules; clarify the pay rate information to be included on wage statements provided to employees; codify a long-standing existing BOLI policy of recognizing and accepting sub-minimum wage certifications issued by the U.S. Department of Labor of nonprofit sheltered workshops as complying with state sub-minimum wage requirements; provide for tipped food and beverage service employees to waive meal periods under certain circumstances pursuant to SB 403 (2007 Legislature); and conform existing civil penalty provisions to these amendments.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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**Rule Caption:** Proposed amendments and proposed adoption of public records rules implementing legislative changes.

**Stat. Auth.:** ORS 651.040(4)

**Other Auth.:** SB 554 & 671, 2007 Oregon Legislature

**Stats. Implemented:** Ch. 467 sec. 1, ch. 513, OL 2007

**Proposed Adoptions:** 839-030-0015

**Proposed Amendments:** 839-030-0010

**Last Date for Comment:** 11-16-07

**Summary:** The proposed adoption of a new rule would implement new legislation providing for a condensation of public records in response to a public records request, under certain circumstances.

The proposed amendment of OAR 839-010-0010 would make a reference to the new rule on condensation of records, as well as implement new legislation requiring particular procedures in handling public records requests.

**Rules Coordinator:** Marcia Ohlemiller

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

**Telephone:** (971) 673-0784

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### Department of Agriculture

#### Chapter 603

**Rule Caption:** License fee increase on commercially used weighing and measuring instruments and devices.

**Date:** Time: Location:

10-23-07 10-11 a.m. ODA Building  
635 Capitol Street NE  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 618.016, 618.031, 618.136, 618.141

**Other Auth.:** Enrolled Senate Bill 238

**Stats. Implemented:** ORS 618.121, 618.141

**Proposed Amendments:** 603-027-0030

**Last Date for Comment:** 11-2-07, 5 p.m.

**Summary:** This rule amends OAR 603-027-0030 to increase the license fees that are applied to commercially used weighing and measuring instruments and devices in Oregon. The maximum license fees were increased by the 2007 Legislative Assembly through Senate Bill (SB) 238 that relates to ORS 618.141. The increased license fees allows the ODA Measurement Standards Division to operate a fully staffed and viable weighing and measuring instrument and device examination and certification program in Oregon to help assure a fair marketplace for businesses and consumers.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

## NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Increase Brand Inspection and Service Fees for the brand inspection of cattle and cattle hides.

**Date:** 11-1-07    **Time:** 11:30 a.m.    **Location:** 1522 Cline Falls Hwy  
Redmond, OR  
**Date:** 11-6-07    **Time:** 1 p.m.    **Location:** 635 Capitol Street NE  
Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 604

**Other Auth.:** ORS 561, 601.050, 603.025, 603.045

**Stats. Implemented:** ORS 604.046, 604.066, 604.071, 604.992

**Proposed Amendments:** 603-014-0055, 603-014-0065, 603-014-0095, 603-014-0100, 603-014-0135

**Proposed Repeals:** 603-014-0100

**Last Date for Comment:** 11-8-07

**Summary:** These rules are established to reflect the changes made by the 2007 Legislative Assembly through SB236 to provide funding for the Animal Identification/Brand program of the Oregon Department of Agriculture. These rules amend Service Fee and Service Fee Exemptions to establish a \$25 service fee and to modify or remove exceptions from the service fee. Amends Brand Inspection Fee to increase brand inspection fees for cattle to \$0.85. Increase fee for hide inspection to \$1.50. Increase fee for self inspection to \$1.00. Removes the requirement for brand inspection of horses, mules and donkeys. Removes the Claims for Brand Inspection Fee Refund. Amends Brand Inspection System for Cattle Hides.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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**Rule Caption:** Update language to reference current pesticide residue tolerances on raw agricultural commodities established by EPA.

**Stat. Auth.:** ORS 616.366

**Other Auth.:** ORS 616.235, 616.341, 616.345, 634.042

**Stats. Implemented:** ORS 616.366

**Proposed Amendments:** 603-057-0216

**Last Date for Comment:** 10-15-07

**Summary:** Updates language to reference current pesticide residue tolerances on raw agricultural commodities established for the United States by the U.S. Environmental Protection Agency.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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### **Department of Agriculture, Oregon Beef Council Chapter 605**

**Rule Caption:** Sets per diem and reimbursement for a substitute rates for commissioners that correspond with ORS 292.495.

**Date:** 11-2-07    **Time:** 7:45 a.m.    **Location:** Eagle Crest Resort  
Redmond, OR

**Hearing Officer:** Nicole Bechtel

**Stat. Auth.:** ORS 576.304

**Other Auth.:** Motion made by Commission at June 22, 2007 Council Meeting

**Stats. Implemented:** ORS 292.495, 576.206(7), 576.265, 577.260

**Proposed Adoptions:** 605-020-0010, 605-020-0020, 605-020-0030

**Last Date for Comment:** 11-2-07, 11 a.m.

**Summary:** Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem and reimbursement for hiring a substitute correspond with limit set in ORS 292.495.

**Rules Coordinator:** Nicole Bechtel

**Address:** Department of Agriculture, Oregon Beef Council, 1827 NE 44th Ave., Suite 315, Portland, OR 97213

**Telephone:** (503) 274-2333

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### **Department of Agriculture, Oregon Wheat Commission**

#### **Chapter 678**

**Rule Caption:** Sets per diem and reimbursement for a substitute rates for commissioners that correspond with ORS 292.495.

**Date:** 10-22-07    **Time:** 8 a.m.    **Location:** Pendleton Convention Center  
1601 Westgate  
Pendleton, OR

**Hearing Officer:** Tana Simpson

**Stat. Auth.:** ORS 578, 576

**Stats. Implemented:** ORS 578, 576

**Proposed Adoptions:** 678-030-0000, 678-030-0010, 678-030-0020, 678-030-0030

**Last Date for Comment:** 10-22-07, 8 a.m.

**Summary:** The adoption of OAR 678-030-0000 would allow the commission to compensate commissioners for time spent on commission business. The compensation of up to \$30.00 per day, in accordance with ORS 292.495(1), could be allocated subject to the availability of funds and commission budget decisions.

The adoption of OAR 678-030-0010 allows commissioners to receive reimbursement for actual expenses incurred in the performance of commission business.

The adoption of OAR 678-030-0020 allows for the reimbursement of a commissioner up to \$25.00 per day to employ a substitute to perform duties while the commissioner is conducting commission business.

The adoption of OAR 678-030-0030 limits commissioner terms to two consecutive four year terms. Should a vacancy occur the Director of the Oregon Department of Agriculture will appoint a replacement for the remainder of the term.

**Rules Coordinator:** Tana Simpson

**Address:** Department of Agriculture, Wheat Commission, 1200 NW Naito Parkway, Suite 370, Portland, OR 97209

**Telephone:** (503) 229-6665

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

**Rule Caption:** Clarifies definitions and distinguishes permit types based on changes made in Senate Bill 193.

**Date:** 10-16-07    **Time:** 9:30 a.m.    **Location:** 1535 Edgewater St. NW  
Salem, OR

**Hearing Officer:** Casey Hoyer

**Stat. Auth.:** ORS 455.030, 480.545, 480.585, 480.595, 480.600, 480.605, 480.607, 480.630

**Stats. Implemented:** ORS 480.525, 480.545, 480.550, 480.560, 480.565, 480.585, 480.595, 480.600, 480.605, 480.607, 480.630

**Proposed Amendments:** Rules in 918-225

**Last Date for Comment:** 10-19-07, 5 p.m.

**Summary:** These proposed rules clarify definitions and distinguish permit types in the boiler safety program's rules based on changes made in Senate Bill 193 (2007).

**Rules Coordinator:** Nicole Jantz

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

**Telephone:** (503) 373-7438

# NOTICES OF PROPOSED RULEMAKING

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

**Rule Caption:** Adopt rules to implement 2007 legislation requiring licensing and regulation of check-cashers.

**Date:** 10-22-07      **Time:** 9 a.m.      **Location:** Rm. 260, L&I Building,  
350 Winter St NE  
Salem, OR

**Hearing Officer:** Patricia Locnikar

**Stat. Auth.:**

**Other Auth.:** Sec. 16, ch. 358, 2007 OL

**Stats. Implemented:** Ch. 358, 2007 OL

**Proposed Adoptions:** 441-755-0000, 441-755-0010, 441-755-0100, 441-755-0110, 441-755-0120, 441-755-0130, 441-755-0140, 441-755-0150, 441-755-0160, 441-755-0170, 441-755-0200, 441-755-0210, 441-755-0220, 441-755-0300, 441-755-0310

**Last Date for Comment:** 10-25-07, 5 p.m.

**Summary:** Chapter 358, 2007 Oregon Laws, directs the Director of the Department of Consumer and Business Services to license and regulate check-cashers, with certain exceptions. These proposed rules implement that new program. Specifically, the proposed rules define additional terms, set fees, describe the required contents of a license application, clarify the retail exemption, specify when an application is deemed abandoned, set the process for biennial renewal of licenses, describe the process to change a licensed location, identify material changes that must be brought to the director's attention, identify events that are considered an assignment or transfer of the license, prescribe a process for handling of the license when that license is terminated, identify the documents that must be posted at the licensed location, describe unfair or deceptive practices, clarify that the licensee is held responsible for violations that occur at licensed locations, specify required books and records, and require an annual report.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

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**Rule Caption:** Establishing guidelines for a credit union predominantly serving low-income members

**Date:** 10-24-07      **Time:** 2:30 p.m.      **Location:** Rm. 260, L&I Building  
350 Winter St NE  
Salem, OR

**Hearing Officer:** Patricia Locnikar

**Stat. Auth.:** ORS 723.102

**Other Auth.:** Sec. 5, Ch. 343, 2007 OL

**Stats. Implemented:** Sec. 5, Ch. 343, 2007 OL

**Proposed Adoptions:** 441-710-0085

**Last Date for Comment:** 10-30-07, 5 p.m.

**Summary:** This proposed new rule describes criteria that a credit union may use to demonstrate that it predominantly serves low-income members, the types of additional funds that may be accepted by a credit union with a low-income designation, and the handling of non-member shares and secondary capital accounts after obtaining a low-income designation. The rule further describes the circumstances under which a low-income designation may be removed.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Rulemaking Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices

**Date:** 10-30-07      **Time:** 1:30 p.m.      **Location:** Conference Rm. B (basement)  
350 Winter St. NE  
Salem, OR

**Hearing Officer:** Lewis Littlehales

**Stat. Auth.:** ORS 731.244, sec. 2, ch. 374, OL 2007 (Enrolled HB 2517)

**Stats. Implemented:** sec. 2, ch. 374, OL 2007 (Enrolled HB 2517)

**Proposed Adoptions:** 836-052-1000

**Last Date for Comment:** 11-6-07

**Summary:** This rulemaking proposes to adopt a rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements section 2, chapter 374, Oregon Laws 2007 (Enrolled HB 2517), which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

**Telephone:** (503) 947-7272

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**Rule Caption:** Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2007

**Stat. Auth.:** ORS 731.244, 731.574, 733.210

**Stats. Implemented:** ORS 731.574, 733.210

**Proposed Amendments:** 836-011-0000

**Last Date for Comment:** 10-24-07

**Summary:** This rulemaking proposes to prescribe, for reporting year 2007, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

**Telephone:** (503) 947-7272

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## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

**Rule Caption:** Propose to add Confined Space Rescue rules to the General Industry standard for Fire Fighters.

**Date:** 10-29-07      **Time:** 10 a.m.      **Location:** Fish & Wildlife Bldg.  
3406 Cherry Ave. NE  
Commission Rm.  
First Floor  
Salem OR 97303

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2), 656.726(4)

**Stats. Implemented:** ORS 654.001 – 654.295

**Proposed Amendments:** 437-002-0182

**Last Date for Comment:** 11-2-07

**Summary:** Oregon OSHA proposes to adopt new Oregon Administrative Rules for the fire fighting industry as it pertains to confined space rescue. These additions will be in OAR 437-002-0182, Oregon Rules for Fire Fighters in Division 2/L, General Industry/Fire Protection. The proposed rule focuses on fire departments that will respond to calls prompted by the public, typically 911, for rescue from confined spaces. The proposed adoption was drawn heavily from the 2000 edition of the National Fire Protection Agency (NFPA), Standard for Rescue Technician Professional Qualifications

## NOTICES OF PROPOSED RULEMAKING

(NFPA 1006), and the 1999 edition of the NFPA Standard on Operations and Training for Technical Rescue Incidents (NFPA 1670). This rule was initiated in part as a need to standardize methods for all fire fighters in the state for the rescue of victims from spaces large enough and so configured that an employee can bodily enter and perform assigned work, that has limited or restricted means for entry or exit and is not designed for continuous occupancy.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882

**Telephone:** (503) 947-7449

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**Rule Caption:** Increases time to file a retaliation complaint from 30 to 90 days.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
10-30-07	1:30 p.m.	Fish & Wildlife Bldg. 3406 Cherry Ave. NE Commission Rm. First Floor Salem OR 97303

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2), 656.726(4)

**Stats. Implemented:** ORS 654.001 – 654.295

**Proposed Amendments:** 437-001-0295

**Last Date for Comment:** 11-2-07

**Summary:** Oregon OSHA proposes to amend OAR 437-001-0295 Discrimination Complaint, to reflect the changes made in House Bill 2259 passed into law by the 2007 Oregon Legislature. This action increases the time to file a retaliation complaint from 30 days to 90 days.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882

**Telephone:** (503) 947-7449

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**Rule Caption:** Propose to adopt changes to Dipping and Coating rules in General Industry.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
10-30-07	1:30 p.m.	Fish & Wildlife Bldg. 3406 Cherry Ave. NE Commission Rm. First Floor Salem OR 97303

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2), 656.726(4)

**Stats. Implemented:** ORS 654.001 – 654.295

**Proposed Adoptions:** 437-002-0122

**Proposed Amendments:** 437-002-0100

**Last Date for Comment:** 11-2-07

**Summary:** Oregon OSHA proposes to adopt a new Dipping and Coating standard in General Industry. This rule combines the requirements of the current standards in 1910.122 through 1910.126. This is also part of our initiative to convert our rules into clear language. The standards in 1910.122 through 1910.126 will be removed and a new rule OAR 437-002-0122, Dipping and Coating will be adopted into Division 2/H.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882

**Telephone:** (503) 947-7449

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**Rule Caption:** Extends appeal deadline from 20 to 30 days; extends civil penalty to judgment from 10 to 20 days.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
10-30-07	1:30 p.m.	Fish & Wildlife Bldg. 3406 Cherry Ave. NE Commission Rm. First Floor Salem OR 97303

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2), 656.726(4)

**Stats. Implemented:** ORS 654.001 – 654.295

**Proposed Amendments:** 437-001-0205, 437-001-0215, 437-001-0220, 437-001-0240, 437-001-0255

**Last Date for Comment:** 11-2-07

**Summary:** Oregon OSHA proposes to amend rules in Division 1, General Administrative Rules, to reflect the changes made in Senate Bill 556 passed into law by the 2007 Oregon Legislature. This action increases the time to file an appeal from 20 to 30 days and extends the period before civil penalty can be recorded as a judgment from 10 to 20 days after the final order. Also amended is the Extension of Correction Date – Application rule to allow greater discretion for granting extensions.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882

**Telephone:** (503) 947-7449

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### Department of Energy Chapter 330

**Rule Caption:** Adopt Rules for State Regulated Appliances and Equipment Standards.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
10-23-07	9:30 a.m.	Oregon Dept. of Energy 625 Marion St., NE Salem OR 97301

**Hearing Officer:** John Kaufmann

**Stat. Auth.:** ORS 469.229 – 469.261, 469.040(1)(d)

**Stats. Implemented:** ORS 469.229 – 469.261

**Proposed Adoptions:** OAR 330-095-0005 – 330-095-0100

**Last Date for Comment:** 10-29-07

**Summary:** The purpose of these rules is to implement ORS 469.229 through 469.261, as amended by Or. Laws 2007, Ch. 375 (HB 2565) and Or. Laws 2007, Ch. 649 (Senate Bill 375) to establish procedures governing enforcement and amendment of standards found in ORS 469.229 through ORS 469.261, which establish minimum energy efficiency standards for equipment and appliances for sale or use in Oregon that are not federally regulated. The proposed rules would:

- Define terms used.
- Summarize effective dates for each category of equipment.
- Clarify where the minimum energy efficiency standards and test methods are located in Oregon statutes.
- Require manufacturer reporting of equipment compliance through the Multi-State Compliance System (M-SCS) located at [www.appliancestandards.org](http://www.appliancestandards.org). Products registered with the California Energy Commission (CEC) located at ([www.energy.ca.gov/appliances/appliance](http://www.energy.ca.gov/appliances/appliance)) will automatically be entered uploaded to the M-SCS. Alternatively, manufacturers may enter data directly into the M-SCS.

## NOTICES OF PROPOSED RULEMAKING

- Requires products to be listed in the M-SCS to be sold or used in Oregon after the respective effective date for each category of equipment.
- Require manufacturers to certify to the accuracy of the information listed in the M-SCS. A single letter may certify compliance for multiple products.
- Authorize the Department to require a manufacturer to provide test results or other documentation verifying that a product meets Oregon's minimum energy efficiency standards.
- Describe procedures the Oregon Dept. of Energy will use to determine compliance. Products for which Oregon's minimum energy efficiency standards are identical to California's will automatically be approved for sale and use in Oregon. Other products will require manufacturer attestation and department approval.
- Require complaint products to include a non-removable label stating that the manufacturer certifies that the If Oregon's standard is consistent with standard in another state, Oregon will accept a label required by that state. The labeling requirement will be deemed met if equipment is tagged in compliance with federal requirements and includes information that can be checked against Oregon's standards. Provides for authority to waive the labeling requirement on a case-by-case basis for any category of equipment.
- List procedures to determine non-compliance with Oregon's minimum energy efficiency standards, testing requirements, or labeling requirements. If the Department has any cause to believe a product may not comply, it will notify a manufacturer of its concerns and require the manufacturer to respond within a designated time period.
- Provide for written appeals of department staff's action to the Director. The Director will respond to an appeal within a designated time period.

- Establish procedure to postpone the operative date of the minimum energy efficiency standard for a category of equipment. A rule postponing the operative date may be done on an emergency basis without prior notice or hearing to prevent serious prejudice to the public interest or to the interest of parties concerned. The Department may extend the operative date for not more than one additional year if the original conditions for the postponement still apply.
- Clarify additional factors that may be considered when adopting minimum energy efficiency standards for additional categories of equipment.
- Provide that the Department will establish a mailing list of manufacturers and for each category of equipment.

**Rules Coordinator:** Kathy Stuttaford

**Address:** Department of Energy, 625 Marion St. NE, Salem, OR 97301

**Telephone:** (503) 378-4128

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**Rule Caption:** Amend Residential Energy Tax Credit (RETC) program rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
11-8-07	9:30 a.m.	Oregon Dept. of Energy 625 Marion St., NE Salem OR 97301

**Hearing Officer:** John Kaufmann

**Stat. Auth.:** ORS 469.160 – 469.180, 469.040(1)(d)

**Stats. Implemented:** ORS 469.160 – 469.180

**Proposed Adoptions:** Rules in 330-070

**Proposed Amendments:** 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0040, 330-070-0045, 330-070-0048, 330-070-0055, 330-070-0059, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0064, 330-070-0070, 330-070-0073, 330-070-0085, 330-070-0089, 330-070-0091, 330-070-0097

**Last Date for Comment:** 11-15-07

**Summary:** The proposed rules implement provisions of HB3201, sections 28–36, which expand the Residential Energy Tax Credit (RETC) program. The proposed rules would:

- Clarify that the combined tax credit for energy efficient appliance may exceed the \$1,000 limit for any one appliance.
- Clarify that applicants may not receive certification for more than \$6,000 per site for solar electric (photovoltaic) systems or \$1,500 for ground source heat pump systems in any one year.
- Increase the tax credit for wind electric systems from \$1,500 to \$6,000, to be taken over four years, and raise the basis of calculating the tax credit from \$0.60 to \$2.00 multiplied by the first year energy yield in kilowatt hours. To qualify for a tax credit the system:
  - (a) must be certified by the North American Small Wind Certification Corporation as meeting the safety and performance standards set by a national or international standards setting body; or
  - (b) Manufacturers must provide monthly data of average energy produced and average wind speed for one continuous year to demonstrate reliable operation at a site with average annual wind speeds of at least 12 mph; or
  - the model shall be listed on the list of Qualified Wind Generators published by the California Energy Commission or the New York State Energy Research and Development Authority (NYSERDA); and
  - applications must include the nominal rated electric capacity, power curve, and energy production data as a function of average annual wind speed.
- Provide that fuel cell systems may qualify for a tax credit of \$6,000, to be taken over four years.
- Define the criteria for premium efficiency biomass combustion devices. Such devices may qualify for a tax credit equal to the lesser of \$300 or the first year energy yield in kilowatt hours multiplied by \$0.40. To qualify for a tax credit, a premium efficiency biomass combustion device must:
  - burn wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin;
  - be less than 250,000 British thermal units (Btus) per hour heat input;
  - include a combustion intake air system which is sized to draw allow combustion air directly into the combustion chamber from outside the envelope of the structure;
  - be listed on the EPA's *List of EPA Certified Wood Stoves* with a publishing date in the year in which an application for a tax credit is submitted;
  - be listed with an energy efficiency category of 72% or greater; and
  - emits less than 2.5 grams of smoke per hour.
- Define the criteria for ductless mini-split heat pumps. Such heat pumps will be eligible for a tax credit equal to \$50 per 1/2 ton, not to exceed \$400. To qualify, ductless mini-split heat pumps must:
  - be inverter driven;
  - have a low ambient performance of at least 70% of rated capacity at 15°F outside temperature;
  - include no integrated electric resistance backup heat;
  - be sized and installed per manufacturer specifications;
  - be installed by a technician trained by the manufacturer within the last five years.
- Provide that after January 1, 2009, to become a Tax Credit Certified Technician, solar technicians must be tested and certified by the North American Board of Certified Energy Practitioners (NABCEP). Tax Credit Certified Solar Technicians certified by the Oregon Department of Energy before that date will have until January 1, 2010 to obtain NABCEP certification.
- Allow systems installed under the Business Energy Tax Credit (BETC) program as well as the Residential Energy Tax Credit (RETC) program to be counted to satisfy the requirements that a Tax Credit Certified Technician install a certain number of systems per year,

## NOTICES OF PROPOSED RULEMAKING

- Require system diagrams, operational and maintenance materials, and a commissioning report for each for solar thermal and electric systems, and increase warranty requirement.
- Eliminate the OSEIA tank insulation option for solar domestic hot water systems.
- Effective October 1, 2008, raise the standard for high efficiency residential gas furnaces from a minimum AFUE rating of 0.90 (90 percent) to a minimum AFUE rating of 0.92 (92 percent) to be consistent with Energy Star.
- Eliminate dishwashers from the program or raise the Energy Factor (EF) for from 0.68 to 0.70 and eliminate the Water Factor (WF) requirement.
- Clarify that an alternative fuel vehicle capable of using E-85 is not eligible for the tax credit because it has become standard in many models.
- To qualify for a tax credit for a hybrid vehicle, require applicants to acknowledge on the application form that they do not intend to sell the vehicle to a person who is not an Oregon resident for a period of one year.

Make editorial and housekeeping changes to OAR 330-070-0010 to OAR 330-070-0097.

**Rules Coordinator:** Kathy Stuttaford

**Address:** Department of Energy, 625 Marion St. NE, Salem, OR 97301

**Telephone:** (503) 378-4128

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**Rule Caption:** Amend Business Energy Tax Credit (BETC) program rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
11-6-07	9:30 a.m.	Oregon Dept. of Energy 625 Marion St., NE Salem OR 97301

**Hearing Officer:** John Kaufmann

**Stat. Auth.:** ORS 469.040(1)(d), 469.185 – 469.225

**Stats. Implemented:** ORS 469.185 – 469.225

**Proposed Adoptions:** Rules in 330-090

**Proposed Amendments:** 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0135, 330-090-0140, 330-090-0150

**Last Date for Comment:** 11-13-07

**Summary:** The proposed rules implement provisions of HB3201, sections 14 -27, which expand the BETC program. The proposed rules would:

- Set the Pass-Through rate for renewable energy resource systems and renewable energy manufacturing facilities at 33.5%. The rate for renewable energy resource systems costing \$20,000 or less shall be 43.5%.

- Reduce the cost of reviews from 0.0075 multiplied by the eligible project cost to 0.0060 multiplied by the eligible project cost, and set the maximum cost of review at \$25,000. The new fees would be applied to projects costing \$1 million and more retroactively to January 1, 2007. For all other projects, this rate and cap will be effective January 1, 2008.

- Establish a minimum refund of \$10 on project fees submitted in excess of the final cost of review.

- Eliminate the requirement to subtract federal tax credits from project cost when determining eligible cost. Only grants and gifts shall be subtracted.

- Renewable energy resource projects and renewable energy manufacturing facilities completed after January 1, 2007 are eligible for a tax credit equal to 10% of the certified cost in each of the five succeeding tax years, not to exceed \$20 million.

- Define renewable energy resource system or renewable energy manufacturing facility for purposes of the \$20 million eligible cost limit.

- Define renewable energy manufacturing facility to include a structure or equipment that exclusively manufactures components or subcomponents to be used in a renewable energy resource system.

- For renewable energy resource manufacturing facilities, define site as a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet. Land shall be considered contiguous even if there is an intervening public or railroad right of way.

- For renewable energy resource systems, adopt a definition of site consistent with the definition adopted by the Oregon Public Utility Commission in Docket No. UM 1129.

- Clarify that an RD&D project that uses or produces a renewable energy resource or is a renewable energy manufacturing facility is eligible for a tax credit of 10% in each of five succeeding tax years.

- Define the eligibility criteria for a homebuilder-installed renewable energy system. Such a system is eligible for a tax credit not to exceed \$9,000 per home. To qualify, a home must provide more than 1 kilowatt hour per year per square foot of conditioned space and meet minimum technical requirements. To qualify, a home must include one of the following:

- solar electric (photovoltaic) system;
- solar domestic hot water system;
- passive solar design equivalent;
- active solar space heating system;
- wind electric system greater;
- ground source heat pump with a coefficient of performance (COP) of 3.5 or greater; or
- fuel cell system.

– Solar pool heating systems are not eligible.

- Define the eligibility criteria for a homebuilder-installed renewable energy system that also constitutes a high-performance home, which is eligible for a tax credit not to exceed \$12,000. To qualify, the home must:

- include a homebuilder installed renewable energy system (above);
- be built to the minimum prescriptive requirements of the state building code;
- include R-49 attic insulation, R-38 floor insulation, R-24 wall insulation, U=0.32 windows;

- be certified by the Energy Star Homes Northwest program;
- include ducts within the heated space, or have no ducts;
- include a high efficiency heating system (90% gas furnace, 8.5 HSPF air source heat pump, 3.0-3.49 COP ground source heat pump, or a ductless mini-split heat pump with inverter, no integrated electric resistance backup heat, low ambient performance of 70% of rated capacity at 15°F, and system sized and installed per manufacturer specifications by a manufacturer trained installer).

- be certified by a sustainable building program approved by the Department (e.g., Earth Advantage, LEED), or the building meets Energy Star Homes Northwest indoor air quality and ventilation specifications, including a heat recovery ventilator or an energy recovery ventilator.

- Require a Tax Credit Certified Technician to verify that the system meets Oregon Dept. of Energy technical standards. After January 1, 2009, to become a Tax Credit Certified Technician, solar technicians must be tested and certified by the North American Board of Certified Energy Practitioners (NABCEP). Tax Credit Certified Solar Technicians certified by the Oregon Department of Energy before that date will have until January 1, 2010 to obtain NABCEP certification.

- Require system diagrams, operational and maintenance materials, and a commissioning report for each for solar thermal and electric systems.

- Define high-efficiency combined heat and power facility by setting fuel chargeable to heat rate which exceeds the minimum Energy Facility Siting Standards by no less than 10 percent.

- Require that projects that recover material and energy from a waste stream shall provide significant recovery of energy or marketable materials and lower net greenhouse gas emissions and other environmental impacts compared to standard disposal practices, and use the best available pollution control technology, and are based

## NOTICES OF PROPOSED RULEMAKING

upon the highest and best use of the waste stream. Material recovery is considered a higher and better use of a waste stream than energy recovery, and significant recovery means that 50% of the materials introduced into the waste stream by dry weight for sale or use as other than a fuel or lubricant, and that the value of the materials and energy resources recovered minus the value of the energy resources consumed is greater than the magnitude of the disposal costs or revenues of the waste stream. Atmospheric burning projects and intentionally adding moisture or wet organics to landfills are not eligible. Except for landfill gas recovery projects, only projects that use 100% non-toxic biomass feedstock will be eligible as a renewable energy resource system.

- Establish standards for efficiency and emission for eligible biomass combustion devices. Adopt other national or regional standards established for devices such as outdoor wood boilers and wood-fired furnaces.

- Define biomass as derived 100% from organic materials.
- Require liquid biofuels, as a subset of alternative fuels, to be derived from 100% organic sources.
- Increase the size of hydroelectric facilities eligible for BETC from 1 megawatt to 10 megawatts, provided they meet all statutory requirements for protection of fish and wildlife.

- Consider a streamlined method to determine eligible costs for state agency and university buildings approved under the State Energy Efficient Design program (SEED), ORS 276.900 to ORS 276.915, as being 20% more efficient than a comparable building built to meet the minimum requirements of the state building code.

- Provide transportation service BETC to mass transit districts serving communities with than 50,000 residents for providing service to K-12 students.

- Change the minimum requirement for using transportation options from "days" to "working days," and from "calendar year" to "project year."

- Amend the definition of carpool and vanpool to mean "employer-sponsored program" or "organization-sponsored program."

- Make editorial and housekeeping changes to OAR 330-090-0105 to OAR 330-090-0150, as needed.

**Rules Coordinator:** Kathy Stuttaford

**Address:** Department of Energy, 625 Marion St. NE, Salem, OR 97301

**Telephone:** (503) 378-4128

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**Rule Caption:** Biofuel consumer income tax credit procedures.

Date:	Time:	Location:
10-3-07	9:30 a.m.	Advisory Committee Meeting 625 Marion St. Salem, OR
10-31-07	10 a.m.	Oregon Dept of Energy 625 Marion St. Salem OR

**Hearing Officer:** Mark Kendall

**Stat. Auth.:** ORS 469.185 – 469.225

**Stats. Implemented:** ORS 469.185 – 469.225, 315.014 – 315.675

**Proposed Adoptions:** 330-090-0160, 330-090-0161, 330,090,0162, 330-090-0163

**Last Date for Comment:** 11-9-07, 5 p.m.

**Summary:** • Add definitions from statute into administrative rule of alternative fuel vehicle, biodiesel, biomass, bone dry ton and fuel blend.

- Establish the conditions under which biofuel consumer income tax credits may be documented and claimed.

- Establish how to claim a biofuel consumer income tax credit for costs paid or incurred to purchase diesel blended fuel equal to \$0.50 per gallon and in any one tax year, not to exceed \$200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days duration and that is capable of using a fuel blend.

- Establish how to claim a biofuel consumer income tax credit for costs paid or incurred to purchase gasoline blended fuel equal to \$0.50 per gallon and in any one tax year, not to exceed \$200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days duration and that is capable of using a fuel blend.

- Establish how to claim a biofuel consumer income tax credit for costs paid or incurred to purchase forest, rangeland or agriculture waste or residue densified and dried prepared solid biofuel equal to \$10 per bone dry ton of solid biofuel and in any one tax year, not to exceed \$200 per taxpayer.

- Establish how to claim a biofuel consumer income tax credit for costs paid or incurred to purchase fuel for primary home space heating that is at least 20 percent biodiesel not to exceed the lesser of five cents per gallon or \$200 in any one tax year, not to exceed \$200 per taxpayer.

- Establish how biofuel consumer income tax credit in any one tax year may not exceed the tax liability of the taxpayer and may not be carried forward to a subsequent tax year.

- Establish how the biofuel consumer claiming an income tax credit shall maintain records sufficient to determine the taxpayer's purchase of qualifying biofuel blends or biomass for at least five years.

**Rules Coordinator:** Kathy Stuttaford

**Address:** 625 Marion Street NE, Salem OR 97301

**Telephone:** (503) 378-4128

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### Department of Environmental Quality Chapter 340

**Rule Caption:** Disclosure of the Relationship between Proposed Rules and Federal Requirements.

Date:	Time:	Location:
10-16-07	7 p.m.	Lewis and Clark Rm. State Bldg. Health & Human Services 1300 NW Wall St., Suite 101500 Bend, OR 97701
10-17-07	7:30 p.m.	Training Center Eugene Water & Electric Brd. East 4th Ave. Eugene, OR 97401
10-22-07	7:30 p.m.	Conference Rm.: EQC A DEQ Headquarters 811 SW Sixth Ave. Portland, OR 97204

**Hearing Officer:** Larry McAllister, DEQ

**Stat. Auth.:** 468.020, 468A.025

**Stats. Implemented:** 468A.315

**Proposed Amendments:** 340-011-0010, 340-011-0029

**Last Date for Comment:** 10-26-07, 5 p.m.

**Summary:** The Oregon Department of Environmental Quality (DEQ) is revising two Oregon Administrative Rules (OARs) that direct the Department's rulemaking procedures. These changes are necessary to comply with Senate Bill 107, Section 3 that the 2007 legislature enacted. DEQ is revising OAR 340-011-0010 to accommodate new requirements when noticing an intent to adopt, amend or repeal DEQ administrative rules. Also, the agency is revising OAR 340-011-0029(1) and (2) to reflect the new requirements regarding DEQ disclosure of the relationship between proposed administrative rules and applicable federal requirements. By this rulemaking, DEQ is removing from rule the disclosure form (OAR 340-011-0029, table 1) it has used in its disclosure process. The questions that provide the basis of disclosure will remain in administrative rule and are being updated to reflect Senate Bill 107, Section 3 requirements.

Senate Bill 107, Section 3 also requires DEQ establish specific procedures related to its rules affecting Title V operating permits; Title V of the federal Clean Air Act requires that each major industrial source of air pollution obtain and comply with an operating permit. DEQ is revising OAR 340-011-0029(3) to ensure that those impacted by DEQ rules related to facilities regulated by Title V

# NOTICES OF PROPOSED RULEMAKING

permits have an opportunity, as now required by law, to discuss those impacts before the Environmental Quality Commission.

To submit comments or request additional information, please contact Larry McAllister at DEQ, 811 SW Sixth Avenue, Portland, Oregon 97204, toll free in Oregon at 1 (800) 452-4011 extension 6412; or (503) 229-6412, or at [mcallister.larry@deq.state.or.us](mailto:mcallister.larry@deq.state.or.us), or by fax (503) 229-6037, or visit DEQ's website at: <http://www.deq.state.or.us/news/publicnotices/PN.asp>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

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**Rule Caption:** Clarifying and Updating References in State Revolving Fund Rules (OAR 340-054).

Date:	Time:	Location:
10-16-07	5:30 p.m.	Lewis and Clark Rm. State Bldg. Health and Human Services 1300 NW Wall St., Suite 101500 Bend, OR 97701
10-17-07	6:30 p.m.	Training Center Eugene Water & Electric Board East 4th Ave. Eugene, OR 97401
10-22-07	6 p.m.	Conference Rm.: EQC A DEQ Headquarters 811 SW Sixth Ave. Portland, OR 97204

**Hearing Officer:** Larry McAllister, DEQ

**Stat. Auth.:** ORS 468.020, 468.423 – 468.440

**Stats. Implemented:** ORS 197.180, 468.423 – 468.440

**Proposed Amendments:** 340-054-0035, 340-054-0060

**Last Date for Comment:** 10-26-07, 5 p.m.

**Summary:** The Oregon Department of Environmental Quality's (DEQ) Clean Water State Revolving Fund (CWSRF) program is updating the environmental review process for projects seeking CWSRF funding. That process is outlined in the Department's CWSRF Procedures Manual (Manual). The 2003 Manual is being updated to replace the Alternative State Environmental Review Process (Alternative SERP) with a new, more comprehensive State Environmental Review Process (SERP), as required by EPA to continue annual federal grants in support of the CWSRF loan program. Two administrative rules, OAR 340-054-0035 and -0060, currently cross-reference the Manual. DEQ proposes to amend those two rules to delete outdated references to the 2003 Manual and remove the term "alternative" from rule. Finally, this rulemaking will also delete one sentence of text in OAR 340-054-0035(1)(c) that was inconsistent with the revised SERP. No other changes are being proposed in this rulemaking.

The proposed rule amendments confirm and clarify DEQ's authority to administer the CWSRF program consistent with the updated, Procedures Manual and the updated environmental review process therein, and, consequently, with federal requirements for state environmental review processes.

To submit comments or request additional information, please contact Larry McAllister at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, Oregon 97204, toll free in Oregon at 800-452-4011 x 6412 or directly at (503) 229-6412, or at [mcallister.larry@deq.state.or.us](mailto:mcallister.larry@deq.state.or.us), or by fax (503) 229-6037, or visit DEQ's website at: <http://www.deq.state.or.us/news/publicnotices/PN.asp>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Commercial ocean Dungeness crab fishery requirements for fishing gear, reporting, and permit transactions.

**Date:** 10-12-07      **Time:** 8 a.m.      **Location:** 3406 Cherry Ave. N  
Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.146, 506.119, 506.129, 506.755, 508.921

**Stats. Implemented:** ORS 496.012, 506.109, 506.119, 506.129, 506.755, 508.921–508.941

**Proposed Adoptions:** Rules in 635-005 & 006

**Proposed Amendments:** Rules in 635-005 & 006

**Proposed Repeals:** Rules in 635-005 & 006

**Last Date for Comment:** 10-12-07

**Summary:** Amend rules for the commercial Oregon ocean Dungeness crab fishery to modify permit transfer requirements and buoy tag replacement provisions. These modifications refine the definition of illegal gear, establish landings requirements and require reporting in log books. These modifications may implement a permit stacking program for all Oregon ocean Dungeness crab permit holders which may include requirements for gear, permits, landings, areas and licenses.

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

**Rules Coordinator:** Casaria Tuttle

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

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

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**Rule Caption:** Adoption and Amendment of Rules for the Issuance and Management of Sturgeon Propagation Permits.

**Date:** 11-9-07      **Time:** 8 a.m.      **Location:** Resort at the Mountain  
68010 E. Fairway  
Welches, OR 97067

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 497.252, 498.222

**Stats. Implemented:** ORS 498.325, repealing 498.330

**Proposed Adoptions:** Rules in 635-007

**Proposed Amendments:** Rules in 635-007

**Proposed Repeals:** Rules in 635-007

**Last Date for Comment:** 11-9-07

**Summary:** Adopt and amend rules as determined necessary to allow issuance of sturgeon propagation permits and management of commercial propagation of sturgeon.

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

**Rules Coordinator:** Casaria Tuttle

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

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

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**Rule Caption:** Adoption and Amendment of Rules for the Issuance and Management of Sardine Permits.

**Date:** 11-9-07      **Time:** 8 a.m.      **Location:** Resort at the Mountain  
68010 E. Fairway  
Welches, OR 97067

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.146, 506.036, 506.109, 506.119

**Stats. Implemented:** ORS 506-036, 506.109, 506.119, 506.129

**Proposed Adoptions:** Rules in 635-006

**Proposed Amendments:** Rules in 635-006

**Proposed Repeals:** Rules in 635-006

**Last Date for Comment:** 11-9-07

**Summary:** Adopt and amend rules as determined necessary to establish the maximum number of commercial limited entry sardine

# NOTICES OF PROPOSED RULEMAKING

permits that may be issued by the Department; create a lottery system for reissuing permits which have not been renewed; and establish a sardine permit renewal deadline date.

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

**Rules Coordinator:** Casaria Tuttle

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

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

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**Rule Caption:** Definition of Wild Birds and Wild Mammals.

**Date:** 11-9-07      **Time:** 8 a.m.      **Location:** 68010 E Fairway Welches, OR 97067

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.004, 496.012, 496.138, 496.146, 496.162

**Stats. Implemented:** SB 804 (OL 2007, Ch. 523), ORS 496.004(19), 496.004, 496.012, 496.138, 496.146, 496.162

**Proposed Adoptions:** Rules in 635-057

**Proposed Amendments:** Rules in 635-045 & 056

**Last Date for Comment:** 11-9-07

**Summary:** Adopt rule and amendments to the Oregon Administrative Rules that define wild birds and wild mammals.

**Rules Coordinator:** Casaria Tuttle

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

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

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

**Rule Caption:** Amendment of "Enhanced Care" rules, in order to update the rules.

**Date:** 10-25-07      **Time:** 1:30 p.m.      **Location:** 500 Summer St. NE Rm. 137A Salem, OR 97301-1118

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 426.490 – 426.500

**Proposed Amendments:** Rules in 309-032

**Last Date for Comment:** 11-2-07, 5 p.m.

**Summary:** The Department of Human Services, Addictions and Mental Health Division, is proposing to amend OAR 309-032-0720 through 309-032-0830 "Standards for Enhanced Care Services" rules, in order to update the rules.

**Rules Coordinator:** Richard Luthe

**Address:** Department of Human Services, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-86, Salem, OR 97301

**Telephone:** (503) 947-1186

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**Rule Caption:** Amend the Psychiatric Security Review Board rules to correct a definition error.

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 161.295 - 161.430, 428.205 - 428.270

**Proposed Amendments:** 309-032-0455

**Proposed Repeals:** 309-032-0455(T)

**Last Date for Comment:** 11-2-07, 5 p.m.

**Summary:** The Department of Human Services, Addictions and Mental Health Division, is temporarily amending OAR 309-032-0450 "Psychiatric Security Review Board (PSRB) rules to correct a definition error. The correction will codify the meaning of "qualified person."

**Rules Coordinator:** Richard Luthe

**Address:** Department of Human Services, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-86, Salem, OR 97301

**Telephone:** (503) 947-1186

.....

**Department of Human Services,  
Children, Adults and Families Division:  
Child Welfare Programs  
Chapter 413**

**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Date:** 10-23-07      **Time:** 8:30 a.m.      **Location:** Rm. 254 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.194, 418.005

**Stats. Implemented:** ORS 409.192, 418.005

**Proposed Amendments:** 413-010-0400, 413-010-0410, 413-010-0420, 413-010-0430, 413-010-0440, 413-010-0480

**Proposed Repeals:** 413-010-0450, 413-010-0460, 413-010-0470, 413-010-0490

**Last Date for Comment:** 10-26-07, 5 p.m.

**Summary:** OAR 413-010-0400, 413-010-0410, 413-010-0420, 413-010-0430, 413-010-0440, 413-010-0480 are being amended and OAR 413-010-0450, 413-010-0460, 413-010-0470, and 413-010-0490 are being repealed to update and clarify the complaint process for Child Welfare, incorporate the various new department-wide processes and forms, and remove references to outdated policies and forms. The rules about the Child Welfare Formal Grievance process are being repealed and the Department-wide process is being followed.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

**Telephone:** (503) 945-6067

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

**Rule Caption:** Disease Reporting.

**Stat. Auth.:** ORS 433.004

**Stats. Implemented:** ORS 433.001, 433.004, 433.006, 433.012, 433.106, 433.110, 433.130, 433.235-433.284, 437

**Proposed Amendments:** 333-018-0015

**Proposed Repeals:** 333-018-0015(T)

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division (Division) is proposing to permanently adopt the temporary amendment of Oregon Administrative Rule (OAR) 333-018-0015 that was made to correct a filing error. On April 17, 2006, the Division permanently amended OAR 333-018-0015 to include the requirement that licensed laboratories must report the results of all tests of CD4+ T-lymphocyte counts, percent of total lymphocytes that are CD4 positive, and viral load tests. On September 13, 2006, when the Division permanently amended the same rule to include the reporting of mumps, the aforementioned requirement was inadvertently left out.

**Rules Coordinator:** Cat McGinnis

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

**Telephone:** (971) 673-1291

# NOTICES OF PROPOSED RULEMAKING

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

**Rule Caption:** Transition Spousal Pay Program (General Fund) to the Title XIX Home and Community-Based Services Waiver.

**Date:** 10-23-07      **Time:** 9 a.m.      **Location:** Human Services Bldg.  
500 Summer St. NE,  
Rm. 137BC  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 410.070, 410.090

**Stats. Implemented:** ORS 410.010, 410.020, 410.070, 411.802, 411.803

**Proposed Amendments:** 411-030-0020, 411-030-0080

**Proposed Repeals:** 411-030-0020(T), 411-030-0080(T)

**Last Date for Comment:** 10-26-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to permanently adopt the temporary rule amendments that became effective on May 1, 2007 to transition the Spousal Pay Program from a state general fund program to a program receiving federal match dollars included in Oregon's Title XIX Home and Community-Based Services Waiver.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 945-6398

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**Rule Caption:** Registration and Standards for Adult Day Services Programs.

**Date:** 10-23-07      **Time:** 2 p.m.      **Location:** Human Services Bldg.  
500 Summer St. NE,  
Rm. 137BC  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070, 410.490, 410.495

**Other Auth.:** Title XIX 1915(c) Home and Community-Based Services Waiver

**Stats. Implemented:** ORS 410.485–410.495

**Proposed Adoptions:** 411-066-0015

**Proposed Amendments:** 411-066-0000, 411-066-0005, 411-066-0010, 411-066-0020

**Proposed Repeals:** 411-066-0000(T), 411-066-0005(T), 411-066-0010(T), 411-066-0015(T), 411-066-0020(T)

**Last Date for Comment:** 10-26-07 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to permanently adopt the May 15, 2007 temporary rulemaking that created a state certification process for adult day services programs.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 945-6398

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**Rule Caption:** Temporary Absence from Community-Based Facilities.

**Date:** 10-19-07      **Time:** 2 p.m.      **Location:** Human Services Building  
500 Summer St. NE  
Rm. 137A  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070

**Stats. Implemented:** ORS 410.070

**Proposed Adoptions:** 411-027-0125

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to adopt Oregon Admin-

istrative Rule (OAR) 411-027-0125 to allow for payment to community-based facilities during temporary absence of residents.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 945-6398

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## Department of Justice Chapter 137

**Rule Caption:** Corrects Cite Reference in Model Rule and Sentence Structure by Adding Word "By" Before Cite.

**Stat. Auth.:** ORS 183.341

**Stats. Implemented:** ORS 183.341, OL 1999, ch. 849

**Proposed Amendments:** 137-003-0635

**Last Date for Comment:** 10-22-07

**Summary:** OAR 137-003-0635(3) is amended to correct a cite reference in that subsection from OAR 137-003-0520(3) to read OAR 137-003-0520. The amendment also inserts the word "by" before the corrected cite reference, which was omitted in a previous amendment to the rule.

**Rules Coordinator:** Carol Riches

**Address:** Department of Justice, 1162 Court St. NE, Salem, OR 97301

**Telephone:** (503) 947-4700

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## Department of Oregon State Police, Office of State Fire Marshal Chapter 837

**Rule Caption:** Implement Permanent Administrative Rules for Oregon's Fire Safer Cigarette Program.

**Stat. Auth.:** Ch. 34, 2007 OL, Sections 1–15

**Stats. Implemented:** ORS Ch. 34, 2007 OL

**Proposed Adoptions:** 837-035-0000, 837-035-0020, 837-035-0040, 837-035-0060, 837-035-0080, 837-035-0100, 837-035-0120, 837-035-0140, 837-035-0160, 837-035-0180, 837-035-0200, 837-035-0220, 837-035-0240, 837-035-0260, 837-035-0280, 837-035-0300, 837-035-0320, 837-035-0340.

**Last Date for Comment:** 10-22-07

**Summary:** Implementation of Oregon's Fire Safer Cigarette Program Administrative Rules 837-035-0000 through 837-035-0340.

**Rules Coordinator:** Pat Carroll

**Address:** Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305

**Telephone:** (503) 373-1540, ext. 276

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## Department of Revenue Chapter 150

**Rule Caption:** Implementation of income tax withholding on certain real estate transactions (2007 Oregon Laws chapter 864).

**Date:** 10-22-07      **Time:** 10 a.m.      **Location:** Sign in beginning at 9:45  
955 Center St. NE  
Fishbowl Conference Rm.  
Salem OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 305.100, 2007 OL ch. 864

**Stats. Implemented:** 2007 OL Ch. 864

**Proposed Adoptions:** 150-2007 Or Laws, chapter 864

**Last Date for Comment:** 10-22-07, 5 p.m.

**Summary:** 2007 Or Laws chapter 864 (HB 2592) requires withholding of state income tax on certain real estate transactions beginning January 1, 2008. The rule is adopted to provide definitions of terms used in the law and to clarify when withholding is and is not required. The rule explains the role of authorized agents in providing information and forms to nonresidents and to corporations not doing business in Oregon that may be subject to withholding on a real estate transaction.

# NOTICES OF PROPOSED RULEMAKING

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

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**Department of State Lands**  
**Chapter 141**

**Rule Caption:** Adopts Provisions Necessary to Implement 2007 Legislation Related to Fees and Clarifies Certain Provisions in OARs.

**Date:** 11-13-07    **Time:** 10-11:30 a.m.    **Location:** 775 Summer St. NE  
Salem, OR 97301-1279

**Hearing Officer:** Janet Morlan & Eric Metz

**Stat. Auth.:** ORS 196.692, 196.800

**Other Auth.:** OL 2007, Ch. 849 (Enrolled HB 2105) & Ch. 850 (Enrolled HB 2106)

**Stats. Implemented:** OL 2007, Ch. 849 (Enrolled HB 2105) and Ch. 850 (Enrolled HB 2106)

**Proposed Adoptions:** 141-085-0068, 141-089-0157, 141-089-0192, 141-089-0302, 141-089-0423, 141-089-0572, 141-089-0607, 141-090-0032

**Proposed Amendments:** Rules in 141-085, 141-089, 141-090 & 141-102

**Proposed Repeals:** 141-085-0021

**Last Date for Comment:** 11-16-07

**Summary:** The Department of State Lands has had legislation passed in 2007 concerning a new fee for wetland delineation reviews and new timelines for agency review, a new fee for general authorizations and increased fees for removal-fill permits.

**Rules Coordinator:** Elizabeth Bott

**Address:** Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301-1279

**Telephone:** (503) 986-5239

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**Department of Transportation**  
**Chapter 731**

**Rule Caption:** ConnectOregon II, Multimodal Transportation Fund Program.

**Date:** 10-22-07    **Time:** 1 p.m.    **Location:** Transportation Bldg.  
Rm. 122  
Salem, OR

**Hearing Officer:** Julie Rodwell

**Stat. Auth.:** ORS 184.616, 184.619, 367.082, Ch. 859 OL 2007 (HB 2278)

**Stats. Implemented:** ORS 367.080 – 367.086, Ch. 859 OL 2007 (HB 2278)

**Proposed Amendments:** 731-035-0010 – 731-035-0080

**Last Date for Comment:** 10-22-07

**Summary:** HB 2278 requires ODOT to amend rules specifying the process by which a public body or private entity may apply for a loan or grant from the Multimodal Transportation Fund. HB 2278 authorizes the State Treasurer to issue lottery bonds to finance grants and loans for air, marine, public transit and rail transportation projects. These proposed rule amendments modify the Multimodal Transportation Fund Program and eligibility standards, application requirements, criteria for application review and project selection, provisions of agreements with the Department and sanctions. These proposed rules will amend the existing permanent rules that were adopted by the Oregon Transportation Commission on January 18, 2006.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

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

**Rule Caption:** Medical Programs including Commercial Driver License Medical Qualifications.

**Date:** 10-17-07    **Time:** 11 a.m.    **Location:** Transportation Bldg.  
Rm. 122  
Salem, OR

**Hearing Officer:** Liz Woods

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 802.012, 807.040, 807.050, 807.070, 807.080, 807.340, 807.350, 807.710 & 809.419

**Stats. Implemented:** ORS 802.012, 802.540, 807.040 – 807.060, 807.070, 807.100, 807.150, 807.340, 807.350, 807.400, 807.710 & 809.419

**Proposed Amendments:** 735-060-0120, 735-062-0000, 735-062-0073, 735-062-0090, 735-062-0200, 735-074-0080, 735-074-0140, 735-074-0180, 735-076-0002, 735-076-0007, 735-076-0018, 735-076-0020, 735-076-0035

**Proposed Ren. & Amends:** 735-074-0260 to 735-063-0050, 735-074-0270 to 735-063-0055, 735-074-0280 to 735-063-0060, 735-074-0290 to 735-063-0065

**Last Date for Comment:** 10-22-07

**Summary:** Chapter 195, Oregon Laws 2007 (HB 2176) amends ORS 807.090 switching responsibility for determining if a person is medically eligible for driving privileges from the Department of Human Services in the guise of State Health Office to DMV through a designated Medical Determination Officer. ORS 809.070 is also amended so that a person must receive a determination of eligibility from the Medical Determination Officer rather than obtain a certificate of eligibility from the State Health Officer. Many of the above listed rules are being amended to change references from the State Health Office or State Health Officer to Medical Determination Officer and that the person is receiving a medical determination rather than obtaining a certificate of eligibility.

Chapter 434, Oregon Laws 2007 (SB 620) amends ORS 807.090 and 807.710 to include a Doctor of Naturopathic Medicine in the definition of physician. OAR 735-074-0080 and 735-076-0002, both of which list definitions for DMV medical programs, are being amended to include a Doctor of Naturopathic Medicine in the definition of “physician” instead of in the definition of “health care provider.”

The rules that are being moved, renumbered and amended are specific to Commercial Driver License (CDL) qualifications and are out of place in OAR Chapter 735 Division 74 which addresses mandatory reporting of cognitive and functional impairments that make a person unable to safely operate a motor vehicle. These rules are being amended to clarify: 1) what qualifies as a medical certificate needed to operate a commercial motor vehicle; 2) where a person can get the various certificates; 3) that DMV will suspend commercial driving privileges if notified that a person no longer qualifies for commercial driving privileges; and 4) other needed clarification.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

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**Rule Caption:** Disabled Person Parking Permits.

**Date:** 10-17-07    **Time:** 10 a.m.    **Location:** Transportation Bldg.,  
Rm. 122  
Salem, OR

**Hearing Officer:** Liz Woods

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 811.602, 811.607, 811.609 & Ch. 70 OL 2007

**Stats. Implemented:** ORS 811.602, 811.604, 811.605, 811.606, 811.607, 811.609, 811.611

## NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 735-080-0020, 735-080-0040, 735-080-0080

**Proposed Repeals:** 735-080-0010, 735-080-0030

**Last Date for Comment:** 10-22-07

**Summary:** Chapter 411, Oregon Laws 2005 (HB 3047) directed Legislative Counsel to prepare legislation for 2007 that begins the process of using the term “persons with disabilities.” Chapter 70, Oregon Laws 2007 (SB 83) is the result. The term “disabled person parking permit” is still used in statute so DMV will continue to use that term when describing that actual permit, placard or decal, however language describing the individual or individuals is being updated to emphasize the individual rather than the disability.

Chapter 468 Oregon Laws 2007 (SB 716) provides for a wheelchair user disabled person parking placard or decal and amendments to OAR 735-080-0020 and 735-080-0040 includes information for issuance and renewal, respectively, of the wheelchair user placard or decal.

Other amendments are made to these rules to make the rules more readable by outlining what a person, family or organization must do to apply for the appropriate disabled parking permit. The previous rules relied on numerous definitions which were unneeded and made the rules more difficult to follow.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

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**Rule Caption:** Vision Standards and Driving Privileges for Persons with a Limited Vision Condition.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
10-17-07	9 a.m.	Transportation Bldg. Rm. 122 Salem, OR

**Hearing Officer:** Liz Woods

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 807.070, 807.350, Ch. 277 OL 2003, Ch. 588 OL 2007

**Stats. Implemented:** ORS 807.070, Ch. 277 OL 2003, Ch. 588 OL 2007

**Proposed Adoptions:** 735-062-0390

**Proposed Amendments:** 735-062-0050, 735-062-0320, 735-062-0380

**Last Date for Comment:** 10-22-07

**Summary:** Chapter 588, Oregon Laws 2007 (SB 728) makes changes to the program allowing limited driving privileges to a person with a low vision condition who uses a bioptic telescopic lens while driving. OAR 735-062-0320 and 735-062-0380 must be amended to remove the restriction of only driving on roads with a designated or posted speed of 45 mph or less. Chapter 588, Oregon Laws 2007 added a new provision allowing nighttime driving under certain circumstances for those with a limited vision condition using a bioptic telescopic lens. DMV proposes to adopt OAR 735-062-0390 to establish procedures for DMV to issue driving privileges without a daylight only restriction to a person who qualifies and meets the training requirements for night time driving established by this rule.

DMV is also proposing amendments to OAR 735-062-0050 regarding vision standards to clarify that a person may be granted driving privileges without meeting vision standards if they qualify under the limited vision condition program. Other changes are made to this rule for clarity.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

**Rule Caption:** Deletes Reference to Length of Time that Vehicle Appraiser Certificate is Valid.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 819.230, Ch. 630, OL 2007

**Stats. Implemented:** ORS 819.230, Ch. 630, OL 2007

**Proposed Amendments:** 735-158-0000

**Last Date for Comment:** 10-22-07

**Summary:** In pertinent part, HB 2435 (Chapter 630, Oregon Laws 2007), amends ORS 819.230 to increase—from two years to three years—the length of time a vehicle appraiser certificate is valid. Rather than amend section (4) of the administrative rule, DMV proposes to delete it because the length of time a certificate is valid is already established under ORS 819.230. Repeating this in the rule serves no additional purpose.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

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**Rule Caption:** Requirement for Ignition Interlock Device Following a DUII Suspension and on a Hardship/Probationary Permit

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 807.240, 807.270, 813.602

**Stats. Implemented:** ORS 807.240, 807.270, 813.602

**Proposed Amendments:** 735-064-0070, 735-070-0080

**Last Date for Comment:** 10-22-07

**Summary:** Chapter 655, Oregon Laws 2007 (HB 2774) amends ORS 813.602 to extend the length of time a person convicted of driving under the influence of intoxicants (DUII) must install and use an approved ignition interlock device (IID). The current requirement for an IID is six months, but effective January 1, 2008 the requirement will be that the IID must be installed and used at the end of the suspension for one year if it was a first DUII conviction and two years if it was a second or subsequent DUII conviction. Amendments are proposed to OAR 735-064-0070 and 735-070-0080 to include the new time requirements. Further changes are proposed to these rules to clarify that a person who fails to install an IID at the end of the DUII suspension but does install an IID during the year or two-year suspension does not need a hardship permit as they will have met the requirement for reinstatement. ORS 813.602 (6) was amended effective January 1, 2003 such that the suspension for failure to install would be ended if the person installed an IID during the six month period of suspension for failure to install an IID. OAR 735-064-0070 (7) (b) is also be amended to include a naturopathic doctor to the list of medical professionals who may provide a written, signed statement that a person is unable to use an IID due to a medical condition. This change is being made for consistency with other DMV rules and processes as Chapter 434, 2007 Laws (SB 620) adds a Doctor of Naturopathic Medicine to ORS 807.090, which is the statute relating to most of DMV medical based issues. Other changes are being made to make the terminology consistent with the administrative rules in OAR Chapter 735 Division 118 which describe approved ignition interlock devices.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

## NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** DMV Hearings.

**Stat. Auth.:** ORS 183.341, 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.220, 802.230, 813.410, 813.440, 822.515, 822.530, 825.412

**Stats. Implemented:** ORS 802.177, 802.179, 802.200, 802.220, 802.230, 813.410, 813.440, 822.515, 825.410, 825.412

**Proposed Amendments:** 735-010-0045, 735-070-0190, 735-090-0000, 735-090-0020, 735-090-0051, 735-090-0120, 735-090-0130, 735-160-0115

**Last Date for Comment:** 10-22-07

**Summary:** Chapter 849, Oregon Laws 1999 (HB 2525) created the Hearing Officer Panel in a pilot program. Oregon Chapter 75, Oregon Laws 2003 (HB 2526) made the creation permanent and renamed it the Office of Administrative Hearings (OAH). Before the creation of the Hearing Officer Panel, DMV had its own hearing officers to conduct implied consent and APA Hearings in DMV cases. The OAH has maintained staff at DMV Headquarters and some of the responsibilities for tasks related to hearings have become blurred. The OAH intends to consolidate staff and move all staff from the DMV Headquarters building in December 2007. In preparing for this move, DMV has reviewed its rules regarding hearings and believe the amendments proposed in OAR Chapter 735 Division 90 and OAR 735-160-0115 will clarify whether it is DMV, OAH or OAH providing services for DMV that has responsibility for different tasks.

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

**Rules Coordinator:** Lauri Salsbury

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

**Telephone:** (503) 986-3171

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**Oregon Board of Dentistry  
Chapter 818**

**Rule Caption:** Creates/amends rules: Fees; Unprofessional Conduct, Education, Expanded/Restorative Functions, Limited Permits, and Radiologic Proficiency.

**Date:** 11-9-07      **Time:** 7 p.m.      **Location:** OHSU School of Dentistry  
611 SW Campus Dr.,  
Rms. 220 & 225  
Portland, OR

**Hearing Officer:** Board President or Designee

**Stat. Auth.:** ORS 679 & 680

**Other Auth.:** HB 2867 (ch. 379, 2007 Laws) & SB 591 (ch. 812, 2007 Laws)

**Stats. Implemented:** ORS 679.020, 679.140 679.250, 680.050

**Proposed Adoptions:** 818-042-0095

**Proposed Amendments:** 818-001-0087, 818-012-0030, 818-021-0060, 818-021-0070, 818-035-0030, 818-035-0040, 818-035-0065, 818-042-0040, 818-042-0060

**Last Date for Comment:** 11-8-07

**Summary:** The Board is amending 818-001-0087, Fees, to create a fee for Restorative Functions Dental Assistant Certificates.

The Board is amending 818-012-0030, Unprofessional Conduct, to update the charges that dentists are allowed to charge regarding the copying of patient records and adding to unprofessional conduct any agreements made by licensees that would prevent the Board from interviewing witnesses regarding an investigation by the Board.

The Board is amending 818-021-0060, Continuing Education – Dentists, to update types of continuing education credits that may be considered acceptable for fulfilling the continuing education requirements and adding the newly required one hour of Web-based pain management continuing education.

The Board is amending 818-021-0070, Continuing Education – Dental Hygienists, to update types of continuing education credits that may be considered acceptable for fulfilling the continuing education requirements.

The Board is amending 818-035-0030, Additional Functions of Dental Hygienists, to reflect recent legislative changes regarding functions that can be performed without the supervision of a dentist.

The Board is amending 818-035-0040, Expanded Functions of Dental Hygienists, to bring it in line with other recent rule changes.

The Board is amending 818-035-0065, Limited Access Permits, to reflect a change in the requirements of hours and information regarding professional liability insurance.

The Board is amending 818-042-0040, Prohibited Acts, to reflect recent legislative changes, as well as a name change for a state agency named in the rule.

The Board is amending 818-042-0060, Certification – Radiologic Proficiency, to reflect a name change for a state agency named in the rule.

The Board is adopting 818-042-0095, Restorative Functions of Dental Assistants, to allow the placement and finishing of direct alloy or direct composite restorations.

**Rules Coordinator:** Sharon Ingram

**Address:** Oregon Board of Dentistry, 1600 SW 4th Ave., Suite 770, Portland, OR 97201

**Telephone:** (971) 673-3200

.....  
**Oregon Department of Education  
Chapter 581**

**Rule Caption:** Rule will define process for awarding school improvement grants authorized by SB 318.

**Date:** 10-24-07      **Time:** 1 p.m.      **Location:** Rm. 251A  
Public Service Bldg.  
Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051, OL 2007 Ch. 578

**Stats. Implemented:** OL 2007 Ch. 578

**Proposed Amendments:** 581-023-0112

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** In 2007, SB 318 directed the Oregon Department of Education to award grants to school districts, education service districts, and Youth Corrections Education Program, and Juvenile Detention Education Program for school improvement activities designed to increase student achievement. Rule will define terms needing clarity and define process for awarding of grants.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

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**Rule Caption:** Rule defines requirements for teacher/administrator mentoring, including process for awarding grants authorized by HB 2574.

**Date:** 10-24-07      **Time:** 1 p.m.      **Location:** Rm. 251A  
Public Service Bldg.  
Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051, OL 2007 Ch. 863

**Stats. Implemented:** OL 2007 Ch. 863

**Proposed Amendments:** 581-020-0060, 581-020-0065, 581-020-0070, 581-020-0075, 581-020-0080

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** In 2007, HB 2574 directed the Oregon Department of Education to establish requirements for teacher and administrator mentoring programs. Proposed amendments will define requirements for mentoring programs and the process for awarding of grants.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Rule will define process for awarding physical education grants authorized by HB 3141.

**Date:** 10-24-07    **Time:** 1 p.m.    **Location:**  
Rm. 251A  
Public Service Bldg.  
Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051, OL 2007 Ch. 839

**Stats. Implemented:** OL 2007 Ch. 839

**Proposed Adoptions:** 581-020-0250

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** In 2007, HB 3141 directed the Oregon Department of Education to award grants to school districts and public charter schools for purpose of meeting the physical education requirements of Section 5 of HB 3141. Rule will define terms needing clarity and define process for awarding of grants.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

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**Rule Caption:** Rule will define terms and process for collection and reporting of physical education data.

**Date:** 10-24-07    **Time:** 1 p.m.    **Location:**  
Rm. 251A  
Public Service Bldg.  
Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051, OL 2007 Ch. 839

**Stats. Implemented:** OL 2007 Ch. 839

**Proposed Adoptions:** 581-022-1661

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** In 2007, HB 3141 directed the Oregon Department of Education to collect data from school districts concerning the number of minutes of physical education that are provided to students in Kindergarten through grade 8 each school week, the physical capacity of schools to provide required minutes to students in Kindergarten through grade 8 and what additional facilities are required by public schools to provide the required number of minutes to students each school week. Rule will define terms needing clarity and define process for collection and reporting of data.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

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**Rule Caption:** Increases floor for eligibility to receive reimbursement from high cost disabilities fund from \$25,000 to \$30,000.

**Date:** 10-24-07    **Time:** 1 p.m.    **Location:**  
Rm. 251A  
Public Service Bldg.  
Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051, 327.348

**Stats. Implemented:** ORS 327.348

**Proposed Amendments:** 581-023-0104

**Last Date for Comment:** 10-24-07, 5 p.m.

**Summary:** ORS 327.348 increases the amount that a school district must incur before the district can claim funds from the High Cost Disability funds from \$25,000 to \$30,000. The proposed amendment makes that revision.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amend rule creating a new Number VI minor posting for "mixed-use" on-premises licensees.

**Date:** 10-30-07    **Time:** 10 a.m.–12 p.m.    **Location:**  
9079 SE McLoughlin Blvd.  
Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

**Stat. Auth.:** ORS 471, including 471.030, 471.430(3), 471.730(1) & (5)

**Stats. Implemented:** ORS 471.430(3)

**Proposed Amendments:** 845-006-0340

**Last Date for Comment:** 11-13-07

**Summary:** This rule describes the minor postings that the Commission assigns to those licensed premises that allow on-premises consumption. These minor postings define if and under what conditions minors are allowed in areas where alcohol is consumed or there is a drinking environment. Staff proposes revising and clarifying the definition of "drinking environment" to reflect a premises, room or area where the consumption of alcoholic beverages is the predominant activity. The proposed amendments would allow the Commission to determine that there is no "drinking environment" when activities besides "eating meals" (i.e. watching a performance, bowling, etc.) are the predominant activity. In order to standardize how minors are regulated in a premises, room, or area with "mixed-use" operations (i.e. concert halls, performing arts centers, movie theaters, sports arenas, convention centers, or dance halls), staff proposes the deletion of the current section (2)(a)–(j), When Minor Patrons are Allowed, and the addition of a new Number VI minor posting instead. This new Number VI minor posting [section (5)(g)] will put into our rule our current practice of using an approved control plan to regulate minors in certain types of premises. Staff further proposes the addition of a new section (8) regarding the control plan required for a Number VI minor posting, which would include examples of control plan elements which will prevent minors from obtaining alcohol and minimize minors' exposure to a drinking environment, and also establish violations for both failure to follow the approved control plan and failure to make the control plan available. Staff also proposes amending section (7), Permanent Changes to Minor Postings, by separating it from the section on temporary changes, and revising the language to simplify the process for licensees and staff while also clarifying the criteria for permanently changing a minor posting.

**Rules Coordinator:** Jennifer Huntsman

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

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

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**Rule Caption:** Amend rules to allow progressive coupons for both distilled spirits & beer, wine and cider.

**Date:** 10-23-07    **Time:** 10 a.m.–12 p.m.    **Location:**  
9079 SE McLoughlin Blvd.  
Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

**Stats. Implemented:** ORS 471.750(1), 471.730(7)

**Proposed Amendments:** 845-015-0165, 845-007-0015

**Last Date for Comment:** 11-6-07

**Summary:** OAR 845-015-0165 Supplier Rebates on Distilled Spirits: This rule describes the sorts of rebates and coupons which are allowed for distilled spirits, and regulates how rebate coupons are to be redeemed. The Commission has accepted a petition and initiated rulemaking to consider amending the rule by deleting language which only permits progressive-type coupons for a limited period of time. Progressive-type coupons allow a larger discount as progressively more alcohol is purchased. The petitioners essentially request elimination of the current "sunset" provision on progressive-type

## NOTICES OF PROPOSED RULEMAKING

coupons for distilled spirits; the current rule language allowing progressive-type coupons expires March 1, 2008.

OAR 845-007-0015 Advertising Media, Coupons: This rule regulates the sorts of advertising and coupons which are allowed for the sale of beer, wine and cider in Oregon. In response to two petitions, the Commission amended this rule effective November 1, 2006 to allow manufacturers of beer, wine and cider to offer mail-in, money-back rebate coupons for purchases of their products. Because, parallel to the distilled spirits rule, the intent was to allow progressive-type coupons but for a limited time period so as to evaluate their impact, the Commission initiated rulemaking so that the issue of allowing progressive-type coupons could be addressed in both rules simultaneously. This rule is currently silent on the issue of progressive-type coupons. If the "sunset" provision is removed from OAR 845-015-0165, then this rule would need to be amended to expressly allow progressive-type coupons for beer, wine and cider. If the allowance for progressive-type coupons in OAR 845-015-0165 is allowed to "sunset", then this rule would need to be amended to expressly prohibit progressive-type coupons for beer, wine and cider.

**Rules Coordinator:** Jennifer Huntsman

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

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

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**Rule Caption:** Amend rule to change fee for Temporary Sales Licenses and qualifications for certain categories of applicants

**Date:** 10-24-07    **Time:** 10 a.m.–12 p.m.    **Location:** 9079 SE McLoughlin Blvd.  
Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.730(1) & (5)

**Stats. Implemented:** ORS 471.190

**Proposed Amendments:** 845-005-0440

**Last Date for Comment:** 11-7-07

**Summary:** This rule needs amendment in order to comply with statutory changes regarding Temporary Sales Licenses (TSL). The amendments will a) change the TSL fee from \$25 per five-hour period to \$50 per day, b) change the qualification standard for one category of TSL applicants, from minor patrons being allowed anywhere on the licensed premises throughout the time the event occurs, to Commission approval of a written plan detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors, and c) allow a TSL to be issued to a nonprofit trade association whose membership is primarily comprised of persons holding winery licenses or grower sales privilege licenses. The changes need to be made to comply with the 2007 legislature's House Bill 2168. Staff further proposes adding language defining a "License day" in the new section (2) and adding language clarifying the number of license days that can be approved on a single application in the new section (3). Staff also proposes deleting section (12) regarding the prohibition against "ongoing business operation" while replacing it with new language in the new section (15) clarifying the limitation that the same licensee at a single location can be issued TSL's for no more than 31 license days per calendar year. And finally, staff proposes the deletion of language distinguishing between routine and non-routine applications and modifying the timeline prior to the event for application submittal in the new section (7).

**Rules Coordinator:** Jennifer Huntsman

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

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

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

**Rule Caption:** Revision of University Residences annual contract fee.

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

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

**Proposed Amendments:** 574-050-0005

**Last Date for Comment:** 10-22-07

**Summary:** Revision of University Residences annual contract fee.

**Rules Coordinator:** Debra L. Charlton

**Address:** Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

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

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**Real Estate Agency  
Chapter 863**

**Rule Caption:** Review of all licensing administrative rules in chapter 863, division 015.

**Stat. Auth.:** ORS 183, 696

**Other Auth.:** Enrolled 2007 SB 167 effective June 11, 2008

**Stats. Implemented:** ORS 696

**Proposed Amendments:** 863-015-0005, 863-015-0010, 863-015-0015, 863-015-0020, 863-015-0025, 863-015-0030, 863-015-0035, 863-015-0040, 863-015-0045, 863-015-0050, 863-015-0055, 863-015-0060, 863-015-0061, 863-015-0062, 863-015-0064, 863-015-0065, 863-015-0070, 863-015-0075, 863-015-0076, 863-015-0080, 863-015-0085, 863-015-0095, 863-015-0100, 863-015-0120, 863-015-0125, 863-015-0130, 863-015-0135, 863-015-0140, 863-015-0145, 863-015-0150, 863-015-0155, 863-015-0160, 863-015-0165, 863-015-0175, 863-015-0180, 863-015-0185, 863-015-0186, 863-015-0190, 863-015-0195, 863-015-0200, 863-015-0205, 863-015-0210, 863-015-0215, 863-015-0220, 863-015-0225, 863-015-0230, 863-015-0250, 863-015-0255, 863-015-0260, 863-015-0265, 863-015-0275

**Last Date for Comment:** 7-18-08, 5 p.m.

**Summary:** The purpose of this collaborative rulemaking is to make needed changes to current rules, to conform rules to new statutory language, and to incorporate legislative changes that impact the agency. Public hearing dates will be set on specific rules.

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

**Telephone:** (503) 378-4170, ext. 237

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**Rule Caption:** Review of all property management administrative rules in chapter 863, division 025.

**Stat. Auth.:** ORS 183 & 696

**Other Auth.:** Enrolled 2007 SB 166 ef. 1-1-08; Enrolled 2007 SB 167 ef. 6-11-07

**Stats. Implemented:** ORS 696

**Proposed Amendments:** 863-025-0005, 863-025-0010, 863-025-0015, 863-025-0020, 863-025-0025, 863-025-0030, 863-025-0035, 863-025-0040, 863-025-0045, 863-025-0050, 863-025-0055, 863-025-0060, 863-025-0065, 863-025-0070, 863-025-0080

**Last Date for Comment:** 4-1-08, 5 p.m.

**Summary:** The purpose of this collaborative rulemaking is to make needed changes to current rules, to conform rules to new statutory language, and to incorporate legislative changes that impact the agency. Public hearing dates will be set on specific rules.

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

**Telephone:** (503) 378-4170 ext. 237

## NOTICES OF PROPOSED RULEMAKING

**Secretary of State,  
Corporation Division  
Chapter 160**

**Rule Caption:** Regarding notices of intent to hold a Going Out of Business Sale under SB 684 (2007).

**Stat. Auth.:** ORS 56.022

**Stats. Implemented:** SB 684 (2007)

**Proposed Adoptions:** 160-010-0600 – 160-010-0630

**Last Date for Comment:** 10-22-07

**Summary:** This rule clarifies certain aspects of the new Notice of Intent to hold a Going Out of Business sale. It specifies the form and content of the notice, and anticipates completely electronic filing.

**Rules Coordinator:** Tom Wrosch

**Address:** Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

**Telephone:** (503) 986-2371

.....  
**Teacher Standards and Practices Commission  
Chapter 584**

**Rule Caption:** Adopt and amend rules regarding School Psychologists, Charter School educators and other housekeeping clarifications.

**Date:** 10-19-07      **Time:** 1-3 p.m.      **Location:** TSPC Office  
465 Commercial St. NE  
Salem, OR 97301

**Hearing Officer:** Victoria Chamberlain

**Stat. Auth.:** ORS 181, 183, 342

**Stats. Implemented:** ORS 181.525, 183.310 - 183.550, 342.120 - 342-200, 342.223 - 342.232, 342-400, 342.553

**Proposed Adoptions:** 584-017-0351

**Proposed Amendments:** 584-019-0002, 584-019-0003, 584-019-0025, 584-019-0035, 584-019-0040, 584-020-0000, 584-020-0005, 584-020-0010, 584-020-0015, 584-020-0020, 584-020-0025, 584-020-0030, 584-020-0035, 584-020-0040, 584-020-0041, 584-021-0175, 584-023-0005, 584-023-0015, 584-023-0025, 584-036-0060, 584-038-0080, 584-038-0335, 584-038-0336, 584-040-0080, 584-040-0315, 584-050-0002, 584-050-0005, 584-050-0006, 584-050-0009, 584-050-0012, 584-050-0015, 584-050-0016, 584-050-0018, 584-050-0019, 584-050-0020, 584-050-0035, 584-050-0040, 584-050-0042, 584-050-0065, 584-050-0066, 584-050-0067, 584-050-0070, 584-052-0032, 584-060-0012, 584-070-0014

**Proposed Repeals:** 584-019-0020, 584-070-0021, 584-070-0011

**Last Date for Comment:** 11-1-07, 4 p.m.

**Summary:** 1. Adopts new standards for School Psychologist license;  
2. Adds Charter School educators to ethical procedural rules in two rule divisions and makes housekeeping amendments;  
3. Updates educator standards rules to include charter school educators and other housekeeping amendments;  
4. Amends Charter School rules to align with legislative amendments;  
5. Makes housekeeping amendments to several rules.

**Rules Coordinator:** Victoria Chamberlain

**Address:** Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

**Telephone:** (503) 378-6913

# ADMINISTRATIVE RULES

## Board of Pharmacy Chapter 855

**Rule Caption:** Establishes definitions for Tamper Resistant Prescription Forms to facilitate implementation of the Federal Medicaid requirement.

**Adm. Order No.:** BP 2-2007(Temp)

**Filed with Sec. of State:** 8-27-2007

**Certified to be Effective:** 8-27-07 thru 2-18-08

**Notice Publication Date:**

**Rules Adopted:** 855-006-0015, 855-041-0061

**Subject:** August 17, 2007, the US Department of Health and Human Services, Center for Medicaid and State Operations issued a letter of guidance to State Medicaid agencies on section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, regarding the use of tamper-resistant prescription pads, which was signed into law May 25, 2007.

This section amends the Social Security Act that effects payment reimbursements on Medicaid prescriptions that do not meet the new federal requirement for tamper-resistant prescriptions.

On Tuesday, August 21, during a public meeting, held by conference call, the Oregon Board of Pharmacy approved language for adoption as a temporary rule establishing definitions for "electronically transmitted prescription" and "tamper-resistant prescription". It was deemed important that these definitions be in place as soon as possible to facilitate the prescribers' and pharmacists' understanding of the terms and to facilitate implementation of the October 1, 2007 Federal requirement.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-006-0015

### Additional Definitions

(1) Electronically Transmitted Prescription:

(a) Where used in this chapter, Electronically Transmitted Prescription (ETP) means a prescription for a drug or medical device issued by a practitioner who is licensed and authorized to prescribe pursuant to the laws of this state and is acting within the scope of his or her practice, which has been transmitted by an electronic means that may include but is not limited to:

(A) Transmission by facsimile or hand held digital electronic device to a computer or facsimile;

(B) Transmission from a computer to another computer;

(C) Transmission by facsimile to computer; or

(D) Transmission from a computer to facsimile.

(b) ETP does not include an oral prescription that has been reduced to writing by a pharmacist pursuant to OAR 855-041-0085 and does not include prescriptions, or drug or device orders written for inpatient use in a hospital;

(c) For an ETP to be valid, it must contain the name and immediate contact information of the prescriber, and be electronically encrypted or in some manner protected by up-to-date technology from unauthorized access, alteration or use.

(2) Tamper-resistant Prescription:

(a) Where used in this chapter, Tamper-resistant Prescription means a form for the purpose of issuing a hand written or typed prescription, intended to be manually delivered to a pharmacy, which has been developed, produced and formatted to ensure security, integrity and authenticity using currently accepted technologies;

(b) Formatted features may include but are not limited to characteristics such as:

(A) The word "void" appears when photocopies are attempted;

(B) Background ink which reveals attempted alterations;

(C) Heat sensitive ink changes colors;

(D) Penetrating ink to prevent chemical alterations;

(E) Watermark(s) which cannot be photocopied;

(F) Coin reactive ink reveals word when rubbed with a coin;

(G) Sequential numbering.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: BP 2-2007(Temp), f. & cert. ef. 8-27-07 thru 2-18-08

## 855-041-0061

### Tamper-resistant Prescription

When the use of a tamper-resistant prescription is required by any federal or state law or rule, the term "tamper-resistant" shall have the meaning as defined in OAR 855-006-0015.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: BP 2-2007(Temp), f. & cert. ef. 8-27-07 thru 2-18-08

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## Bureau of Labor and Industries

### Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2007.

**Adm. Order No.:** BLI 22-2007

**Filed with Sec. of State:** 8-30-2007

**Certified to be Effective:** 8-30-07

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2007.

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

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2007, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2007, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006);

(b) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 22, 2007);

(c) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 6, 2007);

(d) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 13, 2007);

(e) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 7, 2007);

(f) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 17, 2007).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2007, 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 are listed in the blue pages of the phone book. Copies are also available on the bureau's web page at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may 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 #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI

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14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2007.

**Adm. Order No.:** BLI 23-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-4-07

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2007.

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

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2007, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2007, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006);

(b) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 22, 2007);

(c) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 6, 2007);

(d) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 13, 2007);

(e) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 7, 2007);

(f) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 17, 2007);

(g) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 24, 2007).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2007, 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 are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may 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 #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2007.

**Adm. Order No.:** BLI 24-2007

**Filed with Sec. of State:** 9-11-2007

**Certified to be Effective:** 9-12-07

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2007.

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

## 839-025-0700

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(c) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 6, 2007);

(d) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 13, 2007);

(e) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 7, 2007).

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(f) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 17, 2007).

(g) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 24, 2007)

(h) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective September 7, 2007)

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Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 5-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07

## Construction Contractors Board Chapter 812

**Rule Caption:** Regarding providing SSN, granting a license to parties with criminal convictions, and criteria for higher bond requirements.

**Adm. Order No.:** CCB 6-2007

**Filed with Sec. of State:** 8-29-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 812-003-0260, 812-003-0450, 812-005-0210

**Subject:** • OAR 812-003-0260 is amended to clarify that sole proprietorships and partners in partnership, if partners are human beings, are required to provide their social security number to CCB on their application form.

• OAR 812-003-0450 is amended to establish the conditions under which CCB will grant a license to applicants or licensees who have had a criminal conviction.

• OAR 812-005-0210 is amended to provide objective criteria the agency will use when requiring higher bond levels mandated by the agency pursuant to OAR 812-005-0210(1)(b).

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

### 812-003-0260

#### Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name, date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust; or

(G) All members of a limited liability company, and if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees or members of the entity that is a member of the limited liability company that is the subject of this paragraph.

(d) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(e) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(f) Category of license requested as required under OAR 812-003-0130;

(g) Name and identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.072 or is otherwise exempt under division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) Litigation, complaint, and licensing history;

(k) Criminal background;

(l) Independent contractor certification statement and 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; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond as required under OAR 812-003-0150; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.072, 701.075, 701.085, 701.105, & 701.125

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07

# ADMINISTRATIVE RULES

## 812-003-0450

### License Fitness Standards

(1) In considering whether to sanction an applicant or licensee pursuant to ORS 701.135(1)(h)(A)–(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.

(2) Fitness to engage in construction contracting includes, but is not limited to the ability to:

- (a) Refrain from violent, threatening, intimidating or sexually predatory behavior;
- (b) Refrain from dishonest or fraudulent conduct; or
- (c) Be financially responsible.

(3) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(4) Applicants or licensees that meet all of the conditions listed in subsections (4)(a)–(c) of this section will be considered to meet the fitness standards if:

- (a) The conviction is more than five years old;
- (b) The applicant or licensee has been out of prison for at least three years; and
- (c) The applicant or licensee has been off probation or parole for at least 24 months with no subsequent arrests.

(5) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.135(1)(h)(A)–(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(6) Failure to provide requested information in (2) of this section may result in the denial of a license.

(7) A contractor licensed under ORS 701 must immediately report to the Board if the contractor is convicted of any crime listed in ORS 701.135(1)(h)(A)–(I).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.135

Hist.: CCB 3-2007, f. 4-24-07, cert. ef. 5-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07

## 812-005-0210

### Conditions to Require an Increased Bond

(1) Under ORS 701.085(8), the agency may require a bond of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance;

(b) Five or more breach of contract complaints filed under ORS 701.139 to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint;

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond.

(2) The amount of the increased bond required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the amount required under ORS 701.085;

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085;

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond in the amount of five times the normal amount required under ORS 701.085.

(3) The amount of increased bond the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond amount required under ORS 701.085 if five or more complaints are received in any twelve-month period;

(b) Three times the bond amount required under ORS 701.085 if five or more complaints are received in any six-month period;

(c) Five times the bond amount required under ORS 701.085 if five or more complaints are received in any three-month period.

(4) The amount of the increased bond required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the bond amount required under ORS 701.085;

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085;

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond five times the bond amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.005, 701.077 & 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(a)-(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07

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## Department of Administrative Services, Human Resource Services Division Chapter 105

**Rule Caption:** Establishes methods of providing veterans and disabled veterans with preference in employment with the State.

**Adm. Order No.:** HRSD 3-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07 thru 3-3-08

**Notice Publication Date:**

**Rules Adopted:** 105-040-0015

**Subject:** Establishes manner in which State of Oregon agencies provide preference points to qualifying veterans and disabled veterans in scored employment examination processes and establishes manner in which preference is provided to qualifying veterans and disabled veterans in un-scored employment examination processes. Designates methods used by state agencies to provide preference to veterans and disabled veterans in different selection processes including application examinations, interviews and final hiring decision. Specifies process by which veteran or disabled veteran may request and receive a written explanation for a decision not to appoint the veteran or disabled veteran applicant.

**Rules Coordinator:** Cheryl Knottingham—(503) 378-2349, ext. 325

## 105-040-0015

### Veteran's Preference in Employment

**Applicability:** Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) **Definitions:** (see also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies):

(a) **Initial Application Screening:** A process used by an agency to determine, based upon an application for employment, whether such applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required at the time of application for employment.

(b) **Application Examination:** The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks,

(c) **Veteran and Disabled Veteran:** As defined by ORS 408.225.

(2) **Application of preference points upon Initial Application Screening:** Qualifying Veterans and Disabled Veterans are provided with preference points as follows:

(a) Five Veteran's preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application;

(b) Ten Disabled Veteran's preference points are added upon Initial Application Screening when an applicant submits as verification of eligi-

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bility a copy of the Certificate or Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215;

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veteran's and Disabled Veteran's); or

(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five preference points to a Veteran's score and add 10 preference points to a Disabled Veteran's score; or

(B) Un-scored Application Examinations: Un-scored Application Examinations done by application sorting into levels based on desired attributes, or other criteria to determine those in an applicant pool to be considered further for Appointment will be accomplished by:

(i) Advancing the application of a Veteran one level within a sorting process; or

(ii) Advancing an application of a Disabled Veteran two levels within a sorting process.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran is provided preference in un-scored interview processes through an assessment of the Veteran's or Disabled Veteran's merits conducted by the Appointing Authority or designee. A Veteran or Disabled Veteran who meets all or substantially all of the agency's purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee upon completion of the Application Examination process, then the Veteran or Disabled Veteran shall be ranked more highly than non-veteran applicants and, a Disabled Veteran shall be ranked more highly than both non-veteran and Veteran applicants.

(6) Preference of the type described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran's or Disabled Veteran's merits or qualifications.

(7) A Veteran or a Disabled Veteran applicant who is not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected for a position. The agency shall send, in writing, within 30 calendar days from receiving the written request, to the Veteran or the Disabled Veteran applicant, the employing agency's reasons for the decision not to appoint the Veteran or Disabled Veteran.

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

Stat. Auth: ORS 240.145(3), 240.250

Stats. Implemented: ORS 408.225, 408.230, 408.235

Hist.: HRSD 3-2007(Temp), f. & cert eff. 9-5-07 thru 3-3-08

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## Department of Agriculture Chapter 603

**Rule Caption:** Makes commissions responsible for obtaining audits; changes how the oversight program fee is calculated.

**Adm. Order No.:** DOA 14-2007

**Filed with Sec. of State:** 8-23-2007

**Certified to be Effective:** 8-23-07

**Notice Publication Date:** 5-1-07

**Rules Amended:** 603-042-0010, 603-042-0020

**Rules Repealed:** 603-041-0005, 603-041-0010

**Subject:** Makes commodity commissions responsible for obtaining a financial statement audit at least one every five years. Sets for a

fiscal evaluation tool option for commissions with annual assessment income of \$50,000 or less.

Changes the method used for calculating Commodity Commission Oversight Program fee: (1) calls for using the assessment income from the year previous to the billing period; (2) raises the maximum fee to \$12,500; (3) lowers the minimum fee to \$500 for commissions with annual assessment income of \$30,000 or less.

Repeals election related rules; since 2003 the ODA Director has appointment authority for all Commodity Commissioners.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-042-0010

### Monitoring of Fiscal Practices and Procedures

(1) To facilitate the monitoring of the fiscal practices and procedures of all commodity commissions by the Department under ORS 576.066, in order to assure that commodity commissions are complying with applicable laws and administrative rules and are maintaining good business management practices, and pursuant to ORS 576.395, all commodity commissions shall comply with the requirements of this section.

(2) As soon as practicable after preparation, copies of the following documents shall be submitted to the Commodity Commission Oversight Program Office of the Department:

(a) Minutes of regular or special meetings;

(b) Administrative rules, including all related statements of the rules;

(c) Executed contracts, agreements, memoranda of understanding or similar documents, and addenda thereto;

(d) Statements of internal operational policies;

(e) Periodic reports or summaries of the fiscal status of the commissions; and

(f) Fidelity bonds covering authorized agent who receives or disburses funds, filed with the commissions under either ORS 576.385, 577.550, or 578.110.

(3) Not later than 60 days after the end of each fiscal year, commission must prepare an annual financial statement of commission revenues and expenses, which shall be made available to the public, submitted to the Commodity Commission Oversight Program Office of the Department, and provided to the Secretary of State. An annual financial statement must include the following:

(a) A balance sheet combining all funds;

(b) A statement of budgeted and actual revenues and expenditures, indicating thereon any changes in fund balances; and

(c) Any appropriate notes of explanation or disclosure.

(4) Every five years, or with greater frequency as determined by each Commission, each Commission will acquire either an independent fiscal evaluation or a financial statement audit of the Commission's accounting records, books and fiscal procedures. The constitutional and statutory audit authority of the Secretary of State is recognized as applicable to commodity commissions, and upon either a request of the Secretary of State or a request of a commodity commission, the Secretary of State may audit a commission either in lieu of or in addition to an Independent Fiscal Evaluation or audit:

(a) Each Commission shall determine the number of years that will be evaluated or audited;

(b) Each Commission will write a letter to the Secretary of State Audits Division seeking permission to obtain a financial statement audit, and obtain permission from the Audits Division before conducting an audit;

(c) Commissions shall follow competitive bidding procedures to obtain financial evaluation or audit services when the value of service is in excess of \$10,000, pursuant to OAR 122-050;

(d) Financial statement evaluations and audits shall follow generally accepted accounting principles.

(5) Independent Fiscal Evaluations shall be an option only for those Commissions with annual assessment income of \$50,000 or less and shall follow the Fiscal Evaluation Tool adopted by the Commodity Commission Oversight Program Advisory Committee. Each commission that selects the Independent Fiscal Evaluation method shall take official action to name a committee to conduct the evaluation. The committee shall not contain any member who was authorized to sign commission checks during the period that will be evaluated.

(6) One copy of the draft Independent Fiscal Evaluation report or the audit report, whichever the case, shall be mailed via certified mail to the home address of the Commission chairman or chairwoman for review, and one copy shall be mailed via first class mail to the Department's office of the Commodity Commission Oversight Program.

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(7) One copy of the final report shall be mailed to the home address of the Commission chairman or chairwoman; a second copy of the final report shall be provided to the Commission's administrator. In addition, one copy of the final report shall be mailed to the Department's office of the Commodity Commission Oversight Program and one copy shall be mailed to the Secretary of State Audits Division.

(8) Whenever a Commission administrator changes, the Commission shall cause an audit to be conducted pursuant to ORS 297.210(2).

(9) The accounting records, books and procedures of all commodity commissions shall be established and maintained in accordance with generally accepted accounting principles.

(10) All new contracts, memoranda of understanding or similar documents committing commissions' funds or actions, and all addenda thereto, shall be submitted to and reviewed by the Department of Agriculture's office of the Commodity Commission Oversight Program prior to execution.

(11) The Attorney General's Model and Uniform Rules of Procedure under the Administrative Procedure Act shall be followed in all matters except where a different procedure is prescribed by a commodity commission's statute or rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561, 576, 577 & 578

Stat. Implemented: ORS 561, 576, 577 & 578

Hist.: AD 7-1983, f. & ef. 7-8-83 ; DOA 14-2007, f. & cert. ef. 8-23-07; DOA 14-2007, f. & cert. ef. 8-23-07

## 603-042-0020

### Commodity Commission Fees for Commodity Commission Program

(1) Pursuant to ORS 576.320, the Department of Agriculture may collect from the agricultural commodity commissions an annual fee for the oversight responsibilities provided by the Department through ORS chapters 576, 577, and 578.

(2) The total fee will be calculated on a base fee plus any surcharge set by the Oregon Department of Agriculture. The Oregon Department of Agriculture shall consult with the Commodity Commission Oversight Program Advisory Committee when determining the surcharge.

(3) The surcharge will be a flat rate assessed to each commission.

(4) A base fee of \$125,000 for commodity commissions shall be calculated on the following formula:

(a) The total assessments for all commissions shall be determined from the annual financial reports submitted to the ODA. The base fee shall be based on the actual assessment income received in the July 1 through June 30 fiscal year from one year prior to the calculation (for example, the 2005-06 fiscal year assessment income shall be used to calculate the fee billed no later than September 28, 2007);

(b) Each commission shall first be assessed \$750, except those with assessment income of \$30,000 or less, which will be assessed a maximum of \$500. A shortfall shall be calculated by totaling the \$750 and \$500 assessments for each commission, and deducting the resulting total from \$125,000;

(c) An assessment factor shall be determined by dividing each commission's fiscal year assessment collection by the total assessment income collected from all commodity commissions;

(d) The shortfall shall be multiplied by the assessment factor to determine the amount of payment owed by each commission to be added to the amount assessed in (4)(b) for a combined payment figure. Commissions with assessment income of \$30,000 or less will not be assessed the shortfall; and

(e) If a shortfall continues to exist, the second shortfall shall be multiplied by a factor to achieve the \$125,000 and then added to the payment figure determined after the first shortfall calculation.

(5) The above base fee formula results in the maximum payment per commission of \$12,500 and a minimum payment of \$750 per year except for those commissions with assessment income of \$30,000 or less, which will be assessed a maximum of \$500.

(6) The Department shall invoice each commission and the total fees shall be paid to the Department no later than October 31 of each year.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 561, 576

Hist.: DOA 11-2000, f. & cert. ef. 4-18-00; DOA 14-2007, f. & cert. ef. 8-23-07

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### Department of Agriculture, Oregon Dungeness Crab Commission Chapter 645

**Rule Caption:** Sets per diem and reimbursement for a substitute rates for commissioners that correspond with ORS 292.495.

**Adm. Order No.:** ODCC 1-2007

**Filed with Sec. of State:** 9-13-2007

**Certified to be Effective:** 9-13-07

**Notice Publication Date:** 8-1-07

**Rules Adopted:** 645-040-0010, 645-040-0020, 645-040-0030

**Subject:** Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem and reimbursement for hiring a substitute correspond with limit set in ORS 292.495.

**Rules Coordinator:** Shirley D. Velazquez—(503) 267-5810

## 645-040-0010

### Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Dungeness Crab Commission must pay any member of the commission, other than a member who is employed in full-time public service, compensation for each day or portion thereof during which the member is actually engaged in the performance of official commission duties.

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1).

(3) In order to receive compensation, a member must submit to the Oregon Dungeness Crab Commission a written claim for compensation by the 1st day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416

Stat. Implemented: ORS 292.495, 576.206(7), 576.265

Hist.: ODCC 1-2007, f. & cert. ef. 9-13-07

## 645-040-0020

### Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)-(6) of this rule, a member of the Oregon Dungeness Crab Commission, including a member employed in full-time public service, may receive actual and necessary travel and other expenses actually incurred in the performance of the member's official duties.

(2) In order to receive reimbursement of actual and necessary travel and other expenses, a member must submit to the Oregon Dungeness Crab Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 1st day of the calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

(a) Date on which the member incurred the expense; and

(b) Nature of the expense; and

(c) Amount of the expense.

(3) An expense that exceeds \$500.00 must be authorized by the Oregon Dungeness Crab Commission before a member incurs the expense, and accompanied by a receipt before reimbursement is made.

(4) For the purposes of this rule, "travel and other expenses" are limited to reasonable expenses. An expense is reasonable if:

(a) It is an actual expense incurred by a member in carrying out official commission business, which is within the member's scope of responsibilities; and

(b) The expense is necessary to enable the member to carry out official commission business.

(5) For the purposes of this rule, "travel and other expenses" includes:

(a) Meals.

(b) Overnight lodging.

(c) Transportation.

(d) Postage.

(e) Cost of attending an event associated with promotion of a commodity, such as a festival, county fair or state fair.

(6) For the purposes of this rule, "travel and other expenses" does not include:

(a) Attendance at a sporting event, concert, theatrical performance, movie, or dance venue, including such events that occur at a fair, festival or stock show.

(b) In-room movie rental.

(c) Snacks and beverages offered for sale by a place of lodging.

(d) Long distance telephone charges at a place of lodging.

(e) Use of a gym or health club.

(f) Cost of a gift for a host, business associate, commission member or employee, or family member.

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(g) Alcoholic beverages.

Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440

Stat. Implemented: ORS 292.495, 576.206(7), 576.265

Hist.: ODCC 1-2007, f. & cert. ef. 9-13-07

## 645-040-0030

### Reimbursement for Hiring a Substitute

(1) As used in OAR 645-40-0020, "other expenses" includes expenses incurred by a member of the Oregon Dungeness Crab Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed \$25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495.

Stat. Implemented: ORS 292.495, 576.206(7), 576.265

Hist.: ODCC 1-2007, f. & cert. ef. 9-13-07

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## Department of Community Colleges and Workforce Development

### Chapter 589

**Rule Caption:** Definitions for Division 6, Community College Course Approval.

**Adm. Order No.:** DCCWD 3-2007

**Filed with Sec. of State:** 9-6-2007

**Certified to be Effective:** 9-6-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 589-006-0050

**Subject:** Adds the following definition and updates subsequent definitions numbering:

(11) "Career Pathways Certificate of Completion" is defined as a form of certificate awarded by a community college for meeting specific technical skill proficiency requirements that meet an employment need. Career Pathways Certificates pertain to a grouping of 12 to 44 credits that are wholly contained in an approved Associate of Applied Science (AAS) Degree/Option or an Independent Certificate of Completion (with a minimum size of 45 credits), have a defined job entry point, represent collegiate-level work, and meet State Board of Education's standards and criteria.

**Rules Coordinator:** Linda Hutchins—(503) 378-8648, ext. 474

## 589-006-0050

### Definitions for Division 006, Chapter 589

For the purposes of division 006 of chapter 589, the following definitions apply:

(1) "Academic standard of achievement" is defined as demonstrated achievement, proficiency, or measured learning acknowledged as meeting a predetermined academic standard. Normally noted through a record transcribed and maintained by the college.

(2) "Adverse intersegmental impact" is defined as the detriment of duplication that would fall on a school or its students in a segment other than that of the school proposing the new program or location, except that a publicly funded program or location proposed by a private school or other organization has adverse intersegmental impact if it is detrimental to a school in any of the five segments.

(3) "Associate degree" is defined as a state-approved lower division undergraduate award issued by a community college that indicates satisfactory completion of a course of study approved by the community college board.

(4) "Associate of Applied Science" is defined as a state-approved associate degree that is intended to prepare graduates for direct entry into the workforce. AAS degrees may also help to prepare students for career advancement, occupational licensure, or further study at the baccalaureate level.

(5) "Associate of Applied Science degree option" is defined as a transcribed specialization within a state-approved associate degree that is intended to prepare graduates for direct entry into the workforce.

(6) "Associate of Arts — Oregon Transfer degree" is defined as a state approved associate degree that is intended to prepare students to transfer into upper division courses for a baccalaureate degree.

(7) "Associate of General Studies" is defined as a state-approved associate degree that is intended to meet the individual student need using a variety of collegiate level courses to meet degree requirements.

(8) "Associate of Science" is defined as a state-approved associate degree that is intended to prepare student to transfer into an upper division baccalaureate degree program in areas such as Business, Science, Mathematics, and Engineering. The Associate of Science degree is often designed to meet the requirements of a specific receiving institution.

(9) "Business and Industry Based program" is defined as an Associate of Applied Science degree and/or certificate of completion designed for employers to meet specific occupational and educational needs of their current employees.

(10) "Certificate of Completion" is defined as a form of recognition awarded by a community college for meeting minimum occupational course, curriculum or proficiency requirements. Certificates of completion must be state-approved, have a defined job entry point, represent collegiate-level work, and meet State Board of Education's standards and criteria.

(11) "Career Pathways Certificate of Completion" is defined as a form of certificate awarded by a community college for meeting specific technical skill proficiency requirements that meet an employment need. Career Pathways Certificates pertain to a grouping of 12 to 44 credits that are wholly contained in an approved Associate of Applied Science (AAS) Degree/Option or an Independent Certificate of Completion (with a minimum size of 45 credits), have a defined job entry point, represent collegiate-level work, and meet State Board of Education's standards and criteria.

(12) "Clock/contact hours" is defined as one clock (or contact) hour is 60 minutes long. No more than 10 minutes of each hour can be used for a regularly-scheduled break or passing period.

(13) "Collegiate level work" is defined as course and program content that provides skills and information beyond that which is normally gained before or during the secondary level. It is characterized by analysis, synthesis, and application in which students demonstrate an integration of skills and critical thinking. It is a term that denotes more than college/university transfer courses. It also includes professional technical education and other courses that exceed basic skills, workplace readiness, and fundamental basic skills. Courses must be collegiate level if used to fulfill a requirement in an associate degree, option or certificate of completion program.

(14) "Complementary courses in general education" are defined as courses that are designed to serve as supportive parts of the professional technical programs. They are designed to aid the students in attaining a higher degree of self-development and to assist the student to make a maximum contribution as a citizen in a democratic society.

(15) "Continuing Education Units (CEUs)" is defined as a form of recognition given for completion of a unit of training for selected occupational supplementary courses. CEUs are based on time attended and not on the assessment of learning.

(16) "Credit" is defined as an indication or certification by a school that a student has completed a unit of study, demonstrated achievement or proficiency, or manifested measured learning outside of school, so as to have satisfied a portion of the requirements for a degree or for any other academic recognition offered by the school.

(17) "Credit course" is defined as courses offered by the college as part of a lower-division transfer degree or approved professional technical program.

(18) "Degree" is defined as any academic or honorary title, rank, or status that may be used for any purpose whatsoever, which is designated by a symbol or series of letters or words such as, but not limited to, associate, bachelor, master, or doctor, and forms or abbreviations thereof that signifies, purports, or may generally be taken to signify

(a) Completion of a course of instruction at the college or university level; or

(b) Demonstration of achievement or proficiency comparable to such completion; or

(c) Recognition for nonacademic learning, public service, or any other reason of distinction comparable to such completion.

(19) "Deleted program" is defined as the permanent elimination of a program previously approved by the local and State Boards of Education.

(20) "Detrimental Duplication" is defined as a situation that occurs when recruitment of students for a new program or location will tend to redirect prospects from a fixed pool concomitant with the application of publicly funded educational cost subsidies, thereby significantly reducing enrollment in existing similar programs for which student financial aid is available but the number of prospective enrollees is limited by non-financial

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cial factors such as interest, qualifications needed for admission, internship openings for students, and job openings for graduates.

(21) "Direct control" is defined as the community college maintains direct and sole responsibility for the academic quality of all aspects of all programs and courses through the management and supervision by faculty and institutional administrators.

(22) "Educational programs" are defined as state-approved certificate of completion and associate degree programs.

(23) "General education" is defined as the introduction to the content and methodology of the major areas of knowledge -- the humanities and fine arts, the natural sciences, mathematics, and the social sciences and help students to develop the mental skills that will make them more effective learners and citizens in a democratic society.

(24) "Hobby course" is defined as any directed activity engaged in by individuals as an avocation resulting in a collection of objects or in the production of works.

(25) "Intersegmental" is defined as across segments of education. See "Segments of Education."

(26) "Laboratory (Lab)" is defined as an instructional setting in which students work independently with the instructor available and in the instructional area for assistance and supervision.

(27) "Lecture" is defined as an instructional setting in which the instructor delivers information.

(28) "Lecture/laboratory (Lecture/Lab)" is defined as an instructional setting in which the instructor gives short presentations and supervises student application of content. Instructional methods are integrated; lecture and lab are dependent upon each other for the student's educational success.

(29) "Local community college program approval" is defined as the approval by the local community college board of education or their designee indicating that a program has met or exceeded local community college program standards and processes prior to being submitted to the State Board of Education or their designee for review.

(30) "Lower Division Collegiate" (LDC) is defined as collegiate level work in areas of instruction that parallel the offerings of the first two years of Oregon's four-year institutions, and are generally accepted for transfer by Oregon's public higher education institutions.

(31) "New location of an approved program" is defined as a facility where students collectively may receive instruction in the program face-to-face or through telecommunications in a community not previously so served, including a non-Oregon location within 50 miles of where a comparable program is located in Oregon."

(32) "New program" is defined as any program not previously approved by the State Board of Education, Office of Degree Authorization of the Oregon Student Assistance Commission or by their predecessor review authorities, regardless of whether it comprises new instructional components or the reassembled components of existing programs.

(33) "Non-credit course" is defined as a course that does not offer college credit for completion and generally cannot be used as part of a credit based degree or certificate program. No assessment of learning generally takes place.

(34) "Occupational preparatory program" is defined as a state-approved professional technical program which is designed to prepare persons for employment in a specified occupation or cluster of closely related occupations.

(35) "Occupational supplementary program" is defined as a state-approved program designed for individuals who have already entered an occupation but seek to improve their occupational skills and knowledge in order to achieve employment stability or advancement.

(36) "Other Education Courses" are defined as general self-improvement courses intended primarily for adults and independent of professional technical or lower division curricula. These courses are not intended for programs that may lead toward a baccalaureate degree. These courses may be used as prerequisite and elective courses in professional technical degree and certificate programs. Other Education Courses include areas of instruction not otherwise included in the professional technical education and lower-division collegiate categories. Other Education course areas include but are not limited to adult basic education (ABE), general education development (GED), adult high school completion (AHS), English as a second language (ESL), and self-improvement courses not fitting into previously listed categories.

(37) "Professional technical courses" are defined as the collegiate level occupational preparatory or occupational supplementary courses that are designed to prepare persons for entrance into and employment stability and advancement in specific occupations or clusters of closely related occu-

pations. Professional technical courses include both occupational preparatory and occupational supplementary courses.

(38) "Professional technical program" is defined as collegiate level coursework that is designed to prepare persons for entrance into and employment stability and advancement in specific occupations or clusters of closely related occupations. Professional technical programs result in the achievement of a state-approved certificate of completion, associate of applied science degree or associate of applied science degree option.

(39) "Program" is defined as any organized teaching and learning activity in which successful completion qualifies a student for a degree, a certificate of substantial academic or vocational learning short of a degree, a certificate of preparation related to new or modified occupational licensure, or another academic or vocational certificate that represents a shorter period of activity but has value as a public credential.

(40) "Program amendment" is defined as a change in state-approved program submitted to the State Board of Education or their designee by a college to receive approval to revise the program. Revisions include minor changes in curriculum content, courses, program outcomes and titles.

(41) "Program approval" is defined as the process by which the local community college board and the State Board of Education acknowledge that a program has met the applicable program standards and requirements of the local and state boards or their designees. Program approval also includes the authorization of the program by the Office of Degree Authorization of the Student Assistance Commission.

(42) "Publicly funded" is defined as controlled by an agency of government or by a public corporation as occurs in Oregon community colleges, institutions of higher education, and the Oregon Health Sciences University, regardless of specific sources and applications of funds, or controlled by a private entity but subsidized with appropriated public funds received directly for program operation rather than indirectly in the form of student financial aid.

(43) "Recognition award" is defined as an award given to a student by a community college for completion of a state-approved course or courses or for attendance and participation in workshops or seminars. Recognition awards may not be called "certificates of completion" or "certificates" and may not be included on the official student transcript.

(44) "Recreational course" is defined as any directed activity in which individuals participate with the purpose of engaging in physical activity, except those activities which focus on physical fitness or which directly relate to the initial skill development of physical activities in which individuals could reasonably be expected to participate during most of their adult lives.

(45) "Related instruction" is defined as programs of study for which applied or specialized associate degrees are granted, or programs of an academic year or more in length for which certificates are granted. They must contain a recognizable body of instruction in program-related areas of:

- (a) Communication;
- (b) Computation; and

(c) Human relations. Additional topics which should be covered as appropriate include safety, industrial safety, and environmental awareness. Related instruction areas are either embedded within the program curriculum or taught in blocks of specialized instruction.

(46) "Segment of education" is defined as any one of the following:

(a) Oregon community colleges, community college districts, or service districts, together with every other postsecondary program or location ultimately sponsored by the State Board of Education;

(b) Oregon state-owned institutions of higher education and related organizational units, together with every other postsecondary program or location ultimately sponsored by the State Board of Higher Education;

(c) The Oregon Health Sciences University, any hereafter created public corporations for higher education, and any organizational units of such public corporations, together with every postsecondary program or location under their ultimate sponsorship;

(d) Private Oregon degree-granting institutions and organizations and all non-Oregon entities offering residential instruction in Oregon for credit toward full degrees approved by the Office of Degree Authorization, together with every postsecondary program or location they sponsor; and

(e) Private nondegree career schools offering instruction in Oregon and licensed under ORS 345, together with every postsecondary program or location they sponsor.

(47) "Stand alone occupational prep courses" are defined as courses designed for individuals seeking to build knowledge and skills for initial employment in an area not included in one or more of a community college's existing approved Associate of Applied Science degree or certificate of completion programs. Also see Occupational Preparatory Course.

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(48) "Statewide or regional consortium program" is defined as an associate of applied science and/or certificate of completion program which is developed, applied for and continuously monitored by a partnership of colleges to address a specific program need through a cohesive and transferable curriculum among participating colleges.

(49) "State approved program" is defined as a community college certificate of completion or associate degree program that has met and continues to meet the standards and criteria of the State Board of Education and has received authorization by the Office of Degree Authorization of the Student Assistance Commission.

(50) "Suspended program" is defined as the temporary removal of a state-approved program from the overall curriculum of a community college by the local community college board of education or their designee.

Stat. Auth.: ORS 326.051

Stats. Implemented:

Hist.: DCCWD 1-2003, f. & cert. ef. 1-9-03; DCCWD 5-2003, f. & cert. ef. 10-20-03; DCCWD 1-2007(Temp), f. & cert. ef. 6-15-07 thru 12-11-07; DCCWD 3-2007, f. & cert. ef. 9-6-07

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

**Rule Caption:** Clarifies the code requirements on installations of manufactured dwellings in floodways.

**Adm. Order No.:** BCD 9-2007(Temp)

**Filed with Sec. of State:** 8-21-2007

**Certified to be Effective:** 8-21-07 thru 2-17-08

**Notice Publication Date:**

**Rules Amended:** 918-500-0021

**Subject:** This rule amends the 2002 Manufactured Dwelling and Park Specialty Code to allow a building official to determine if a manufactured dwelling may be installed in a floodway, conforming with federal requirements.

**Rules Coordinator:** Marianne Manning—(503) 373-7438

### 918-500-0021

#### Amendments to the Manufactured Dwelling and Park Specialty Code

(1) The **2002 Oregon Manufactured Dwelling and Park Specialty Code** is adopted as the recognized standard for manufactured dwelling use pursuant to chapter 918, division 8. Amendments adopted are placed in this rule, showing the section reference, a descriptive caption and a short description of the amendment.

(2) Effective April 1, 2005:

(a) Amend Section 9-5.3(k) and 9-6.3(n) by removing reference to clearances between dwellings on adjacent lots and property lines.

(b) Amend Table 9-A by changing notations on separations for dwellings on same lot and dwellings on adjacent lots.

(c) Amend Table 9-B by changing notations on several setbacks and clearances and adding notation number 5.

(3) Effective August 21, 2007, Section 3-2.4.2 is amended to clarify installation requirements for manufactured dwellings in floodways.

[Publications: Publications referenced are available from agency]

Stat. Auth.: ORS 446.100 & 446.185

Stats. Implemented: ORS 446.100 & 445.110

Hist.: BCD 3-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 9-2007(Temp), f. & cert. ef. 8-21-07 thru 2-17-08

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Rulemaking Relating to Small Employer Health Benefit Plans.

**Adm. Order No.:** ID 5-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-20-07 thru 2-15-08

**Notice Publication Date:**

**Rules Amended:** 836-053-0021, 836-053-0030, 836-053-0040, 836-053-0050, 836-053-0060, 836-053-0065

**Rules Suspended:** 836-053-0016, 836-053-0026

**Subject:** This rulemaking implements chapter 389, Oregon Laws 2007 (Enrolled House Bill 2002). The legislation makes several changes to the statutes governing small employer health benefit plans. The proposed rules add specifics and clarifications to these

changes. For example, the rules prescribe a group profile form for use by carriers in determining whether an employer is a small employer, and phase in the rate band changes from the legislation.

**Rules Coordinator:** Sue Munson—(503) 947-7272

### 836-053-0016

#### Categories of Small Employers

As used in OAR 836-053-0016 to 836-053-0070:

(1) "Oregon small employer" means a small employer as defined in ORS 743.730. In general, an Oregon small employer is an employer with at least two and no more than 25 eligible employees, as defined in ORS 743.730, who work on a regularly scheduled basis of 17.5 or more hours per week. For purposes of determining if an employer is an Oregon small employer, the proprietor or partners of a business may be included as employees, as provided in ORS 743.730.

(2) "HIPAA small employer" means a small employer as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA, 42 U.S.C. 300gg-91) who does not otherwise qualify as an Oregon small employer. In general, a HIPAA small employer is an employer with at least two and no more than 50 partial- and full-time employees. For purposes of determining if an employer is a HIPAA small employer, the proprietor or partners of a business are not included as employees, as provided in federal regulations at 29 CFR 2510.3-3.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240

Stats. Implemented: ORS 743.730 et seq.

Hist.: ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; Suspended by ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

### 836-053-0021

#### Plans Offered to Oregon Small Employers

The following provisions apply to health benefit plans offered to small employers:

(1) A small employer carrier shall issue a plan to a small employer if the employee eligibility criteria established by the small employer meet the requirements of this section. After April 1, 2008, a carrier must use the Oregon Standardized Group Profile Form established by the Director to collect data to determine the applicable type of group coverage for an employer and to provide disclosure notices as required for small employers. The eligibility criteria must be based solely on weekly work hours and completion of a group eligibility waiting period, if applicable, and those criteria must meet the following standards:

(a) The work hours requirement may range from 17.5 to 40 hours per week, but a single, uniform requirement must apply to all employees of the employer; and

(b) A waiting period requirement may not exceed 90 days and a single, uniform requirement must apply to all employees of the employer.

(2) A carrier must include a sole proprietor as an employee.

(3) Employee eligibility criteria must be limited to those described in section (1) of this rule. Impermissible criteria include:

(a) Health status;

(b) Disability; and

(c) A requirement that an employee be actively at work when coverage would otherwise begin.

(4) A small employer carrier may provide different health benefit plans to different categories of employees of an employer, as determined by the employer but based on bona fide employment-based classifications that are consistent with the employer's usual business practice. The categories may not relate to the actual or expected health status of the employees or their dependents, regardless of the number of employees in the group.

(5) A small employer carrier may enforce reasonable employer participation and contribution requirements, as specified in OAR 836-053-0040. Such requirements, however, shall be applied uniformly to all small employers with the same number of eligible employees. In determining minimum participation requirements, a carrier shall count only those employees who are not covered by an existing group health benefit plan.

(6) Premium rates for plans issued to small employers are subject to the rating and filing requirements of ORS 743.737 and OAR 836-053-0065 and 836-053-0910.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240

Stats. Implemented: ORS 743.730 et seq.

Hist.: ID 5-1998, f. & cert. ef. 3-9-98; ID 23-2002, f. & cert. ef. 11-27-02; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

### 836-053-0026

#### Plans Offered to HIPAA Small Employers

The following provisions apply to health benefit plans offered to HIPAA small employers:

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(1) A small employer carrier shall issue a plan to a small employer if the employee eligibility criteria established by the small employer meet the following requirements:

(a) Permissible employee eligibility criteria include:

(A) Employee classifications or categories, such as salaried, hourly, management, and non-management;

(B) A work hours requirement of 17.5 to 40 hours per week, which may vary for different classifications or categories of employees; and

(C) A group eligibility waiting period requirement, which may vary for different classifications or categories of employees.

(b) Impermissible employee eligibility criteria include:

(A) Health status;

(B) Disability; and

(C) A requirement that an employee be actively at work when coverage would otherwise begin.

(2) A small employer carrier may provide different health benefit plans to different categories of employees, as determined by the employer, if the categories do not relate to the actual or expected health status of the employees or their dependents.

(3) A small employer carrier may enforce reasonable employer participation and contribution requirements, as specified in OAR 836-053-0040. Such requirements, however, shall be applied uniformly to all HIPAA small employers with the same number of eligible employees.

(4) Premium rates for plans issued to HIPAA small employers are not subject to the rating and filing requirements of ORS 743.737 and OAR 836-053-0065 and 836-053-0910.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240

Stats. Implemented: ORS 743.730 et seq.

Hist.: ID 5-1998, f. & cert. ef. 3-9-98; Suspended by ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

## 836-053-0030

### Marketing

The following requirements relating to marketing apply to health benefit plans offered to small employers:

(1) A small employer carrier may offer different small employer health benefit plans in different geographic areas. However, the Basic plan required under ORS 743.734 and a point-of-service plan required of certain carriers under ORS 743.808 must be offered in every geographic area in which the carrier offers or renews its small employer health benefit plans. A small employer carrier may not cease offering or renewing, or offering and renewing, its Basic plan in a geographic area unless the carrier discontinues all plans in the geographic area as provided in ORS 743.737(5)(e).

(2) A small employer carrier must offer all of its approved small employer health benefit plans and plan options, including the Basic plan required under ORS 743.734 and a point-of-service plan required of certain carriers under ORS 743.808, to all small employers on a guaranteed issue basis. A carrier may not serve only a portion of the small employer market, such as employers with more than 25 employees, and a carrier may not establish or maintain a closed plan or plan option or a closed book of business in the small employer market. For purposes of this section, a "closed" arrangement is one in which coverage is maintained and renewed for currently enrolled small employers, but the coverage is not offered or issued to other small employers.

(3) A small employer carrier may not require a small employer to purchase or maintain other lines of coverage, such as group life insurance, in order to purchase or maintain a small employer health benefit plan.

(4) A small employer carrier that offers a particular health benefit plan in the small employer market only through one or more bona fide associations is not required to offer that plan, on a guaranteed issue basis or otherwise, to small employers that are not members of the association.

(5) A small employer carrier must market fairly all of its small employer health benefit plans and plan options and shall not engage in any practice that:

(a) Restricts a small employer's choice of such plans and plan options; or

(b) Has the effect or is intended to influence a small employer's choice of such plans and plan options for reasons of risk selection.

(6) A small employer carrier shall not provide to any insurance producer any financial or other incentive that conflicts with the requirements of section (5) of this rule.

(7) A small employer carrier must use the same sales compensation methodology for all small employer health benefit plans offered by the carrier.

(8) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with an insurance producer for

any reason related to the following: the health status, claims experience, occupation, geographic location of small employer groups, or the type of small employer plans placed by the insurance producer with the carrier.

(9) When a small employer carrier is required to treat an employer as a small employer under ORS 743.733(2), the carrier may limit coverage to categories of employees as authorized by ORS 743.734(6).

Stat. Auth.: ORS 731.244, 743.731 & 746.240

Stats. Implemented: ORS 743.733, 743.734, 743.73 & 746.650

Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

## 836-053-0040

### Underwriting

The following requirements relating to underwriting apply to health benefit plans offered to small employers:

(1) A small employer carrier shall not use health statements when offering small employer health benefit plans, except for late enrollees as provided in ORS 743.734. A health statement that is used for a late enrollee must comply with the requirements of OAR 836-053-0510. After enrollment, health statements or other information may be used by a carrier for the purpose of providing services or arranging for the provision of services under a small employer health benefit plan.

(2) The crediting of prior coverage, as specified in ORS 743.737, shall be applied in either of the following cases:

(a) If creditable coverage remains in effect on the enrollment date, as specified in ORS 743.737(1); or

(b) If creditable coverage terminated no more than 63 days prior to the enrollment date, as specified in ORS 743.737(1).

(3) All policy forms and enrollee summaries for small employer health benefit plans that contain a preexisting conditions provision must clearly disclose how prior creditable coverage will be counted. A carrier may use the following statement, or another similar disclosure, for this purpose: The duration of the preexisting conditions provision in this policy will be reduced by the amount of your prior "creditable coverage" if:

(a) Your creditable coverage is still in effect on your date of enrollment in this policy; or

(b) Your creditable coverage ended no more than 63 days before your date of enrollment in this policy. "Creditable coverage" means any of the following coverages: Group coverage (including FEHBP and Peace Corps); Individual coverage (including student health plans); Medicaid; Medicare; CHAMPUS; Indian Health Service or tribal organization coverage; state high risk pool coverage; and public health plans. Creditable coverage does not include coverage only for a specified disease or illness or hospital indemnity (income) insurance.

(4) To expedite the accurate crediting of prior coverage, in accordance with section (2) of this rule, a small employer carrier shall:

(a) Include a question about potential creditable coverage in all enrollment forms that are used in conjunction with any small employer health benefit plan containing a preexisting conditions provision; and

(b) Include a notice about potential creditable coverage whenever the carrier notifies an enrollee that a claim has been denied because of a pre-existing conditions provision. The notice of claim denial shall also include a telephone number at the carrier that the enrollee may use for additional information regarding the denied claim.

(5) Except as permitted under a preexisting conditions provision, a small employer carrier shall not modify health insurance with respect to an employee or any eligible dependent of an employee by means of a rider, endorsement or otherwise, for the purpose of restricting or excluding coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(6) Participation and contribution requirements established by a small employer carrier shall be governed by the following:

(a) Participation requirements must apply on an aggregate basis in which all categories of eligible employees of a small employer are combined;

(b) Except as provided in this subsection, a small employer carrier may not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer except at plan anniversary. At plan anniversary, the carrier may increase the requirements only to the extent those requirements are applicable to all other small employer groups of the same size. At the anniversary of a plan or at any time other than the anniversary, an insurer may consider the existing group as a new group for purposes of coverage if the eligibility requirements applicable to the group are changed by the employer;

(c) If a carrier requires 100 percent participation of eligible employees, as allowed by ORS 743.737, the carrier shall not impose a contribution

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requirement upon the employer that exceeds 50 percent of the premium of an employee-only benefit plan; and

(d) Every small employer health benefit plan issued by a small employer carrier must specify all of the participation, contribution, and eligibility requirements that have been agreed upon by the carrier and the small employer. The carrier must apply the participation and eligibility requirements uniformly to all categories of eligible employees and their dependents and may establish and apply contributions for different categories of employees and dependents that exceed the minimum contribution.

(7) A modification to an existing small employer health benefit plan that is required by ORS 743.730 to 743.745 or OAR 836-053-0010 to 836-053-0065 shall be implemented for each policyholder on the next renewal date. For the purposes of this rule, the next renewal date means the first renewal date of the policy issued to the policyholder that occurs on or after the operative date of the governing statutory provision (i.e., October 1, 1996 for SB 152 (1995); August 1, 1997, for SB 98 (1997)). In addition, for small employer health benefit plans, if a certificate holder or dependent has limited coverage because of late enrollment in a plan, credit shall be granted for the time so enrolled against the maximum exclusion or limitation specified in ORS 743.737 and such crediting of time shall be effective as of the next renewal date.

(8) A late enrollee, as defined in ORS 743.730, must be accepted for coverage in a small employer health benefit plan, but may be subject to the coverage limitations specified in ORS 743.737. A health statement may be used to determine a late enrollee's preexisting conditions, but not to determine a late enrollee's eligibility to enroll or enrollment date. If a late enrollee is subject to a preexisting conditions provision, credit for prior creditable coverage must be applied to such provision.

(9) An enrollee who qualifies under a special enrollment period, as specified in ORS 743.737, must be accepted for coverage in a small employer health benefit plan and shall not be considered a late enrollee. Such an enrollee, however, is subject to the preexisting conditions provision, if any, and the creditable coverage requirements that apply to regular enrollees.

(10) A small employer health benefit plan shall be renewable at the option of the policyholder and shall not be discontinued by the carrier during or at the termination of the contract period except in the circumstances specified in ORS 743.737 and consistent with the requirements of HIPAA (42 U.S.C. 300gg-12).

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.736, 743.737 & 746.650

Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 1-1994, f. & cert. ef. 1-26-94; ID 2-1995, f. & cert. ef. 4-26-95; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

## 836-053-0050

### Trade Practices

The following requirements relating to trade practices apply to health benefit plans offered to small employers:

(1) When offering plans to small employers, a carrier must briefly describe the variety of small employer plans and plan options that are available from the carrier and must specify that all plans and plan options are offered on a guaranteed issue basis.

(2) A small employer health benefit plan must be issued with an effective date no later than 31 days after the carrier actually receives the application.

(3) Neither a small employer carrier nor an insurance producer may encourage or direct a small employer to seek coverage from another carrier because of the small employer's health status, claims experience, industry occupation or geographic location, if within the carrier's service area.

(4) Neither a small employer carrier nor an insurance producer may induce or otherwise encourage a small employer to separate or otherwise exclude an eligible employee from employment or from health coverage or benefits provided in connection with the employee's employment.

(5) A small employer health benefit plan may specify that an enrolled small employer may replace its current coverage with another small employer plan offered by the carrier only on the anniversary date of the current coverage. This limitation also applies to a small employer that discontinues coverage with a carrier, or forfeits coverage because of non-payment of premiums, and then requests new coverage with the same carrier.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240

Stats. Implemented: ORS 743.736, 743.737 & 746.240

Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

## 836-053-0060

### Benefit Design

The following provisions relating to benefit design apply to health benefit plans offered to small employers:

(1) No limitations or exclusion period may be placed on any benefit in the Basic health benefit plan other than those contained in ORS 743.737 and as specified in **Exhibit 1** of this rule.

(2) A small employer carrier must offer an approved Basic health benefit plan in accordance with ORS 743.736 and may offer additional plans. Additional plans may include greater or lesser benefit coverage than the Basic plan.

(3) For small employer plans other than the Basic plan, a carrier may impose an exclusion period for specified covered services, other than for pregnancy and maternity, that applies to all employees and dependents upon enrollment in the plan. A carrier may determine the excluded services, but the exclusion period shall not exceed 24 months and credit for prior creditable coverage must be applied if the excluded service was covered under the prior creditable coverage, without regard to the level or use of coverage in the prior plan, and:

(a) Creditable coverage remains in effect on the enrollment date, as specified in ORS 743.737(3); or

(b) Creditable coverage terminated no more than 63 days prior to the enrollment date, as specified in ORS 743.737(3).

(4) Prior coverage credit toward an exclusion period must be applied on the basis of elapsed time in the prior coverage. For example, if the exclusion period is 24 months and the enrollee had creditable coverage for 12 months, the applicable exclusion period would be 12 months.

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

Stat. Auth.: OORS 731.244, 743.731 & 746.240

Stats. Implemented: ORS 743.731 & ORS 743.737

Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

## 836-053-0065

### Rating

The following provisions relating to rating apply to health benefit plans offered to small employers:

(1) A small employer carrier shall file a single geographic average rate (GAR) for each health benefit plan that is offered to small employers within a geographic area and for each category of family composition. The GAR must be determined on a pooled basis and the pool shall include:

(a) All of the carrier's business in the small employer market; and

(b) Any other business in the group market that the carrier wishes to include in the pool.

(2) There shall be one rating class for each small employer carrier. All small employer health benefit plans of the carrier shall be rated in that class. A rating of a health benefit plan is subject to adjustments reflecting the provision of benefits not required to be covered by the basic health benefit plan and differences in family composition.

(3) The variation in geographic average rates among different small employer health benefit plans offered by a carrier must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan, except as authorized by ORS 743.737(8)(b). A variation based on the level of contribution by the small employer or on the level of participation by eligible employees, or on both, must be actuarially sound. A carrier may adjust premium rates to reflect expected claims experience of a small employer as authorized by ORS 743.737(8)(b)(D) only with respect to a renewal of coverage, and the carrier may rely only on the carrier's own claims experience with the small employer.

(4) A small employer carrier shall file its geographic average rates for small employer health benefit plans in accordance with the rate filing requirements of OAR 836-053-0910.

(5) A small employer carrier shall assess administrative expenses in a uniform manner to all small employer health benefit plans, including the Basic health plan. Administrative expenses shall be expressed as a percentage of premium and the percentage may not vary with the size of the small employer.

(6) Plans shall be rated within the following geographic areas comprising counties as follows:

(a) Area 1 shall include: Clackamas, Multnomah, Washington, and Yamhill;

(b) Area 2 shall include: Benton, Lane, and Linn;

(c) Area 3 shall include: Marion and Polk;

(d) Area 4 shall include: Deschutes, Klamath, and Lake;

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(e) Area 5 shall include: Clatsop, Columbia, Coos, Curry, Lincoln, and Tillamook;

(f) Area 6 shall include: Baker, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler.

(g) Area 7 shall include: Douglas, Jackson and Josephine.

(7) A small employer carrier may use five digit zip code groupings to define the carrier's geographic areas. The zip code groupings may vary from the county areas defined in section (6) of this rule by no more than ten percent of the population of a county. The small employer carrier must use either the zip code system or the county system and shall not modify the geographic areas in any other manner.

(8) A small employer carrier may use the same geographic average rate for multiple rating areas.

(9) A small employer carrier may deviate from the requirements of the rate bands specified in ORS 743.737 for coverage that extends to a geographic area outside the state of Oregon. The carrier must do so in a reasonable fashion and maintain records regarding the basis for the rate charged in the small employer's file.

(10) Premium rates for small employer health benefit plans are subject to the following:

(a) The premium rates charged during a rating period for a health benefit plan issued to a small employer with 2 to 25 employees may not vary from the geographic average rate by more than:

(A) 44.7 percent, for a rate that is filed on or before January 1, 2008 to become effective on or before April 1, 2008.

(B) 46.5 percent, effective January 1, 2009.

(C) 48.2 percent, effective January 1, 2010.

(D) 50.0 percent, effective January 1, 2011.

(b) The premium rates charged during a rating period for a health benefit plan issued to a small employer with 26 to 50 employees may not vary from the geographic average rate by more than:

(A) 62.6 percent, for a rate that is filed on or before January 1, 2008 to become effective on or before April 1, 2008.

(B) 58.3 percent, effective January 1, 2009.

(C) 54.1 percent, effective January 1, 2010.

(D) 50.0 percent, effective January 1, 2011.

(11) The variations in premium rates described in section (10) of this rule may be based on one or more of the following factors as determined by the carrier:

(a) The ages of enrolled employees and their dependents;

(b) The level at which the small employer contributes to the premiums payable for enrolled employees and their dependents;

(c) The level at which eligible employees participate in the health benefit plan;

(d) The level at which enrolled employees and their dependents engage in tobacco use;

(e) The level at which enrolled employees and their dependents engage in health promotion, disease prevention or wellness programs;

(f) The period of time during which a small employer retains uninterrupted coverage in force with the same small employer carrier; and

(g) Adjustments to reflect the provision of benefits not required to be covered by the basic health benefit plan and differences in family composition.

Stat. Auth.: ORS 731.244 & 743.731

Stats. Implemented: ORS 743.731, 743.734 & 743.737

Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 1-1994, f. & cert. ef. 1-26-94; ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0020; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08

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**Rule Caption:** Assessments against insurers to fund regulatory functions under the Insurance Code.

**Adm. Order No.:** ID 6-2007

**Filed with Sec. of State:** 9-14-2007

**Certified to be Effective:** 9-14-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 836-009-0011

**Subject:** This rulemaking implements recently enacted legislation (ch. 560 Oregon Laws 2007, Enrolled HB 3484). The legislation amends ORS 731.804, which authorizes DCBS to assess premium on Oregon insurance policies in order to fund DCBS's regulatory functions under the Insurance Code. The amendment eliminates the exemption from assessment that has applied to annuity premium.

This rulemaking makes a conforming change to the Insurance Division's rule that implements the assessment authority.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-009-0011

### Assessments Against Insurers

(1) The percentage rates for assessments authorized under ORS 731.804 against authorized insurers shall be established as provided in this rule. An authorized insurer shall pay an assessment on each line of insurance transacted by the insurer in this state that is subject to assessment under ORS 731.804. This rule provides for establishment of a percentage rate for each of the following lines of insurance:

(a) Life insurance;

(b) Health insurance;

(c) Property and casualty insurance. For purposes of this rule, this line includes title insurance but does not include workers' compensation insurance.

(2) For each line of insurance in section (1) of this rule, the percentage rate for the assessment against each authorized insurer transacting the line of insurance shall be the rate established by dividing the amount of revenue needed to cover expenses to be incurred by the Department in administering the Insurance Code for a fiscal year with respect to the line of insurance by the gross amount of premiums received by all insurers or their agents from and under their policies covering direct domestic risks for that line of insurance, after deductions specified in ORS 731.804. The following is the formula for calculating the assessment rate for each line:

Total Amount to be derived from

Assessment with respect to the line = Assessment

Total assessable premium from the line, rate (0.xxxx%) for all insurers

(3) For a specific insurer:

(a) The assessment billed with respect to a line of insurance shall be determined by finding 0.xxxx% of the insurer's assessable premium for the line for the appropriate calendar year;

(b) The finance charge of charges imposed by the insurer shall be assessed at the lowest assessment rate established pursuant to this rule.

(4) The Director shall determine the amount of revenue needed by considering the legislatively approved expenditures for administration of the Insurance Code and the timing of cash revenues and expenditures, and subtracting there from other available revenue sources.

(5) The amount of premiums for all lines of insurance to be assessed against an insurer under sections (1) to (3) of this rule shall not exceed nine hundredths of one percent of the gross amount of premiums received by an insurer or its agents from and under its policies covering direct domestic risks, after deductions specified under ORS 731.804.

(6) Assessments under this rule shall be imposed and collected annually unless the Director determines that additional amounts need to be assessed and collected in order to support the legislatively authorized budget of the Department with respect to its functions under the Insurance Code or in order to support changes in the budget authorized by the Emergency Board. The additional amounts shall be assessed as provided in sections (1) to (3) of this rule, except that the numerator shall be the additional amounts so needed.

(7) The Director shall assess an insurer only if the insurer is authorized to transact insurance at the time of billing.

(8) Billings of annual assessments shall be issued not later than October 1 of each year.

(9) An insurer must pay each assessment imposed under this rule not later than the 30th day after the date of the billing of the assessment by the Department. An insurer shall pay interest at nine percent per annum on any assessment that is not paid when due.

(10) When the Director determines that an assessment or a part thereof paid by an insurer is in excess of the amount legally due and payable to the Department, if the amount of the refund owed by the Department is less than \$50, the Department shall pay the refund only upon receipt of a written request from the insurer that paid the assessment. The written request must be received by the Department not later than three years from the date the assessment was paid to the Department.

(11) The Director shall not bill an assessment or an adjustment to an assessment of \$25 or less.

Stat. Auth.: ORS 293, 731.244, 731.804

Stats. Implemented: ORS 731.804(1)

Hist.: ID 8-1989, f. & cert. ef. 8-11-89; ID 8-1991, f. & cert. ef. 10-21-91; ID 6-2006, f. & cert. ef. 4-14-06; ID 6-2007, f. & cert. ef. 9-14-07

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**Rule Caption:** Trade practice regulation of life insurance sales to military personnel.

# ADMINISTRATIVE RULES

**Adm. Order No.:** ID 7-2007

**Filed with Sec. of State:** 9-14-2007

**Certified to be Effective:** 1-1-08

**Notice Publication Date:** 8-1-07

**Rules Adopted:** 836-080-0750, 836-080-0755, 836-080-0760, 836-080-0765, 836-080-0770, 836-080-0775

**Subject:** This rulemaking adopts the Military Sales Practices Model Regulation, drafted by the National Association of Insurance Commissioners and pursuant to the federal "Military Personnel Financial Services Protection Act." The rulemaking applies to the solicitation or sale of life insurance and annuity products by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-080-0750

### Purpose; Statutory Authority

(1) OAR 836-080-0750 to 836-080-0775 establish standards for protecting active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

(2) OAR 836-080-0750 to 836-080-0775 are adopted pursuant to the authority of ORS 731.244 for the purpose of implementing ORS 746.075, 746.110 and 746.240.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

## 836-080-0755

### Application of OAR 836-080-0750 to 836-080-0775

(1) OAR 836-080-0750 to 836-080-0775 apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

(2) OAR 836-080-0750 to 836-080-0775 do not apply to solicitations or sales involving:

(a) Credit insurance;

(b) Group life insurance or group annuities when there is no in-person, face-to-face solicitation of individuals by an insurance producer or when the policy or certificate does not include a side fund;

(c) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Director; or, when a term conversion privilege is exercised among corporate affiliates;

(d) Individual stand-alone health policies, including disability income policies;

(e) Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veteran's Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

(f) Contracts offered by State Sponsored Life Insurance (SSLI), as authorized by Public Law 93-289, Title 37 U.S.C., sec. 707 et seq.;

(g) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRS), and which are not underwritten by an insurer; or

(h) Contracts used to fund:

(A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(C) A government or church plan defined in Section 414 of the IRS, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRS;

(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(E) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(F) Prearranged funeral contracts.

(3) Nothing in this rule shall be construed to abrogate the ability of nonprofit organizations (or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense

DoD Instruction 1344.07 — PERSONAL COMMERCIAL SOLICITATION ON DoD INSTALLATIONS or successor directive.

(4) For purposes of OAR 836-080-0750 to 836-080-0775, general advertisements, direct mail, and internet marketing do not constitute "solicitation." Telephone marketing does not constitute "soliciting" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Nothing in this section, however, shall be construed to exempt an insurer or insurance producer from OAR 836-080-0750 to 836-080-0775 in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this section.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

## 836-080-0760

### Definitions for OAR 836-080-0750 to 836-080-0775

The following definitions apply to OAR 836-080-0750 to 836-080-0775:

(1) "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense (DoD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

(4) "General Advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(5) "Insurer" means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

(6) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate life insurance, including annuities.

(7) "Known" or "knowingly" means, depending on its use in OAR 836-080-0750 to 836-080-0775, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(a) Is a service member; or

(b) Is a service member with a pay grade of E-4 or below.

(8) "Life insurance" means insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individual life issued annuities.

(9) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(10) "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(11) "Service member" means any active duty officer (commissioner and warrant) or enlisted member of the United States Armed Forces.

(12) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) Accumulated value or cash value or secondary guarantees provided by a universal life policy;

(b) Cash values provided by a whole life policy that are subject to standard nonforfeiture law for life insurance; or

(c) A premium deposit fund that:

(A) Contains only premiums paid in advance that accumulate at interest;

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- (B) Imposes no penalty for withdrawal;
  - (C) Does not permit funding beyond future required premiums;
  - (D) Is not marketed or intended as an investment; and
  - (E) Does not carry a commission, either paid or calculated.
- (13) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(14) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marines Corps, and Coast Guard.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

## 836-080-0765

### Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation

(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or "mass" audience or in a "captive" audience when attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas in which the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins notices or advertisements.

(g) Failing to present DD Form 2885, "Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

Stat. Auth: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

## 836-080-0770

### Practices Declared False, Misleading, Deceptive or Unfair, Regardless of Location

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The acts or practices described in this subsection include, but are not limited to, using or assisting in using a service member's "MyPay" account or other similar Internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this rule, a formal banking relationship is established when the depository institution:

(A) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and the regulations promulgated thereunder; and

(B) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method or entering into any agreement in which funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and when the service member has no formal banking relationship as defined in section (1)(b) of this rule.

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member in which the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has not formal banking relationship.

(e) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for the service member's attendance to any event in which an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change the service member's income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(a) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor." Nothing in this subsection shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS) or Masters of Science Financial Planning (MS).

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, cost or investment returned and are declared to be false, misleading, deceptive or unfair:

(a) Using or describing credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on all premium paid.

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(4) The following acts or practices by an insurer or insurance producer regarding SGLI, VGLI or SSLI are declared to be false, misleading, deceptive or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI, VGLI or SSLI, that is false, misleading or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI, VGLI or SSLI to private insurers that is false, misleading, or deceptive.

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(c) Suggesting, recommending or encouraging a service member to cancel or terminate the service member's SGLI or SSLI policy or issuing a life insurance policy that replaces an existing SGLI or SSLI policy unless the replacement takes effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-209, p.16.

(e) Excluding individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(A) An explanation of any free look period with instructions on how to cancel if a policy is issued; and

(B) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of OAR 836-051-0500 to 836-051-0600 or the NAIC Life Insurance Buyer's Guide shall be deemed sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product that includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product that includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI or SSLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI or SSLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurance needs for life insurance. For the purpose of this subsection:

(A) "Insurance needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate or survivors or dependents, or both the estate and the survivors or dependents.

(B) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) Excluding individually issued annuities, offering for sale or selling any life insurance contract that includes a side fund:

(A) Unless interest credited accrues from the date of deposit to the death of withdrawal and permits withdrawals without limit or penalty;

(B) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and

(C) That by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) Excluding individually issued annuities, offering for sale or selling any life insurance contract that after considering all policy benefits,

including but not limited to endowment, return of premium or persistency, does not comply with the standard nonforfeiture law for life insurance.

(e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service save and except for an accidental death coverage, e.g., double indemnity, which may be excluded.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

## 836-080-0775

### Severability

If any provisions of OAR 836-080-0750 to 836-080-0775 or their application to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of OAR 836-080-0750 to 836-080-0775 that can be given effect without the invalid provisions or applicant. To this end all provisions of OAR 836-080-0750 to 836-080-0775 are declared to be severable.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.075, 746.110, 746.240

Hist.: ID 7-2007, f. 9-14-07, cert. ef. 1-1-08

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## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

**Rule Caption:** New definition of successor employer.

**Adm. Order No.:** OSHA 5-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07 thru 2-29-08

**Notice Publication Date:**

**Rules Amended:** 437-001-0015

**Subject:** Some Oregon employers change their business status in a successful effort to avoid responsibility for prior and future enforcement actions. The solution was to modify the statute to enable OR-OSHA to hold successor employers responsible for prior OR-OSHA issued violations for purposes of classifying a current violation as a repeat or for attributing knowledge of prior OR-OSHA issued violations to the current employer.

This rulemaking is a result of House Bill 2223 passed into law by the 2007 Oregon Legislature. Oregon OSHA amends the definition rule in Division 1, General Administrative Rules, to establish criteria that determines who is the successor employer. This is a temporary rule that is effective upon filing and will be followed by permanent rulemaking.

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-001-0015

### Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

(1) Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

(2) Accepted Disabling Claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

(3) Accepted Disabling Claims Rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

(4) Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

(5) Administrator — The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

(6) Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date or variance.

# ADMINISTRATIVE RULES

(7) Agent of the employer — The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

(8) Appeal — A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

(9) Audiometric Zero — The lowest sound pressure level that the average, young adult with normal hearing can hear.

(10) Board — The Workers' Compensation Board created by ORS 656.712.

(11) Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(12) Citation — A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

(13) Complaint — A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

- (a) Imminent danger;
- (b) Serious;
- (c) Other than serious.

(14) Compliance Officer — A designated Division employee whose responsibility is to conduct inspections or investigations to identify possible violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

(15) Comprehensive Consultation — is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews of records, written programs and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

(16) Consultant — A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees and other agency staff with information, advice and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices and development of safety and health programs.

(17) Correction order — A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.

(18) Days Away, Restricted, or Transferred (DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

**NOTE:** Lost Workday cases include both days away from work and days of restricted time.

(19) Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

(20) Department — The Department of Consumer and Business Services.

(21) Director — The Director of the Department of Consumer and Business Services, or the Director's designee.

(22) Division — The Oregon Occupational Safety and Health (OR-OSHA) Division of the Department of Consumer and Business Services.

(23) Emphasis Program — A special program that targets Division activity to industries that, according to national or state data, have a high potential for serious injuries or illnesses.

(24) Employee — Any individual who is currently employed or formerly employed, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.

(25) Employee exposure record — A record of monitoring or measuring which contains a qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This

includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(26) Employee medical record — A record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

- (a) The results of medical examinations and tests;
- (b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and
- (c) Any employee medical complaints relating to workplace exposure.

Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(27) Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

(28) Employer.

- (a) Any person who has one or more employees, or
- (b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128, or

(c) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is considered to be substantially the same entity as the predecessor employer if:

(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise:

- (i) Substantially the same type of business or enterprise.
- (ii) Similar jobs and working conditions.
- (iii) A majority of the machinery, equipment, facility, or methods of operation.
- (iv) Similar product or service.
- (v) A majority of the same supervisory personnel.
- (vi) A majority of the same officers and directors.

**NOTE:** Not every element need be present to find an employer to be a successor, the facts will be considered together to reach a determination.

(29) Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

(30) Environmental Exposure Sampling — Sampling of the workplace environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

(31) Establishment — An establishment is a single physical location doing business or offering services or with industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is the main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) Each of the establishments represents a distinctly separate business;

(B) Each business is engaged in a different economic activity;

(C) No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(D) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one

## ADMINISTRATIVE RULES

manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, do not keep a separate 300 Log. Link employees who telecommute to one of your establishments under 437-001-0700(15)(c).

(32) Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

(33) Filed — A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OR-OSHA, DCBS, or the WCB by other means.

(34) First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters or similar injuries which do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though provided by a physician or registered professional personnel.

(35) Fixed place of employment — The entire facility maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months.

(36) Hazard — A condition, practice or act which could result in an injury or illness to an employee.

(37) Health Hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

(38) Imminent danger — A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

(39) Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

**Note:** Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.

(40) Inspection — An official examination of a place of employment by a Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) Programmed.

(A) Routine inspection — An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;

(i) Emphasis inspection — An inspection made in response to a national or state Emphasis Program.

(B) Periodic inspection — An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;

(C) Area inspection — An inspection made because of a geographic factor;

(D) Random inspection — An inspection scheduled and conducted pursuant to written neutral administrative standards.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance has been denied;

(B) Complaint inspection — An inspection made in response to a complaint;

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures; and

(D) Referral inspection — An inspection made in response to a referral.

(41) Letter of Corrective Action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

(42) Lost workdays — The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(43) Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) — The number of lost workday injury and illness cases experi-

enced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

(44) Medical treatment — Treatment administered by a physician or registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

(45) North American Industry Classification System (NAICS) — A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity. The 2002 edition of the NAICS manual is used for coding.

(46) Owner — Every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(47) Person — One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(48) Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

(49) Physician or Other Licensed Health Care Professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(50) Place of employment — Includes every place, whether fixed or movable, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home. Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren.

(51) Record — Any recorded information regardless of its physical form or character.

(52) Recordable occupational injuries or illnesses — Any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing his/her normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases, without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(53) Referral — A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

(54) Rule — Any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public.

(55) Scheduling List — An electronic or paper list of places of employment or employers scheduled for inspection. Lists can be in electronic form, paper form or both.

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(56) Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

(57) Standard Industrial Classification (SIC) — A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, which is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

(58) Standard Threshold Shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

(59) Substantial failure to comply — When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

(60) Suspended penalty — A penalty which is determined but not assessed.

(61) Variance — The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent — A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

(b) Temporary — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

(62) Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard or order.

(a) Specific classifications of violations are:

(A) Serious violation — A violation in which there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation;

(B) Other than serious violation — A violation which is other than a serious or minimal violation; and

(C) Minimal violation — A violation which does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation — a violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard or order.

(B) Unabated violation — A violation that has not been fully corrected by the date ordered.

(C) Repeat violation:

(i) An employer's second or subsequent violation of the requirements of the same statute, regulation, rule, standard or order.

(ii) Subsequent violations shall not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

(D) First-instance violation — An employer's first violation of a particular statute, regulation, rule, standard or order.

(E) Egregious — Those conditions which normally constitute a flagrant violation of the OSEAct or OR-Osha standards or regulations such that each instance of the violation is cited separately.

(c) Combined violation — Multiple violations of the same statute, regulation, rule, standard or order within an establishment which have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard or order.

(d) Grouped violation — Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment which have been combined as one violation:

(A) To indicate an increase in the severity or probability of the violation; or

(B) Recordkeeping and posting requirements involving the same document; or

(C) The violations are so closely related as to constitute a single hazardous condition.

Stat. Auth.: ORS 654.025(2), 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD , 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, f. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 5-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

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## Department of Corrections Chapter 291

**Rule Caption:** Religious Activities for Inmates in ODOC Facilities.  
**Adm. Order No.:** DOC 6-2007

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-17-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 291-143-0010, 291-143-0130, 291-143-0140

**Subject:** Amendment of these rules is necessary to clarify Department policies regarding inmate religious exercise and activities, and religious programming in Department of Corrections facilities, consistent with applicable legal standards.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

### 291-143-0010

#### Definitions

(1) Administrator of Religious Services: The chaplain assigned responsibility for administering religious programming and services for the Department of Corrections.

(2) Chaplain: A person employed full time or contracted by the Department of Corrections to provide religious programming and services to inmates in Department of Corrections facilities.

(3) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to the Director, Deputy Director, an Assistant Director or administrator and has responsibility for delivery of program services or coordination of program operations.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(6) Religious Activity: Any rite, ceremony, event or program that is customarily associated with the practices of a religion, including but not limited to, corporate gatherings of adherents of a religion for purposes of worship, prayer, mediation, teaching or sharing.

(7) Religious Representative: A member of the clergy, medicine person, Imam, Rabbi, spiritual advisor, or other person qualified to provide authoritative information to the Department of Corrections regarding their religion. For purposes of this rule, a religious representative shall not be an inmate or on probation, parole or post-prison supervision, or otherwise disqualified from acting as a volunteer in a Department of Corrections facility under Department rules and policies.

(8) Religious Volunteer: A member of the clergy, medicine person, Imam, Rabbi, spiritual advisor, or other religious authority qualified to direct, lead or conduct others in the rites, ceremonies or other practices of

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a religion who has been approved by the Department of Corrections to assist inmates in requested religious activities in Department of Corrections facilities. Before acting as a religious volunteer to inmates in a Department of Corrections facility, the volunteer shall have received:

(a) Appropriate training in accordance with the Department's rule on Volunteers/Student Interns (OAR 291-015); and

(b) A Department of Corrections identification card in accordance with the Department's policy on Identification Cards, #20.5.15.

(9) Special Housing: Housing for an inmate whose assignment is administrative segregation, disciplinary segregation, Special Management Unit, Intensive Management Unit, infirmary or Death Row.

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

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

Hist.: CD 28-1978, f. 9-13-78, ef. 9-15-78; CD 19-1981(Temp), f. & ef. 6-30-81; CD 47-1981, f. & ef. 10-30-81; CD 20-1985, f. & ef. 8-2-85; CD 2-1987, f. & ef. 1-5-87; CD 19-1992, f. 8-12-92, cert. ef. 8-20-92; CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07; Administrative Correction, 6-16-07; DOC 6-2007, f. & cert. ef. 8-17-07

## 291-143-0130

### Restriction of Religious Activity/Items

(1) An inmate's participation in approved religious activities and possession of approved religious items may be restricted by the Department of Corrections when deemed necessary to maintain facility security, safety, health and order, or to further inmate rehabilitation or other penological interest, consistent with applicable legal standards.

(2) If, in the opinion of the Department, denying or otherwise limiting an inmate's participation in approved religious activities or possession of approved religious items would substantially burden the inmate's religious exercise, the Department must use the least restrictive means necessary in the functional unit manager's or designee's judgment to protect facility concerns.

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

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

Hist.: CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07; Administrative Correction, 6-16-07; DOC 6-2007, f. & cert. ef. 8-17-07

## 291-143-0140

### Religious Exercise Dispute Resolution

(1) Issues of a religious nature (e.g., the significance of a requested religious item or activity to the practice of a particular religion, etc.) will be resolved by the facility chaplain or designee, in consultation with the Administrator of Religious Services, to ensure consistency of interpretation and application of Department policy and procedures regarding inmate religious exercise and religious programming, consistent with applicable legal standards.

(2) The Administrator of Religious Services will consult with appropriate religious representatives or other authorities as needed to clarify issues of religious doctrine and practice.

(3) The functional unit manager or designee shall determine whether the requested religious activity or item in question is consistent with the maintenance of facility security, safety, health or order, inmate rehabilitation or other penological interests, including budgetary or other administrative concerns.

(4) Whenever there is a conflict between a legitimate religious exercise request and a facility interest relating to security, safety, health or order, inmate rehabilitation or other penological interests, including budgetary and other administrative concerns, the matter will be resolved by the functional unit manager in consultation with the Assistant Director for Operations and Administrator of Religious Services, consistent with legal standards.

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

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

Hist.: CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07; Administrative Correction, 6-16-07; DOC 6-2007, f. & cert. ef. 8-17-07

### Department of Energy Chapter 330

**Rule Caption:** Amendments to OAR Divisions 60 and 61 relating to the SHOW program.

**Adm. Order No.:** DOE 2-2007

**Filed with Sec. of State:** 8-29-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 330-060-0005, 330-060-0010, 330-060-0015, 330-060-0020, 330-060-0040, 330-060-0060, 330-060-0070, 330-060-0075, 330-060-0095, 330-061-0005, 330-061-0010, 330-061-0015,

330-061-0020, 330-061-0025, 330-061-0030, 330-061-0035, 330-061-0040, 330-061-0045

**Rules Repealed:** 330-060-0090

**Subject:** • Allows up to \$150 of the \$500 maximum individual rebate for replacing underground tanks when a replacement oil furnace is installed

- Allows Community Action Programs (CAPs) and other organizations that assist low-income households with weatherization and energy conservation measures to use their \$1,000 maximum rebate on each home for any measure.

- Allows the Oregon Department of Energy to establish pilot programs to encourage cost effective energy efficiency measures.

- Authorizes the Director of the Oregon Department of Energy to reduce the amount or the scope of the rebates if rebate applications are likely to exceed available funds.

- Ensures that weatherization and other energy efficiency measures are consistent with Oregon Department of Energy's Residential Energy Tax Credit program, residential building code and standard residential building practices.

- Housekeeping changes, as necessary.

**Rules Coordinator:** Kathy Stuttaford—(503) 378-4040

## 330-060-0005

### Purpose

(1) OAR 330-060-0005 through 330-060-0095 describe qualifying energy conservation measures, the basis for the energy audit, prescribe how fuel oil dealers shall provide energy conservation services to their residential customers as required by ORS 469.673 through 469.679, and prescribe the standards for state financed 6.5 percent interest loans made under Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991.

(2) These rules are effective September 1, 2007 or upon filing with the Secretary of State, whichever is later and shall apply to energy conservation measure rebate applications postmarked on or after the effective date of these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-29-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0010

### Definitions

As used in OAR 330-060-0005 through 330-060-0095, unless the context requires otherwise:

(1) "Annual Rate": The yearly interest rate specified on the note. This is not the annual percentage rate, if any, disclosed to the applicant under the federal Truth in Lending Act.

(2) "ASHRAE": American Society of Heating, Refrigeration, and Air Conditioning Engineers.

(3) "Auditor": The person who gathers information at the dwelling to complete a report recommending energy conservation measures consistent with the standards set in these rules and the energy conservation measures specifications.

(4) "Buffer Space": An enclosed but unheated space such as a garage, porch, unheated basement, crawl space or attic, which abuts a heated space.

(5) "Commercial Energy Auditor": A person who through training or experience has a general knowledge of heat transfer principles, construction practices, energy efficient operations and maintenance procedures, boiler and furnace efficiency improvements, infiltration controls, envelope weatherization, heating, ventilating and air conditioning systems, electric control systems, lighting systems, and solar and energy conservation measures.

(6) "Commercial Energy Audit": The service provided by a commercial energy auditor to the owner of an apartment building which is centrally heated. It includes on-site data gathering, energy use analysis, and a report to the owner recommending energy conservation measures.

(7) "Cost-Effective": The present value of energy saved over the life of an energy conservation measure is worth more than the measure's cost. However, the energy savings of a measure shall receive a 10 percent "bonus".

(8) "Customer": A residential customer or dwelling owner.

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(9) "Dealer": Fuel oil dealer or any person or organization which supplies fuel oil at retail for the heating of dwellings.

(10) "Director": The Director of the Oregon Department of Energy.

(11) "Dwelling": Real or personal property in Oregon which is the principal residence of the owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in an apartment building. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(12) "Dwelling Owner": The person who has legal title to a dwelling, including the mortgagor under a mortgage, the trustor under a deed of trust, or a purchaser under a contract.

(13) "Energy Audit" means a written report completed to recommend energy conservation measures consistent with the standards set in these rules and the energy conservation measures specifications.

(14) "Energy Conservation Measures": Items that are primarily designed to improve the energy efficiency of a dwelling:

(a) In the case of dwellings not receiving a commercial energy audit, these measures are limited to:

(A) Caulking, weatherstripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs (but excluding any fire or weatherproofing or roofing materials installed over the insulation) and associated ventilation;

(C) Fill the wall cavity with insulation. If area has unfinished walls adjacent to unheated areas, fill the wall cavity to R-21, if achievable. In areas that have finished walls with no insulation that are adjacent to unheated areas, fill to R-13, if achievable.

(D) Insulation of floors over unheated spaces to fill framing cavity or achieve R-30 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least ten feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double glazed windows (including sliding doors) with a U-value of at least 0.35 or lower replacing less energy efficient windows.

(H) Storm doors covering uninsulated exterior doors;

(J) Storm windows over single pane glass windows on an exception basis when double glazed windows are not a practical option;

(K) Insulated exterior doors with an U-value no higher than 0.20.

(L) Replacement fuel oil burners, including electrical controls and combustion chamber improvements when needed, which increase combustion efficiency of oil furnaces or boilers. A replacement burner must have a tested steady state efficiency of at least 80 percent and be replacing a burner that is more than 10 years old or is in a heating system with a tested steady state efficiency of 70 percent or less;

(M) Fuel oil furnaces or boilers with tested steady state efficiency of at least 81 percent replacing a fuel oil heating system that is more than 20 years old or has a steady-state efficiency of 70 percent or less or as otherwise authorized by the Oregon Department of Energy;

(N) Installation of above-ground oil tanks to replace use of underground oil tanks and associated fuel lines shall qualify, but only if associated with the replacement of the oil furnace qualifying for a rebate. Any costs associated with the decommissioning, removal, or environmental cleanup of an underground fuel tank are excluded;

(O) Programmable thermostats;

(P) Blower door tests and blower door assisted whole house air sealing performed by a technician certified by the Oregon Department of Energy's Residential Energy Tax Credit duct sealing technician certification program;

(Q) Duct leakage tests and duct sealing performed by a technician certified by the Oregon Department of Energy's Residential Energy Tax Credit technician certification program in accordance with the Oregon Department of Energy's premium efficiency duct system standards in effect at the time the work is completed.

(R) Vapor barrier material, exhaust fans and venting to provide spot ventilation in kitchens, bathrooms, utility rooms, or other areas where as the result of installing recommended energy conservation measures moisture problems could be created or worsened.

(b) In the case of centrally-heated apartment buildings receiving a commercial energy audit, measures shall be primarily designed to reduce

fuel oil use. In addition to measures listed in subsection (a) of this section, the measures may include but not be limited to:

(A) Automatic energy control systems;

(B) Equipment, associated with such control systems, which is needed to run variable steam, hydraulic and ventilating systems;

(C) Furnace or boiler plant and distribution system modifications. This includes devices for modifying flue openings which will increase the efficiency of the heating system; or

(D) Lighting system improvements.

(15) "Energy Conservation Measures Specifications": All energy conservation measures shall meet the installation provisions of the Oregon Department of Energy's Energy Conservation Measure Specifications. All heating system improvements shall meet the steady state efficiency requirements of these rules. All blower door assisted whole house air sealing and duct sealing measures shall meet the specifications of the Oregon Department of Energy's Residential Energy Tax Credit technician certification program.

(16) "Finance Charge": The total of all interest, loan fees, and other charges related to the cost of obtaining credit. This includes any interest on any loan fees financed by the lender.

(17) "Fuel Oil": Any petroleum product sold by a petroleum supplier for use as a residential heating fuel, including heating oil, propane, butane and kerosene.

(18) "Landlord": A dwelling owner who rents his or her dwelling to a tenant.

(19) "Lender": Any bank, mortgage company, trust company, savings and loan, or credit union having an office in Oregon.

(20) "Lighting system improvements": Measures which will reduce energy use in the lighting system by at least 25 percent if recommended in the commercial energy audit.

(21) "Oregon Department of Energy": State of Oregon agency

(22) "Residential Customer": A dwelling owner or tenant who is billed by a dealer for fuel oil received at the dwelling.

(23) "Space-Heating": The heating of living space within a dwelling.

(24) "State Incentive": The energy conservation measure rebate or any other state incentive which gives a customer a cash payment for an energy conservation measure.

(25) "Tenant": A tenant as defined in ORS 91.100 or any other tenant.

(26) "Trade Ally": means a contractor licensed in the State of Oregon to install energy conservation measures.

(27) "Unheated Space": An area in a dwelling which is not connected to a heating system fueled by fuel oil or wood.

(28) "Wood Heating Resident": A person whose primary space heating fuel is any form of wood, including sawdust:

(a) In the case of a dwelling which has an installed central electric or gas heating system the customer is eligible for rebate and loan financing under this program if not eligible for such financial assistance from the utility; or

(b) In the case of a dwelling which has baseboard or portable space heaters, the customer is eligible for rebate and loan financing under this program if not eligible for such financial assistance from the utility.

(c) In the case of a dwelling that has no installed heating system other than wood, the customer is eligible for rebate and loan financing under this program.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0015

### Description of Residential Energy Conservation Program

As defined in ORS 469.673 through 469.679, each dealer shall establish an energy conservation services program and shall provide energy conservation information to customers and to the public. A dealer may rely upon the services contracted for by the Director pursuant to ORS 469.677, instead of presenting a separate program, or complete the energy audits as a trade ally, as provided in these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.673

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

# ADMINISTRATIVE RULES

## 330-060-0020

### Reliance on the Statewide Fuel Oil Audit Program

(1) The Director shall contract for a statewide energy audit program to give the information, help and technical advice required of dealers by ORS 469.675.

(2) A dealer who relies on the statewide energy audit program may, however:

(a) Notify its customers about this program, including a toll-free number to request information; or

(b) Act as a contact between its customers and the statewide energy audit program. Such a dealer may pass on its customers' requests for information to the statewide energy audit contractor chosen by the Oregon Department of Energy.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0040

### Low-Interest Loans Through Lenders

(1) State financed 6.5 percent interest loans made under Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall meet the following standards:

(a) A loan shall be made only to a dwelling owner who is or who rents to a residential fuel oil customer or a wood heating resident;

(b) Only energy conservation measures recommended as cost-effective in the energy audit, recommended adjuncts to those measures, and any loan fee that is included in the body of the loan shall qualify for the loans;

(c) The maximum loan limit, including the loan fee, is \$5,000 for each eligible dwelling unit. If the dwelling owner is a corporation operating a non-profit home for the elderly, a loan shall not exceed \$2,000 per dwelling unit;

(d) A lender may charge, finance, and collect a nonrefundable front-end loan fee. Charging such a loan fee will not disqualify the loan for a tax credit under this section. The fee shall not exceed that charged by the lender for non-subsidized loans made under like terms and conditions at the time the subject loan is made;

(e) There is no limit on the number of eligible dwelling units for which a dwelling owner may receive a loan;

(f) Loans shall not finance the following:

(A) Converting space heat equipment from oil or wood to another source of fuel;

(B) Space heating heat pumps;

(C) Water heating heat pumps;

(D) Wood-burning devices;

(E) Any measure that would benefit all or part of a non-residential commercial building unless the building has some residential living space. In the case of a commercial building which has some residential living space the following can qualify for a loan:

(i) That part of the building used exclusively for residential; and

(ii) In a centrally heated building, a prorated share of the cost of a heating system. This share shall be based on the percentage of residential to total square footage served by the heating system.

EXAMPLE: 1,000 square feet is commercial, 2,000 square feet is residential - 2/3 of the cost of an eligible heating system could qualify for the loan.

(F) Solar equipment;

(G) Any materials used in building a new dwelling, additions to dwellings or remodeling which adds living space;

(H) That part of the cost of the measures for which the dwelling owner receives a state cash incentive.

(g) The costs of materials for "do-it-yourself" jobs may be included in the loan. No labor costs of such jobs shall qualify for the loan.

(2) In order to qualify for a loan, the dwelling owner must submit to the Oregon Department of Energy written permission to inspect the job to verify that the measures have been installed.

(3) In applying for the loan, a dwelling owner shall present to the lender:

(a) For contractor-installed measures, at least one written bid itemizing measures to be included in the loan and their costs. The Oregon Department of Energy may require that contractors use bid forms provided by the Oregon Department of Energy; and

(b) For "do-it-yourself" measures, an itemized list of materials to be installed and their costs.

(4) Lenders may receive a state tax credit in accord with Section 28, Chapter 894, Oregon Laws 1981 as amended by Chapter 749, Oregon Laws

1987, and Chapter 718, Oregon Laws 1991. This applies only to loans which:

(a) Are made to dwelling owners who are or who rent to residential fuel oil customers or wood heating residents and who:

(A) Have received an energy audit completed pursuant to these rules; and

(B) Give the lender a copy of:

(i) The results of the energy audit;

(ii) Certification on a form supplied by the Oregon Department of Energy stating that the dwelling receives space heating from fuel oil or wood; and

(iii) For a furnace or burner replacement, a certification from the contractor on a form supplied by the Oregon Department of Energy that the heating system meets or exceeds the combustion efficiency standards set in these rules.

(iv) Written permission on a form supplied by and submitted to the Oregon Department of Energy to inspect.

(b) Are subject to an annual rate not to exceed 6.5 percent;

(c) Have a term of ten years or less; and

(d) Finance those measures recommended in the energy audit.

(5) Lenders making weatherization loans under Section 28, Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall:

(a) Keep a copy of the customer's energy audit and the certification that the heating system meets or exceeds the combustion efficiency standards set in these rules, as well as the customer's loan application;

(b) Help the customer fill in a form, given to the customer during the energy audit, stating what measures will be included in the loan; and

(c) Return that form and the heating system certification to the Oregon Department of Energy no later than one week after the loan is closed. (This is the lender's only reporting requirement to the Oregon Department of Energy.)

(6) Eligibility of the lender for any tax credit under Section 28, Chapter 894, Oregon Laws 1981, as amended by Chapter 749, Oregon Laws 1987, and Chapter 718, Oregon Laws 1991, shall not be affected by any dwelling owner's failure to use the loan for qualifying measures.

(7) The borrower must complete installation of the measures financed within 90 days of receiving the loan funds.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.170

Hist.: DOE 10(Temp), f. & ef. 9-16-77; DOE 1-1978, f. & ef. 1-16-78; DOE 8-1979, f. & ef. 11-27-79; DOE 13-1980, f. 12-15-80, ef. 1-1-81; DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0060

### Oil Audit Standards: General Description of Oil-Heated Dwellings Energy Audit

(1) The energy audit shall provide a basis to determine which energy conservation measures are recommended as described in OAR 330-060-0010(14).

(2) The energy audit shall also provide information published by the Oregon Department of Energy about no-cost/low-cost energy-saving practices, about energy conservation measures, and financial incentives available to help pay for the costs of installing those measures.

(3) The Administrator may approve the use of other audit methodologies, including allowing customers or trade allies to use a form developed by the Oregon Department of Energy, if the Administrator determines that such alternate methodologies will provide the customer with results comparable to those achieved using the audit methodology prescribed by these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0070

### Oil Audit Standards: Calculation Procedures

(1) The energy savings from energy conservation measures shall be calculated by the Oregon Department of Energy.

(2) The Oregon Department of Energy may approve use of alternate energy savings calculations, if the calculations and the methodology supporting those calculations are submitted to the Oregon Department of Energy for its review and approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.675

# ADMINISTRATIVE RULES

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0075

### **Oil Audit Standards: Calculation of Cost Effectiveness**

(1) The cost-effectiveness of energy conservation measures shall be calculated by the Oregon Department of Energy.

(2) The Oregon Department of Energy may approve use of alternate cost-effectiveness calculations, if the calculations and the methodology supporting those calculations are submitted to the Oregon Department of Energy for its review and approval.

(3) The measure is "cost-effective" if its cost is less than 110 percent of the present value of the cost of fuel oil saved over its assumed life cycle.

(4) The Oregon Department of Energy must approve all measures that are presumed to be cost-effective. These measures may include items which alone may not save energy but are needed to make recommended energy measures work effectively.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 3-1987, f. & ef. 12-18-87; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-060-0095

### **Post-Installation Inspections**

(1) The Oregon Department of Energy may inspect energy conservation measures:

(a) The Oregon Department of Energy may inspect energy conservation measures installed by customers receiving a cash payment or loan for those measures;

(b) The Oregon Department of Energy may inspect installed measures at the customer's request if those measures qualify for a cash payment or loan;

(c) The Oregon Department of Energy may require an inspection at the time of the audit if any energy conservation measures qualifying for the cash payment or loan were installed before the audit is completed.

(d) The Oregon Department of Energy may require an inspection before disbursing cash payments.

(2) The inspection shall verify that:

(a) Measures included in the loan or other incentive were installed; and

(b) Workmanship and materials meet industry standards. Installation standards and inspection forms shall be approved by the Oregon Department of Energy. All measures installed shall meet the energy conservation measure specifications. Local codes shall prevail in all cases.

(3) The results of the inspection shall be promptly reported to:

(a) The customer; and

(b) The Oregon Department of Energy.

(4) Inspectors shall have no financial or other interest in the firm that installed the measure(s) inspected.

(5) An inspector shall be able to determine whether the applicable energy conservation measures meet the standards set forth in these rules and specifications.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.675

Hist.: DOE 7-1981, f. & ef. 12-18-81; DOE 4-1983, f. & ef. 10-10-83; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0005

### **Purpose**

(1) OAR 330-061-0005 through 330-061-0050 prescribe how the Oregon Department of Energy shall run a program providing energy conservation measure rebates. This program shall be known as the energy conservation measure rebate, a part of the State Home Oil Weatherization Program, run by the Oregon Department of Energy. Operation of the oil energy conservation measure rebate depends on availability of funds.

(2) These rules are effective September 1, 2007 or upon filing with the Secretary of State, whichever is later and shall apply to energy conservation measure rebate applications postmarked on or after the effective date of these rules.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0010

### **Definitions**

As used in OAR 330-061-0005 through 330-061-0050, unless the context requires otherwise:

(1) "AFUE": Annual fuel utilization efficiency, as determined by the Gas Appliance and Manufacturers Association.

(2) "Applicant": Any person applying for a rebate.

(3) "Community Action Agency": An agency designated to receive federal low income weatherization funds on behalf of low income clients.

(4) "Contractor": A person receiving payment for installing an energy conservation measure. If installation is performed by a subcontractor, then the subcontractor may fulfill requirements such as the warranty requirements.

(5) "Cost-Effective" has the meaning given in OAR 330-060-0010(8).

(6) "Director": The Director of the Oregon Department of Energy.

(7) "Dwelling" has the meaning given in OAR 330-060-0010(11).

(8) "Energy Audit" has the meaning given in OAR 330-060-0010(13).

(9) "Energy Conservation Measures" has the meaning given in OAR 330-060-0010(14).

(10) "Family": All persons living together in a dwelling unit.

(11) "Fuel Oil" has the meaning given in OAR 330-060-0010(18).

(12) "Improvement Costs":

(a) The actual costs of an energy conservation measure;

(b) Any incidental cost necessary to ensure the quality of the energy conservation measure (for example, providing adequate ventilation in connection with attic insulation), but not including the cost of repairs; and

(c) If installed by contractor, the actual costs to the recipient;

(d) "Improvement costs": Does not include the applicant's own labor.

(13) "Lighting System Improvements" has the meaning given in OAR 330-060-0010(21).

(14) "Oregon Department of Energy": State of Oregon agency.

(15) "Person": An individual, corporation, partnership, joint venture or other entity.

(16) "Rebate": A cash grant for energy conservation measures.

(17) "Recipient": A person receiving a rebate under the energy conservation measure rebate program.

(18) "Space Heating" has the meaning given in OAR 330-060-0010(23).

(19) "Tenant" has the meaning given in OAR 330-060-0010(25).

(20) "Wood Heating Resident" has the meaning given in OAR 330-060-0010(28).

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 3-1988, f. & cert. ef. 5-24-89; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0015

### **Description of Oil Weatherization Rebate Program**

The Oregon Department of Energy offers rebates for cost-effective energy conservation measures. The rebates are subject to available funding on a first-come, first-served basis.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0020

### **Eligible Recipients**

(1) An owner of, or tenant in, a dwelling who purchases and installs energy conservation measures in such building shall be eligible to receive a rebate. All buildings must be heated by fuel oil or wood as the primary source of space heat.

(2) Assistance on behalf of others. A third person may receive a rebate on behalf of any owner or tenant who would be eligible to receive a rebate, if such owner or tenant consents to the arrangement in writing. The third person shall comply with all requirements which would apply to the owner or tenant if he or she had received the rebate. The third person may receive the rebate in the form of a single grant in an amount equal to the sum of such grants which each owner or tenant could have received.

(3) Assistance through Community Action Agencies and other organizations that assist low-income households with weatherization and energy conservation measures. Such agencies may apply for a rebate on behalf of

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applicants who meet income guidelines for the U.S. Department of Energy's Low Income Weatherization Program.

(4) In the case of a commercial building which has some residential living space, the following can qualify for a rebate:

(a) That part of the building used exclusively for residential purposes; and

(b) In a centrally heated building, a prorated share of the cost of a heating system upgrade. This share shall be based on the percentage of residential to total square footage served by the heating system.

**EXAMPLE:** 1,000 square feet is commercial, 2,000 square feet is residential — 2/3 of the cost could qualify for the rebate.

(5) Relationship to low-interest loan. An applicant may apply for a 6.5 percent weatherization loan under ORS 469.715 to cover that part of the weatherization job not paid for by the rebate. However, an applicant may not receive a 6.5 percent loan for the full amount of the weatherization job and a rebate for measures covered by the loan. If a loan is received for the full amount of the weatherization job, the rebate must be used to pay down the loan balance.

(6) Relationship to other publicly-subsidized loans. An applicant may apply for any other local, state or federal low-interest loan to cover costs of energy conservations measures not paid for by the rebate. However, an applicant may not receive a publicly-subsidized low-interest loan for energy conservation measure costs paid for by the rebate.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0025

### Amount of Rebate

(1) The Oregon Department of Energy shall annually allocate available rebate funding based on the following income categories and in the following dollar and percentage amounts:

(a) Households at or below eligibility levels for the U.S. Department of Energy's Low Income Weatherization Program can receive weatherization and energy conservation measure services from a Community Action Agency or other agency serving low-income households. The agency may apply for the rebate program for installing qualifying energy conservation measures. The rebate for installing qualifying energy conservation measures shall not exceed 50 percent of the costs or \$1,000, whichever is less.

(b) Any household may receive a cash rebate for installing qualifying energy conservation measures, subject to the following limitations:

(A) A rebate for a fuel oil furnace or burner shall not exceed 25 percent of the costs or \$150, whichever is less.

(B) A rebate for installation of a qualifying above-ground oil tank shall not exceed 25 percent of the costs or \$150, whichever is less.

(C) A rebate for storm windows, storm doors, double pane windows, or double pane sliding doors shall not exceed 25 percent of the costs or \$150, whichever is less.

(D) A rebate for insulated doors shall not exceed 25 percent of the costs or \$150, whichever is less.

(E) A rebate for a blower-door or duct leakage test performed by a contractor certified by the Oregon Department of Energy to assess the potential energy efficiency and other benefits from whole house air sealing and duct sealing shall not exceed 100 percent of the costs or \$100, whichever is less.

(F) The rebate for all other energy conservation measures shall not exceed 25 percent of the costs or \$500, whichever is less.

(G) The total rebate received by a household for energy conservation measures subject to these rules shall not exceed \$500.

(2) Notwithstanding OAR 330-061-0025(1), The Director may:

(a) Reduce incentive amounts or limit the number of qualifying energy conservation measures if the Director determines that rebate applications are likely to exceed the funding allocated. This action will apply to any applications received no sooner than 30 calendar days after that determination.

(b) Allocate additional funding for financial incentives through pilot programs that the Oregon Department of Energy determines may encourage installation of cost-effective energy efficiency measures.

(3) In some cases, a landlord may not wish to install energy conservation measures in all units within a building. To determine the building type, all dwelling units in the building must be counted. The rebate is only available for those units where energy conservation measures have been installed. All dwelling units sharing a common space conditioning system shall be considered part of the same residential building.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0030

### Application Procedure

(1) Energy audit required prior to rebate payment:

(a) An applicant for a rebate must submit to the Oregon Department of Energy a copy of an energy audit for the building or dwelling unit for which a rebate is requested before the rebate is provided;

(b) A rebate will only be provided for energy conservation measures listed in OAR 330-061-0010(10), subject to the limitations of OAR 330-061-0015 and 330-061-0025.

(2) Applicant certification. The applicant shall certify to the Oregon Department of Energy that the applicant heats with fuel oil or wood, the application is for costs of qualifying energy conservation measures, the applicant will grant permission for an inspection of the installed measures within a reasonable time if requested by the Oregon Department of Energy, and the applicant understands that the installed measures must comply with the program's energy conservation measure specifications and if the measures do not comply that the installation must be remedied or the rebate repaid.

(3) A tenant must get prior written consent from the owner of the building or dwelling unit to be eligible to apply for a rebate for the installation of energy conservation measures.

(4) A third party applying for assistance on behalf of any owner or tenant who would be eligible to receive a rebate must get written consent from the owner or tenant before receiving a rebate on the owner's or tenant's behalf.

(5) Contractor requirements:

(a) All contractors who install energy conservation measures receiving a rebate must be registered with the Oregon Construction Contractors Board. This requirement shall not apply to community action agencies acting as contractors;

(b) Contractors shall certify if requested by the Oregon Department of Energy that neither they nor their suppliers (if any) are on the Consolidated List of debarred, suspended, and ineligible contractors prepared by the General Services Administration pursuant to the temporary rule published at 47 FR 43692 and any successor rule;

(c) Contractors shall certify that a new flame retention burner or fuel oil furnace for which a rebate is requested meets or exceeds the required steady state efficiency;

(d) Warranties:

(A) Basic Requirement:

(i) The contractor for the installation of energy conservation measures shall, in connection with such measures, warrant in writing that the recipient shall (for those measures found within one year from the date of installation to be defective due to materials, manufacture, design or installation) at a minimum be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts, materials or installation;

(ii) Any replacement parts or materials must be provided at the site of installation without charge for transportation and must be installed without charge by the contractor.

(B) Other law. This section shall not relieve a warrantor under this section from full compliance with federal and state laws applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0035

### Payment of Rebate

After receipt of all documents and certificates required by OAR 330-061-0030, the Oregon Department of Energy shall issue a two-party check in the allowable rebate amount to the applicant and the applicant's designated contractor or supplier. The Oregon Department of Energy may also, at its discretion, issue a two-party check to the applicant and another person (such as a landlord, Community Action Agency, or lending institution). If no contractor or supplier is involved, or if the applicant has receipts showing that the contractor has been paid in full, the Oregon Department of

# ADMINISTRATIVE RULES

Energy may issue a single-party check to the applicant. The Oregon Department of Energy may also, at its discretion, issue a single-party check to the contractor. The Oregon Department of Energy may issue checks to Community Action Agencies administering the rebate program on behalf of the Oregon Department of Energy.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 2-1991, f. & cert. ef. 10-14-91; DOE 4-1993, f. & cert. ef. 10-22-93; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0040

### Post-Installation Inspections

The Oregon Department of Energy may conduct post-installation inspections as provided in OAR 330-060-0095.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## 330-061-0045

### Penalties and Remedies

(1) Any person who knowingly makes any false statement or misrepresents any material fact with respect to any rebate provided by the Oregon Department of Energy is subject under state law ORS 162.085 to a fine of not more than \$1,000, or imprisonment for not more than six months, or both, for each offense. Each false statement, material misrepresentation or failure to make a required disclosure or statement shall be a separate offense.

(2) Refusal by a rebate recipient to allow an inspection previously authorized in writing by the recipient, upon reasonable request by the Oregon Department of Energy and at a reasonable time shall constitute grounds for the Oregon Department of Energy to recover the full rebate amount from the recipient.

(3) Penalties in these sections are not exclusive. The penalties provided for in sections (1) and (2) of this rule shall be in addition to any civil or criminal fines or penalties applicable under law, including any applicable provisions of federal, state or local law.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: DOE 5-1983, f. & ef. 12-2-83; DOE 8-1984, f. & ef. 12-19-84; DOE 1-1987, f. & ef. 2-19-87; DOE 3-1987, f. & ef. 12-18-87; DOE 1-2000, f. 3-30-00, cert. ef. 4-1-00; DOE 2-2003, f. 9-24-03, cert. ef. 10-1-03; DOE 5-2004, f. 10-14-04, cert. ef. 11-1-04; DOE 2-2007, f. 8-29-07, cert. ef. 9-1-07

## Department of Environmental Quality Chapter 340

**Rule Caption:** Oregon Title V Operating Permit Program Fee Increase.

**Adm. Order No.:** DEQ 6-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-17-07 thru 2-12-08

**Notice Publication Date:**

**Rules Amended:** 340-200-0020, 340-218-0050, 340-220-0010, 340-220-0020, 340-220-0030, 340-220-0040, 340-220-0050, 340-220-0060, 340-220-0070, 340-220-0090, 340-220-0100, 340-220-0110, 340-220-0120, 340-220-0150, 340-220-0170

**Subject:** The rule amendments increase Title V Operating Permit fees by the amount authorized by Senate Bill 107 and by the 2006 Consumer Price Index. The Annual Base Fee will increase by \$1,011, from \$3,379 to \$4,390. The Emission Fees will increase by \$4.52 per ton, from \$39.38 per ton to \$43.90 per ton. Specific Activity Fees will increase as follows:

Administrative Fee: from \$338 to \$406

Simple Modification: from \$1,352 to \$1,626

Moderate Modification: from \$10,137 to \$12,194

Complex Modification: from \$20,273 to \$24,387

Ambient Air Monitoring: from \$2,703 to \$3,252

The temporary rule also changes definitions for regulated pollutants to conform to new statutory requirements of Senate Bill 107, which amended ORS 468A.315.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

## 340-200-0020

### General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraph (B), actual emissions equal the average rate at which the source actually emitted the pollutant during a baseline period and that represents normal source operation;

(B) The Department presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A).

(C) For any source that had not begun normal operation, actual emissions equal the potential to emit of the source.

(b) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities, except categorically insignificant activities and secondary emissions.

(c) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified.

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) The lesser of the amount established in OAR 340-244-0040, Table 1 or 340-244-0230, Table 3, or 1,000 pounds;

(f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(11) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been

# ADMINISTRATIVE RULES

promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rule-making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in **40 CFR Part 52**;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0200 through 340-210-0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(12) "Baseline Emission Rate" means the actual emission rate during the baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after the baseline period.

(13) "Baseline Period" means any consecutive 12 calendar month period during calendar years 1977 or 1978. The Department may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(14) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible,

sible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possible, set forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.

(15) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(16) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(17) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.

(a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) Evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

(e) Office activities;

(f) Food service activities;

(g) Janitorial activities;

(h) Personal care activities;

(i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

(j) On-site laundry activities;

(k) On-site recreation facilities;

(l) Instrument calibration;

(m) Maintenance and repair shop;

(n) Automotive repair shops or storage garages;

(o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

(p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

(q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

(r) Temporary construction activities;

(s) Warehouse activities;

(t) Accidental fires;

(u) Air vents from air compressors;

(v) Air purification systems;

(w) Continuous emissions monitoring vent lines;

(x) Demineralized water tanks;

(y) Pre-treatment of municipal water, including use of deionized water purification systems;

(z) Electrical charging stations;

(aa) Fire brigade training;

(bb) Instrument air dryers and distribution;

(cc) Process raw water filtration systems;

(dd) Pharmaceutical packaging;

(ee) Fire suppression;

(ff) Blueprint making;

(gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;

(hh) Electric motors;

(ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;

(jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;

# ADMINISTRATIVE RULES

(kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;

(ll) Pressurized tanks containing gaseous compounds;

(mm) Vacuum sheet stacker vents;

(nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;

(oo) Log ponds;

(pp) Storm water settling basins;

(qq) Fire suppression and training;

(rr) Paved roads and paved parking lots within an urban growth boundary;

(ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;

(tt) Health, safety, and emergency response activities;

(uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by the Department;

(vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;

(ww) Non-contact steam condensate flash tanks;

(xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;

(yy) Boiler blowdown tanks;

(zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;

(aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;

(bbb) Oil/water separators in effluent treatment systems;

(ccc) Combustion source flame safety purging on startup;

(ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

(eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and

(fff) White water storage tanks.

(18) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(19) "CFR" means Code of Federal Regulations.

(20) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0250.

(21) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(22) "Commission" or "EQC" means Environmental Quality Commission.

(23) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(24) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(25) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(26) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(27) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, after-burners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(28) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, sulfur dioxide, carbon monoxide, or lead.

(29) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(30) "De minimis emission level" means: [Table not included. See ED. NOTE.]

NOTE: De minimis is compared to all increases that are not included in the PSEL.

(31) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.

(32) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(33) "Director" means the Director of the Department or the Director's designee.

(34) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-218-0210 or the EPA and affected State review under OAR 340-218-0230.

(35) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(36) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(37) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(38) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

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(39) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Where an emission factor is required sources must use an emission factor approved by EPA or the Department.

(40)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO<sub>2</sub> per hour, pounds of SO<sub>2</sub> per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO<sub>2</sub>) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO<sub>2</sub>). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(41) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(42) "Emission Reporting Form" means a paper or electronic form developed by the Department that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(43) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(44) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(45) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(46) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(47) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that

indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(48) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(49) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(50) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(51) Federal Major Source means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. Potential to emit calculations must include emission increases due to a new or modified source.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;

(b) Coal cleaning plants with thermal dryers;

(c) Kraft pulp mills;

(d) Portland cement plants;

(e) Primary Zinc Smelters;

(f) Iron and Steel Mill Plants;

(g) Primary aluminum ore reduction plants;

(h) Primary copper smelters;

(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;

(j) Hydrofluoric acid plants;

(k) Sulfuric acid plants;

(l) Nitric acid plants;

(m) Petroleum Refineries;

(n) Lime plants;

(o) Phosphate rock processing plants;

(p) Coke oven batteries;

(q) Sulfur recovery plants;

(r) Carbon black plants, furnace process;

(s) Primary lead smelters;

(t) Fuel conversion plants;

(u) Sintering plants;

(v) Secondary metal production plants;

(w) Chemical process plants;

(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(z) Taconite ore processing plants;

(aa) Glass fiber processing plants;

(bb) Charcoal production plants.

(52) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(53) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(54) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(55) "Generic PSEL" means: [Table not included. See ED. NOTE.]

NOTE: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in the table above. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELS.

(56) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

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(57) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(58) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(59) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(60) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

- (a) Does not result in a redesignation from an insignificant to a significant activity;
- (b) Does not invoke an applicable requirement not included in the permit; and
- (c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(61) "Late Payment" means a fee payment which is postmarked after the due date.

(62) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(63) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR chapter 340, division 204.

(64) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(65) "Major Modification" means any physical change or change of operation of a source that results in the following for any regulated air pollutant:

- (a) An increase in the PSEL by an amount equal to or more than the significant emission rate over the netting basis; and
- (b) The accumulation of physical changes and changes of operation since baseline would result in a significant emission rate increase.

(A) Calculations of emission increases in (b) must account for all accumulated increases in actual emissions due to physical changes and changes of operation occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed during the baseline period are not included, if that increased use was possible during the baseline period under the baseline configuration of the source, and the increased use of baseline equipment capacity is not to support a physical change or change in operation.

(c) For new or modified major sources that were permitted to construct and operate after the baseline period and were not subject to New Source Review, a major modification means:

(A) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source; or

(B) The addition or modification of any stationary source or sources after the initial construction that have cumulative potential emissions greater than or equal to the significant emission rate, excluding any emission decreases.

(C) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) The following are not considered major modifications:

(A) Except as provided in (c), proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Pollution control projects that are determined by the Department to be environmentally beneficial;

(C) Routine maintenance, repair, and replacement of components;

(D) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(E) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(66) "Major Source":

(a) Except as provided in subsection (b), means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. This includes emissions from insignificant activities.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, Rules Applicable to Sources Required to Have Oregon Title V Operating Permits OAR 340 division 220, Oregon Title V Operating Permit Fees, and OAR 340-216-0066 Standard ACDPs, means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

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- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.
- (C) A major stationary source as defined in part D of Title I of the Act, including:
- (i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
  - (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;
  - (iii) For carbon monoxide nonattainment areas:
    - (I) That are classified as "serious"; and
    - (II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.
  - (iv) For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM10.
- (67) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.
- (68) "Modification," except as used in the term "major modification," means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:
- (a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;
  - (b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and
  - (c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.
- (69) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:
- (a) Continuous emission or opacity monitoring systems.
  - (b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.
  - (c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).
  - (d) Maintaining and analyzing records of fuel or raw materials usage.
  - (e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.
  - (f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

- (g) Visible emission observations and recording.
- (h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.
- (70) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations.
- (a) With the first permitting action for a source after July 1, 2002, the baseline emissions rate will be frozen and recalculated only if:
- (A) A better emission factor is established for the baseline period and approved by the Department;
  - (B) A currently operating emissions unit that the Department formerly thought had negligible emissions, is determined to have non-de minimis emissions and needs to be added to the baseline emission rate; or
  - (C) A new pollutant is added to the regulated pollutant list (e.g., PM2.5). For a pollutant that is newly regulated after 11/15/90, the initial netting basis is the actual emissions during any 12 consecutive month period within the 24 months immediately preceding its designation as a regulated pollutant. The Department may allow a prior 12 consecutive month time period to be used if it is shown to be more representative of normal source operation.
- (b) Netting basis is zero for:
- (A) any source constructed after the baseline period and has not undergone New Source Review;
  - (B) Any pollutant that has a generic PSEL in a permit;
  - (C) Any source permitted as portable; and
  - (D) Any source with a netting basis calculation resulting in a negative number.
- (c) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.
- (d) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected.
- (e) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.
- (f) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).
- (71) "Nitrogen Oxides" or "NO<sub>x</sub>" means all oxides of nitrogen except nitrous oxide.
- (72) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.
- (73) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.
- (74) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
- (75) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.
- (76) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.
- (77) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.
- (78) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.
- (79) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).
- (80) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).

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(81) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(82) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(83) "Permit revision" means any permit modification or administrative permit amendment.

(84) "Permitted Emissions" as used in OAR division 220 means each regulated pollutant portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-0190.

(85) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(86) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

(87) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one regulated pollutant.

(88) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) When used in the context of ambient concentration, means air-borne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J.

(89) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(90) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(91) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(92) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(93) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or a Regional Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(94) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, 61 or 63.

(95) "Regional Authority" means Lane Regional Air Pollution Authority.

(96) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this rule, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-244-0040 or 340-244-0230.

(b) As used in OAR 340 division 220, means any air pollutant as included in subsection (a) of this rule, except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(c) As used in OAR 340 division 224 any pollutant listed under OAR 340-244-0040 or 340-244-0230 is not a regulated pollutant.

(97) "Renewal" means the process by which a permit is reissued at the end of its term.

(98) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(99) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

(100) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).

(101) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of performance for existing sources and provides for implementing and enforcing such standards.

(102) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).

(103) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.

(104) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(105) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(106) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(107) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.

(108) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

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(109) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(110) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NOx in ozone nonattainment areas.

(111) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NOx sources in ozone nonattainment areas.

(112) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(113) "Section 183(f)" means subsection 182(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(114) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.

(115) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.

(116) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."

(117) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.

(118) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.

(119) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(120) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(121) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.

(122) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in Table 1. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NOx, a major source or major modification has a significant impact if it is located within the Ozone Precursor Significant Impact Distance defined in OAR 340-225-0020.

(123) "Significant Emission Rate" or "SER," except as provided in subsections (a) through (c) of this section, means an emission rate equal to or greater than the rates specified in Table 2.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM10 is defined in Table 3.

(b) For regulated air pollutants not listed in Table 2 or 3, the significant emission rate is zero unless the Department determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24 hour average) is emitting at a significant emission rate.

(124) "Significant Impairment" occurs when the Department determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. The Department will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(125) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as

described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(126) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that the Department determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(127) "Source Test" means the average of at least three test runs conducted during operating conditions representative of the period for which emissions are to be determined and in accordance with the Department's Source Sampling Manual or other Department approved methods.

(128) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(129) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(130) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

(131) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(132) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by the Department under OAR 340 division 216 or 218.

(133) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(134) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H<sub>2</sub>S).

(135) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(136) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(137) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(138) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

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(139) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(140) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); and methyl formate (HCOOCH<sub>3</sub>); and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and the Department approves the exclusion.

(c) The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compound(s) are VOC for purposes of all record-keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and must be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(141) "Year" means any consecutive 12 month period of time.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

[Publications] Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f.

& cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0145, 340-020-0225, 340-020-0305, 340-020-0355, 340-020-0460 & 340-020-0520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-218-0050

### Standard Permit Requirements

Each permit issued under this division must include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(b) For sources regulated under the national acid rain program, the permit must state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions must be incorporated into the permit and will be enforceable by the EPA;

(c) For any alternative emission limit established in accordance with OAR 340-226-0400, the permit must contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. The Department will issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.

(3) Monitoring and related recordkeeping and reporting requirements:

(a) Each permit must contain the following requirements with respect to monitoring:

(A) A monitoring protocol to provide accurate and reliable data that:

(i) Is representative of actual source operation;

(ii) Is consistent with the averaging time in the permit emission limits;

(iii) Is consistent with monitoring requirements of other applicable requirements; and

(iv) Can be used for compliance certification and enforcement.

(B) All emissions monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including OAR 340-212-0200 through 340-212-0280 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(C) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-218-0050(3)(c). Such monitoring requirements must assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing must be conducted in accordance with the **Department's Continuous Monitoring Manual** (January, 1992) and the **Source Sampling Manual** (January, 1992), respectively. Other monitoring must be conducted in accordance with Department approved procedures. The monitoring requirements may include but are not limited to any combination of the following:

(i) Continuous emissions monitoring systems (CEMS);

(ii) Continuous opacity monitoring systems (COMS);

(iii) Continuous parameter monitoring systems (CPMS);

(iv) Continuous flow rate monitoring systems (CFRMS);

(v) Source testing;

(vi) Material balance;

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- (vii) Engineering calculations;
- (viii) Recordkeeping; or
- (ix) Fuel analysis; and
- (D) As necessary, requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods;
- (E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method;
- (F) Methods used to determine actual emissions for fee purposes must also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-218-0080. For any regulated pollutant for which fees are paid on actual emissions, the compliance monitoring protocol must include the method used to determine the amount of actual emissions;
- (G) Monitoring requirements must commence on the date of permit issuance unless otherwise specified in the permit.
- (b) With respect to recordkeeping, the permit must incorporate all applicable recordkeeping requirements and require, where applicable, the following:
- (A) Records of required monitoring information that include the following:
- (i) The date, place as defined in the permit, and time of sampling or measurements;
- (ii) The date(s) analyses were performed;
- (iii) The company or entity that performed the analyses;
- (iv) The analytical techniques or methods used;
- (v) The results of such analyses;
- (vi) The operating conditions as existing at the time of sampling or measurement; and
- (vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts).
- (B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;
- (C) Recordkeeping requirements must commence on the date of permit issuance unless otherwise specified in the permit.
- (c) With respect to reporting, the permit must incorporate all applicable reporting requirements and require the following:
- (A) Submittal of four (4) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule must be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. One copy of the report must be submitted to the Air Quality Division, two copies to the regional office, and one copy to the EPA. All instances of deviations from permit requirements must be clearly identified in such reports:
- (i) The semi-annual report will be due on July 30, unless otherwise approved in writing by the Department, and must include the semi-annual compliance certification, OAR 340-218-0080;
- (ii) The annual report will be due on February 15, unless otherwise approved in writing by the Department, but may not be due later than March 15, and must consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-214-0220; the excess emissions upset log, OAR 214-0340; the annual certification that the risk management plan is being properly implemented, OAR 340-224-0230; and the semi-annual compliance certification, OAR 340-218-0080.
- (B) Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. "Prompt" means within seven (7) days of the deviation. Deviations that cause excess emissions, as specified in OAR 340-214-0300 through 340-214-0360 must be reported in accordance with OAR 340-214-0340;
- (C) Submittal of any required source test report within 30 days after the source test unless otherwise approved in writing by the Department or specified in a permit;
- (D) All required reports must be certified by a responsible official consistent with OAR 340-218-0040(5);
- (E) Reporting requirements must commence on the date of permit issuance unless otherwise specified in the permit.
- (d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in an Oregon Title V Operating Permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.
- (4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder:
- (a) No permit revision will be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement;
- (b) No limit may be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to non-compliance with any other applicable requirement;
- (c) Any such allowance must be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.
- (5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (6) Provisions stating the following:
- (a) The permittee must comply with all conditions of the Oregon Title V Operating Permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (b) The need to halt or reduce activity will not be a defense. It will not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;
- (c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
- (d) The permit does not convey any property rights of any sort, or any exclusive privilege;
- (e) The permittee must furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.
- (7) A provision to ensure that an Oregon Title V Operating Permit program source pays fees to the Department consistent with the fee schedule.
- (8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:
- (a) Must require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
- (b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions under each such alternative operating scenario; and
- (c) Must ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this division.
- (9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSELs. Such terms and conditions:
- (a) Must include all terms required under OAR 340-218-0050 and 340-218-0080 to determine compliance;
- (b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions;
- (c) Must ensure that the trades are quantifiable and enforceable;
- (d) Must ensure that the trades are not Title I modifications;
- (e) Must require a minimum 7-day advance, written notification to the Department and the EPA of the trade that must be attached to the Department's and the source's copy of the permit. The written notification

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must state when the change will occur and must describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(f) Must meet all applicable requirements and requirements of this division.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:

(a) Must include all terms required under OAR 340-218-0050 and 340-218-0080 to determine compliance;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of this division.

(11) Terms and conditions allowing for off-permit changes, OAR 340-218-0140(2).

(12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-218-0140(3).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468.020 & 468A.310

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2130; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0010

### Purpose, Scope And Applicability

(1) The purpose of this division is to provide owners and operators of Oregon Title V Operating Permit program sources and the Department with the criteria and procedures to determine emissions and fees based on air emissions and specific activities.

(2) This division applies to Oregon Title V Operating Permit program sources as defined in OAR 340-200-0020.

(3) The owner or operator may elect to pay emission fees for each regulated pollutant on either actual emissions or permitted emissions.

(4) Sources subject to the Oregon Title V Operating Permit program defined in OAR 340-200-0020, are subject to both an annual base fee established under OAR 340-220-0030 and an emission fee calculated pursuant to OAR 340-220-0040.

(5) Sources subject to the Oregon Title V Operating Permit program may also be subject to user fees (OAR 340-220-0050 and 340-216-0090).

(6) The Department will credit owners and operators of new Oregon Title V Operating Permit program sources for the unused portion of paid Annual Fees. The credit will begin from the date the Department receives the Title V permit application.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2560; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0020

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) Regulated pollutant. For purposes of this rule, regulated pollutant means particulates, volatile organic compounds, oxides of nitrogen and sulfur dioxide.

(2) Particulates. For purposes of this rule, particulates mean those currently regulated by the Title V permit.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0030

### Annual Base Fee

(1) The Department will assess an annual base fee of \$ 4,390 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2007 to November 14, 2008.

(2) The Department will assess an annual base fee of \$ 4,715 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2008 to November 14, 2009.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0040

### Emission Fee

(1) The Department will assess an emission fee of \$ 43.90 per ton of each regulated pollutant emitted during calendar year 2006 to each source subject to the Oregon Title V Operating Permit Program.

(2) The Department will assess an emission fee of \$ 47.15 per ton of each regulated pollutant emitted during calendar year 2007 to each source subject to the Oregon Title V Operating Permit Program.

(3) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0050

### Specific Activity Fees

The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as follows:

(1) Existing Source Permit Revisions:

(a) Administrative\* — \$ 406;

(b) Simple — \$ 1,626;

(c) Moderate — \$ 12,194;

(d) Complex — \$ 24,387.

(2) Ambient Air Monitoring Review — \$ 3,252.

\*includes revisions specified in OAR 340-218-0150((1)) (a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0060

### Pollutants Subject to Emission Fees

(1) The Department will assess emission fees on emissions of regulated pollutants up to and including 4,000 tons per year for each regulated pollutant.

(2) The owner or operator must pay emission fees on emissions of all regulated pollutants.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2610; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0070

### Exclusions

(1) The Department will not assess emission fees on newly permitted major sources that have not begun initial operation.

(2) The Department will not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-220-0010.

(3) The Department will not assess emission fees on any device or activity that did not operate at any time during the calendar year.

(4) If an owner or operator of an Oregon Title V Operating Permit program source operates a device or activity for less than 5% of the permitted

# ADMINISTRATIVE RULES

operating schedule, the owner or operator may elect to report emissions based on a proration of the permitted emissions for the actual operating time.

(5) The Department will not assess emission fees on emissions categorized as credits or unassigned emissions within an Oregon Title V Operating Permit.

(6) The Department will not assess emission fees on categorically insignificant emissions as defined in OAR 340-200-0020.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-2620; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0090

### Election for Each Regulated Pollutant

(1) The owner or operator must elect to pay emission fees on either actual emissions, permitted emissions, or a combination of both for the previous calendar year for emissions of each regulated pollutant and notify the Department in accordance with OAR 340-220-0110.

(2) If an owner or operator fails to notify the Department of the election for emissions of a regulated pollutant, the Department will assess emission fees based on permitted emissions.

(3) If the permit or review report does not identify permitted emissions for emissions of a regulated pollutant, the Department will develop representative assessable emissions.

(4) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-2640; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0100

### Emission Reporting

(1) Using a form(s) developed by the Department the owner or operator must report the following emissions:

(a) Particulates;

(b) Sulfur Dioxide as SO<sub>2</sub>;

(c) Oxides of Nitrogen (NO<sub>x</sub>) as Nitrogen Dioxide (NO<sub>2</sub>);

(d) Volatile Organic Compounds as:

(A) VOC for material balance emission reporting; or

(B) Propane (C<sub>3</sub>H<sub>8</sub>), unless otherwise specified by permit, OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.

(2) The owner or operator must report emissions in tons per year and as follows:

(a) Round up to the nearest whole ton for emission values 0.5 and greater; and

(b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions must:

(a) Submit complete information on the forms including all emissions of regulated pollutants; and

(b) Submit documentation necessary to support emission calculations.

(4) The owner or operator electing to pay on actual emissions must report total emissions, including those emissions in excess of 4,000 tons for emissions of each regulated pollutant.

(5) The owner or operator electing to pay on permitted emissions for a regulated pollutant must identify such an election on the form(s) developed by the Department.

(6) If more than one permit is in effect for a calendar year for an Oregon Title V Operating Permit program source, the owner or operator electing to pay on permitted emissions must pay on the most current permitted or actual emissions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-2650; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0110

### Emission Reporting and Fee Procedures

(1) The owner or operator must submit the required form(s), including the election for emissions of each regulated pollutant, to the Department with the annual permit report in accordance with annual reporting procedures.

(2) The owner or operator may request that information, other than emission information, submitted pursuant to this division be exempt from disclosure in accordance with OAR 340-214-0130.

(3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-218-0080. The owner or operator must retain records for at least five years in accordance with OAR 340-218-0050(3)(b)(B).

(4) The Department may accept the information submitted or request additional information from the owner or operator. The owner or operator must submit additional actual emission information requested by the Department within 30 days of the date of the request. The Department may approve a request for additional time, up to 30 days, to submit the requested information.

(5) If the Department determines the actual emission information submitted for emissions of any regulated pollutant does not meet the criteria in this division, the Department will assess the emission fee on the permitted emission for that regulated pollutant.

(6) The owner or operator must submit emission fees payable to the Department by the later of:

(a) August 1 for emission fees from the previous calendar year; or

(b) Thirty days after the Department mails the fee invoice.

(7) Department acceptance of emission fees does not indicate approval of data collection methods, calculation methods, or information reported on Emission Reporting Forms. If the Department determines initial emission fee assessments were inaccurate or inconsistent with this division, the Department may assess or refund emission fees up to two years after emission fees are received by the Department.

(8) The Department will not revise a PSEL solely due to an emission fee payment.

(9) Owners or operators operating sources pursuant to OAR 340 division 218 must submit the emission reporting information with the annual permit report.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-2660; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0120

### Actual Emissions

An owner or operator electing to pay on actual emissions must obtain emission data and determine regulated pollutant emissions using one of the following methods:

(1) Continuous monitoring systems used in accordance with OAR 340-220-0130;

(2) Verified emission factors developed for that particular source in accordance with OAR 340-220-0170 for:

(a) Emissions of each regulated pollutant ; or

(b) A combination of regulated pollutant emissions if there are multiple devices or activities venting to the atmosphere through one common emission point (e.g., stack). The owner or operator must have a verified emission factor plan approved by the Department before conducting the source testing in accordance with OAR 340-220-0170.

(3) Material balances determined in accordance with OAR 340-220-0140, 340-220-0150, or 340-220-0160; or

(4) Verified emission factors for source categories developed in accordance with OAR 340-220-0170(11).

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-028-2670; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0150

### Determining VOC Emissions Using Material Balance

The owner or operator may determine the amount of VOC emissions for emissions of a regulated pollutant by using material balance. The owner or operator using material balance to calculate VOC emissions must deter-

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mine the amount of VOC added to the process, the amount of VOC consumed in the process, and the amount of VOC recovered in the process, if any, by testing in accordance with **40 Code of Federal Regulations (CFR) Part 60 Appendix A** EPA Method 18, 24, 25, a material balance method, or an equivalent plant specific method specified in the Oregon Title V Operating Permit using the following equation: [Equation not included. See ED. NOTE.]

[ED. NOTE: The equation referenced is available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats Implemented: ORS 468.020, 468A.025 & 468A.315

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2700; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08

## 340-220-0170

### Verified Emission Factors

(1) The owner or operator must verify emission factors before using them to determine emissions of regulated pollutants. To verify emission factors, the owner or operator must perform either source testing in accordance with the Department's Source Sampling Manual or use other methods approved by the Department for source tests. Source tests must be conducted in accordance with testing procedures on file at the Department and the Department approved pretest plan which must be submitted at least 15 days before the testing. All test data and results must be submitted for review to the Department within 30 days after testing, unless the Department approves otherwise or a different time period is specified in a permit.

NOTE: DEQ recommends that the owner or operator notify the Department and obtain pre-approval of the emission factor source testing program before or as part of the first source test notification.

(2) The owner or operator must conduct or have conducted at least three compliance source tests. Each test must consist of at least three individual test runs for a total of at least nine test runs.

(3) The owner or operator must monitor and record applicable process and control device operating data.

(4) The owner or operator must perform a source test either:

(a) In each of three quarters of the year with no two successive source tests performed any closer than 30 days apart; or

(b) At equal intervals over the operating period if the owner or operator demonstrates and the Department agrees that the device or activity operates or has operated for part of the year; or

(c) At any time during the year if the owner or operator demonstrates, and the Department agrees, that the process is or was not subject to seasonal variations.

(5) The owner or operator must conduct the source tests to test the entire range of operating levels. At least one test must be conducted at minimum operating conditions, at normal or average operating levels, and at anticipated maximum operating levels. If the process rate is constant, all tests must be conducted at that rate. The owner or operator must submit documentation to the Department demonstrating a constant process rate.

(6) The owner or operator must determine an emission factor for each source test by dividing each test run, in pounds of emission per hour, by the applicable process rate during the source test run. At least nine emission factors must be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient. If the correlation coefficient is less than 0.50, which indicates that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors must be determined.

(7) The owner or operator must determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

(a) If the correlation coefficient ( $R^2$ ) of the regression analysis is greater than 0.50, the EEAF will be  $1+(1-R^2)$ .

(b) If the correlation coefficient ( $R^2$ ) is less than 0.50, the EEAF will be: [Equation not included. See ED. NOTE.]

(8) The owner or operator must determine actual emissions for emission fee purposes using one of the following methods:

(a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions is the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year; or [Equation not included. See ED. NOTE.]

(b) If the regression analysis correlation coefficient is greater than 0.50, perform the following calculations:

(A) Determine the average emission factor (EF) for each production rate category (maximum = EFmax, normal = EFnorm, and minimum = EFmin);

(B) Determine the total annual production and operating hours, production time (PTtot), for the calendar year;

(C) Determine the total hours operating within the maximum production rate category (PTmax). The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(D) Determine the total hours while operating within the normal production rate category (PTnorm). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2 and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(E) Determine the total hours while operating within the minimum production rate category (PTmin). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(F) Actual emissions equals EEAF  $\times$  ((PTmax/PTtot)  $\times$  EFmax + (PTnorm/PTtot)  $\times$  EFnorm + (PTmin/PTtot)  $\times$  EFmin.)

(9) The owner or operator must determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator must apply 340-220-0170(9)(a) or 340-220-0170(9)(b), (c) and (d) in developing emission factors. The owner or operator must apply the emission factor obtained to the total time the device or activity operated under these conditions.

(a) All emissions during startup and shutdown, and emissions greater than normal are assumed equivalent to operation without an air pollution control device, unless the owner or operator accurately demonstrates otherwise in accordance with OAR 340-220-0170(9)(b), (9)(c), (9)(d), and (9)(e), and approved by the Department. The emission factor plus the EEAF must be adjusted by the air pollution control device collection efficiency as follows: [Equation not included. See ED. NOTE.]

(b) During process startups a Department approved source test may be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation will be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test may be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation will be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator may:

(A) Perform routine maintenance activity during source testing for verified emission factors; or

(B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions (e.g. NOx emissions during an ESP failure).

(10) A verified emission factor developed pursuant to this division and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the following criteria are met:

(a) The verified emission factor for a source category must be based on verified emission factors from at least three individual sources within the source category;

(b) Verified emission factors from sources within a source category must be developed in accordance with this rule;

(c) The verified emission factors from the sources must not differ from the mean by more than twenty percent; and

(d) The source category verified emission factor must be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

[ED. NOTE: The equation referenced is available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

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Stats. Implemented: ORS 468A.025  
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99. Renumbered from 340-028-2720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08.

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Extension of Fall Chinook Gill Net Season for Columbia River Mainstem.

**Adm. Order No.:** DFW 72-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-23-07 thru 8-31-07

**Notice Publication Date:**

**Rules Amended:** 635-042-0031

**Subject:** Amended rule extends the commercial fall chinook salmon gill net season in the mainstem Columbia River in Zones 4 and 5 for 11 hours from 8:00 p.m. Thursday August 23 through 7:00 a.m. Friday August 24, 2007. Modifications are consistent with action taken August 15, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-042-0031

#### Early Fall Salmon Season

(1) Salmon and white sturgeon may be taken for commercial purposes in the waters of the Columbia River: Zones 1-5, as identified in OAR 635-042-0001. Retention of green sturgeon is prohibited.

(2) It is unlawful to use a gill net having a mesh size less than 9 inches or more than 9 3/4 inches (as described in OAR 635-042-0010(4)).

(3) The open fishing periods are:

(a) 7:00 p.m. Thursday August 2 to 7:00 a.m. Friday August 3, 2007 (12 hours);

(b) 7:00 p.m. Monday August 6 to 7:00 a.m. Tuesday August 7, 2007 (12 hours);

(c) 7:00 p.m. Thursday August 9 to 7:00 a.m. Friday August 10, 2007 (12 hours);

(d) 8:00 p.m. Thursday August 23 to 7:00 a.m. Friday August 24, 2007 (11 hours).

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. Sturgeon possession and sales limit includes mainstem fisheries only.

(5) Closed waters, as described in OAR 635-042-0005 for Grays River, Elakomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods identified in subsections (3)(a) thru (3)(c) above.

(6) Closed waters, as described in OAR 635-042-0005 for Lewis-A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods identified in subsection (3)(d) above.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: FWC 63-1987, f. & ef. 8-7-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 68-1988(Temp), f. & cert. ef. 8-15-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 56-1989(Temp), f. & cert. ef. 8-11-89; FWC 58-1989(Temp), f. & cert. ef. 8-14-89; FWC 80-1989(Temp), f. 8-28-89, cert. ef. 8-29-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 91-1991(Temp), f. & cert. ef. 8-29-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 53-1996(Temp), f. & cert. ef. 9-16-96; FWC 49-1997, f. 8-20-97, cert. ef. 8-24-97; DFW 74-1998(Temp), f. & cert. ef. 8-25-98 thru 8-26-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 75-1999(Temp), f. 9-29-99, cert. ef. 9-30-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 52-2000(Temp), f. 8-23-00, cert. ef. 8-23-00 thru 8-24-00; Administrative correction 6-20-01; DFW 68-2001(Temp), f. 8-7-01, cert. ef. 8-8-01 thru 8-9-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 79-2001(Temp), f. & cert. ef. 8-22-01 thru 12-31-01; DFW 80-2001(Temp), f. & cert. ef. 8-24-01 thru 12-31-01; DFW 86-2001(Temp), f. & cert. ef. 9-4-01 thru 12-31-01; DFW 81-2002(Temp), f. 8-2-02, cert. ef. 8-4-02 thru 8-9-02; DFW 87-2002(Temp), f. & cert. ef. 8-9-02 thru 8-12-02; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 82-2003(Temp), f. & cert. ef. 8-25-03 thru 12-31-03; DFW 87-2003(Temp), f. & cert. ef. 8-27-03 thru 12-31-03; DFW 81-2004(Temp), f. & cert. ef. 8-12-04 thru 12-31-04; DFW: 82-2004(Temp), f. & cert. ef. 8-16-04 thru 12-31-04; DFW 86-2004(Temp), f. 8-19-04 thru 12-31-04; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 88-2005(Temp), f. 8-11-05, cert. ef. 8-14-05 thru 12-31-05; DFW 90-2005(Temp), f. & cert. ef. 8-17-05 thru 12-31-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 98-2005(Temp), f. 8-24-05, cert. ef. 8-25-05 thru 12-31-05; Administrative correction 1-19-06; DFW 72-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 82-2006(Temp), f. 8-11-06, cert. ef. 8-13-06 thru 12-31-06; DFW 88-2006(Temp), f. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 89-2006(Temp), f. 8-24-06, cert. ef. 8-25-06 thru 12-31-06;

Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 72-2007(Temp), f. 8-17-07, cert. ef. 8-23-07 thru 8-31-07

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**Rule Caption:** Modifications to Commercial Ocean Troll Salmon Seasons North of Cape Falcon, Oregon.

**Adm. Order No.:** DFW 73-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-18-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 635-003-0077

**Subject:** Amended rule modifies the landing and possession limits, per vessel participating in the commercial troll salmon fishery between the US/Canada border and Cape Falcon, Oregon effective August 18, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-003-0077

#### US-Canada Border to Cape Falcon

(1) All vessels participating in the commercial ocean salmon fishery 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.

(2) The commercial troll salmon fishery landing and possession limit is reduced from 60 to 50 Chinook per vessel for the four-day open period June 23 through 26, 2007 in the area North of Leadbetter Point, but remains 30 Chinook per vessel for the four-day open period between Leadbetter Point and Cape Falcon. The fishery is closed to all troll salmon fishing from 12:01 a.m. June 27 through 12:00 midnight June 30, 2007.

(3) The commercial troll salmon fishery is open effective 12:01 a.m. July 1, 2007 through earlier of September 16, 2007 or 5,400 preseason Chinook guideline or a 22,400 marked coho quota. Open Saturdays through Tuesdays, landing and possession limit for each four-day open period is 40 Chinook per vessel North of Leadbetter Point and 20 Chinook per vessel south of Leadbetter Point.

(4) All vessels participating in the commercial troll salmon fishery between the US/Canada border and Cape Falcon, Oregon are restricted to open period landing and possession limits of 140 coho and 20 chinook per vessel effective August 18, 2007.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert.ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05; DFW 97-2005(Temp), f. & cert. ef. 8-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 43-2006(Temp), f. & cert. ef. 6-16-06 thru 11-16-06; DFW 70-2006(Temp), f. 7-28-06, cert. ef. 7-29-06 thru 12-31-06; DFW 85-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 2-14-07; DFW 93-2006(Temp), f. 9-7-06, cert. ef. 9-8-06 thru 12-31-06; Administrative correction 1-16-07; DFW 48-2007(Temp), f. 6-22-07, cert. ef. 6-23-07 thru 9-16-07; DFW 73-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 9-30-07

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**Rule Caption:** Sturgeon Retention Modifications in the Lower Willamette River Downstream of Willamette Falls.

**Adm. Order No.:** DFW 74-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-18-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-017-0095

**Subject:** Amend rule to allow retention of sport caught sturgeon in the Lower Willamette River downstream of Willamette Falls (including Multnomah Channel) seven day per week from Saturday, August 18 through Sunday, September 30, 2007. Revision is consistent with action taken August 15, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-017-0095

#### Sturgeon Season

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

# ADMINISTRATIVE RULES

(2) 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) January 1 through January 31.

(3) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon four days per week, Thursday, Friday, Saturday and Sunday during the following periods:

(a) February 1 through July 31; and

(b) October 1 through December 31.

(4) The retention of white sturgeon in the areas identified in subsections (2) and (3) of this rule is prohibited August 1 through August 17, 2007.

(5) The retention of white sturgeon in the areas identified in subsections (2) and (3) of this rule is allowed 7 days per week effective Saturday, August 18 through Sunday September 30, 2007.

[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 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07

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**Rule Caption:** Sturgeon Retention Modifications in the Columbia River from Wauna power lines to Bonneville Dam.

**Adm. Order No.:** DFW 75-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-18-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Subject:** Amend rule to allow retention of sport caught sturgeon in the Columbia River and tributaries between the Wauna power lines (River Mile 40) upstream to Bonneville Dam seven days per week from Saturday, August 18 through Sunday, September 30, 2007. Revision is consistent with action taken August 15, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-023-0095**

**Sturgeon Season**

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon during the following periods:

(a) Monday, January 1, 2007 through Wednesday January 31, 2007 three days per week, Thursday, Friday, and Saturday; and

(b) Thursday February 1 through Tuesday July 31, 2007 and Monday, October 1, 2007 through Monday, December 31, 2007 four days per week, Thursday, Friday, Saturday and Sunday.

(c) Seven days per week Saturday, August 18 through Sunday, September 30, 2007.

(3) The retention of white sturgeon in the area identified in subsection (2) of this rule is prohibited August 1 through August 17, 2007.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) Monday, January 1, 2007 through Monday, April 30, 2007, and

(b) Saturday, May 12, 2007 through Wednesday, July 4, 2007.

(5) The retention of white sturgeon in the area identified in subsection (4) of this rule is prohibited May 1, 2007 through May 11, 2007 and from July 5, 2007 through December 31, 2007.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42-60" in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45-60" in overall length may be retained.

(8) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:00 Midnight, March 28, 2007.

(9) The Columbia River and tributaries between John Day Dam and McNary Dam are closed to the retention of sturgeon effective 12:00 Midnight, Sunday June 10, 2007.

(10) The Columbia River and tributaries between Bonneville Dam and The Dalles Dam are closed to the retention of sturgeon effective 12:00 Midnight, Sunday July 29, 2007.

(11) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1, 2007 through July 31, 2007.

(12) The retention of green sturgeon is prohibited effective January 1, 2007.

[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 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07

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**Rule Caption:** Ocean sport Pacific halibut Re-opens North of Cape Falcon, Oregon.

**Adm. Order No.:** DFW 76-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-24-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Subject:** Amended rule re-opens the sport fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon, at 12:01 a.m. on Friday, August 24 through 11:59 p.m. Sunday, August 26, 2007 (3 days). This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2007 Oregon recreational fishery for Pacific halibut.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-039-0085**

**Halibut Seasons**

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Volume 72, Number 49, dated March 14, 2007 and as amended by Federal Regulations.

(2) Effective 11:59 p.m., Sunday August 12, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

(3) Effective 12:01 a.m. Friday, August 24 thru 11:59 p.m. Sunday, August 26, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) re-opens to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07

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**Rule Caption:** Treaty Indian Fall Salmon Fisheries for Columbia River Above Bonneville Dam.

**Adm. Order No.:** DFW 77-2007(Temp)

**Filed with Sec. of State:** 8-17-2007

**Certified to be Effective:** 8-22-07 thru 12-31-07

**Notice Publication Date:**

# ADMINISTRATIVE RULES

## Rules Amended: 635-041-0075

**Subject:** Amended rule to specify fishing periods and modify gear and other restrictions upon the commercial harvest and sales of fish caught during the Treaty Indian fall salmon platform and hook-and-line fisheries in the Columbia River above Bonneville Dam (Zone 6). Modifications are consistent with action taken August 15, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-041-0075

### Fall Salmon Season

(1) Chinook and coho salmon, steelhead, carp, shad and walleye may be taken for commercial purposes in the Columbia River above Bonneville Dam (all of Zone 6) from:

(a) 6:00 a.m. Wednesday, August 22 to 6:00 p.m. Friday, August 24, 2007 (60 hours);

(b) 6:00 a.m. Tuesday, August 28 to 6:00 p.m. Friday, August 31, 2007 (84 hours);

(c) 6:00 a.m. Tuesday, September 4 to 6:00 p.m. Saturday, September 8, 2007 (108 hours).

(2) Closed areas are set forth in OAR 635-041-0045, including the closure at the mouth of Spring Creek which is the larger area described in OAR 635-041-0045(11).

(3) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 12:01 a.m., Tuesday August 1 through December 31, 2007.

(a) Gear is restricted to: hoopnets, dipnets, and rod and reel with hook-and-line. Beginning September 1, 2007 a minimum mesh size restriction of 8 inches is required.

(b) Allowable sales include chinook, coho, steelhead, walleye, carp, and shad. Sockeye may be kept for subsistence use but not sold.

(c) Sturgeon may not be sold. However, sturgeon between 48 to 60 inches in length from The Dalles and John Day pools and sturgeon between 45 to 60 inches in length from Bonneville Pool, may be kept for subsistence use.

(d) Fish caught during Yakama Nation's scheduled open tributary fishing periods in the Klickitat and Big White Salmon rivers may be sold when the sale of platform and hook-and-line fish is allowed.

Stat. Auth.: ORS 183.325, 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & ef. 8-2-79; FWC 36-1979(Temp), f. & ef. 8-22-79; FWC 47-1979(Temp), f. & ef. 9-21-79; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 46-1980(Temp), f. & ef. 9-13-80; FWC 33-1981(Temp), f. & ef. 9-15-81; FWC 58-1982(Temp), f. & ef. 8-27-82; FWC 62-1982(Temp), f. & ef. 9-7-82; FWC 63-1982(Temp), f. & ef. 9-14-82; FWC 75-1982(Temp), f. & ef. 10-29-82; FWC 36-1983, f. & ef. 8-18-83; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 51-1983(Temp), f. & ef. 9-30-83; FWC 55-1983(Temp), f. & ef. 10-4-83; FWC 46-1984, f. & ef. 8-30-84; FWC 55-1984(Temp), f. & ef. 9-10-84; FWC 58-1984(Temp), f. & ef. 9-17-84; FWC 61-1984(Temp), f. & ef. 9-21-84; FWC 70-1984(Temp), f. & ef. 10-9-84; FWC 47-1985, f. & ef. 8-23-85; FWC 60-1985(Temp), f. & ef. 9-13-85; FWC 63-1985(Temp), f. & ef. 9-24-85; FWC 42-1986, f. & ef. 8-15-86; FWC 53-1986(Temp), f. & ef. 9-4-86; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 57-1986(Temp), f. & ef. 9-11-86; FWC 60-1986(Temp), f. & ef. 9-26-86; FWC 62-1986(Temp), f. & ef. 10-2-86; FWC 63-1987, f. & ef. 8-7-87; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-1-87; FWC 78-1987(Temp), f. & ef. 9-15-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 89-1987(Temp), f. & ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988(Temp), f. & cert. ef. 9-27-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 87-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989(Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. 9-14-90, cert. ef. 9-17-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. 9-17-91, cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. 9-1-92, cert. ef. 9-2-92; FWC 87-1992(Temp), f. 9-4-92, cert. ef. 9-7-92; FWC 91-1992(Temp), f. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. 10-2-92, cert. ef. 10-5-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. 8-26-94, cert. ef. 8-29-94; FWC 61-1994(Temp), f. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. 8-29-97, cert. ef. 9-2-97, FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. 9-16-97, cert. ef. 9-17-97; FWC 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; FWC 76-1998(Temp), f. & cert. ef. 9-8-98 thru 9-25-98; FWC 77-1998(Temp), f. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; FWC 80-1998(Temp), f. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; FWC 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; FWC 62-1999(Temp), f. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; FWC 65-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; FWC 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99;

DFW 72-1999(Temp), f. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. 9-12-03 cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 108-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. 10-12-04 cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction 12-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 107-2006(Temp), f. 9-28-06, cert. ef. 10-3-06 thru 12-31-06; DFW 115-2006(Temp), f. 10-13-06, cert. ef. 10-15-06 thru 12-31-06; Administrative correction 1-16-07; DFW 60-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; DFW 77-2007(Temp), f. 8-17-07, cert. ef. 8-22-07 thru 12-31-07

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**Rule Caption:** Ocean commercial coho salmon fishery closure from Cape Falcon to Humbug Mountain.

**Adm. Order No.:** DFW 78-2007(Temp)

**Filed with Sec. of State:** 8-20-07

**Certified to be Effective:** 8-20-07 thru 8-31-07

**Notice Publication Date:**

**Rules Amended:** 635-003-0004

**Subject:** Amended rule implements a closure to retention of ocean commercial coho salmon in the non-selective coho fishery in the area between Cape Falcon and Humbug Mountain, Oregon. This closure is effective at 11:59 p.m. Monday, August 20, 2007 when the 10,000 non-mark-selective quota is expected to be reached.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-003-0004

### Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subpart H).

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon/California border:

(a) Open to all salmon except coho April 10-April 29;  
(b) It is *unlawful* to take chinook salmon less than 28 inches in length;  
(c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;

(d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;

(e) It is *unlawful* to possess or land more than 100 salmon per vessel per calendar week (Sunday thru Saturday).

(f) A rectangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped

# ADMINISTRATIVE RULES

chinook salmon may be retained in this area. This rectangular area extends from Twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(6) South of Cape Falcon to Humbug Mountain, Oregon: The non-selective coho fishery is closed to retention of coho salmon effective 11:59 p.m. Monday, August 20, 2007.

(7) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), f. 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07

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**Rule Caption:** Commercial Troll Coho Salmon Season from Cape Falcon to Humbug Mountain Re-opens.

**Adm. Order No.:** DFW 79-2007(Temp)

**Filed with Sec. of State:** 8-23-2007

**Certified to be Effective:** 8-25-07 thru 9-13-07

**Notice Publication Date:**

**Rules Amended:** 635-003-0004

**Subject:** Amended rule implements a re-opening of the Oregon ocean commercial troll non-selective coho salmon season in the area between Cape Falcon and Humbug Mountain, Oregon. This rule is effective at 12:01 a.m. Saturday, August 25 through Tuesday, August 28, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-003-0004**

**Inclusions and Modifications**

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery

Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon/California border:

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- (b) It is unlawful to take chinook salmon less than 28 inches in length;
- (c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;

(d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;

(e) It is *unlawful* to possess or land more than 100 salmon per vessel per calendar week (Sunday thru Saturday).

(f) A rectangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This rectangular area extends from Twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(6) South of Cape Falcon to Humbug Mountain, Oregon: The non-selective coho fishery is open to retention of coho salmon effective 12:01 a.m. Saturday, August 25 through Tuesday, August 28, 2007.

(7) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), f. 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. 10-8-02, cert. ef. 10-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-14-02 thru 12-31-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07; DFW 79-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 9-13-07

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**Rule Caption:** Recreational Ocean Salmon Fishery Closes Between Cape Falcon and the Oregon/Washington Border.

**Adm. Order No.:** DFW 80-2007(Temp)

**Filed with Sec. of State:** 8-23-2007

**Certified to be Effective:** 8-25-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-013-0004

# ADMINISTRATIVE RULES

**Subject:** This rule implements a closure to the recreational ocean salmon fishery between Cape Falcon, Oregon and the Oregon/Washington border effective 11:59 p.m. Saturday, August 25, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the 2007 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR)**, Title 50, Part 660, Subparts A and H, and the **2007 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2007 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) Effective 11:59 p.m. Saturday, August 25, 2007, in the area from Leadbetter Point, WA, to Cape Falcon, OR, the recreational ocean salmon fishery is closed to all salmon fishing.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; 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 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07

## 635-013-0004

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Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; 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 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07

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**Rule Caption:** Commercial vessels allowed to retrieve Dungeness crab gear between September 1 and October 31, 2007.

**Adm. Order No.:** DFW 82-2007(Temp)

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07 thru 10-31-07

**Notice Publication Date:**

**Rules Amended:** 635-005-0055

**Subject:** Amend rule to allow commercial fishermen to retrieve any commercial Dungeness crab fishing gear in the ocean and transport it to shore from September 1 through October 31, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-005-0055

### Fishing Gear

*It is unlawful for commercial purposes to:*

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

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(2) Use any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Use any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Use any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid takedown hooks and the takedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible and legible manner, the brand of the owner and an ODFW buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) After 45 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (E) of this rule, and a request for replacement tags under subsection (C) of this rule, the Director or his designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (C). The Director or his designee shall provide the Director's order to the permit holder and to ODFW License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the specific tag number of each lost tag, the location and date where lost gear or tags were last observed, and the presumed cause of the loss. All buoy tags identified as lost become null and void upon signing of declaration and

remain so even if recovered at a later date. Any lost buoy tags that are recovered shall be immediately returned to ODFW Headquarters.

(7) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(8) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together;

(9) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(10) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(11) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(12) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 246, f. 5-5-72, ef. 5-15-72; FWC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07

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**Rule Caption:** Nearshore Species Cumulative Trip Limits for Commercial Nearshore Fishery Revised.

**Adm. Order No.:** DFW 83-2007(Temp)

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-004-0033

**Subject:** Amended rule revises the cumulative trip limit for vessels having a limited entry Black rockfish and Blue rockfish permit and vessels having a Black rockfish and Blue rockfish permit with a nearshore endorsement, as follows: Increases the Black rockfish and Blue rockfish combined limit to 2000 pounds for period 5 (September–October) only. Revises the cumulative trip limits for vessels having a Black rockfish and Blue rockfish permit with a nearshore endorsement as follows: For period 5 (September–October) and period 6 (November–December) Greenlings increases to 800 pounds per period; Other nearshore rockfish increases to 700 pounds per period; and Cabezon increases to 4000 pounds per period. These revisions are effective at 12:01 a.m. Saturday, September 1, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-004-0033**

**Groundfish Restrictions**

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish;
- (b) Minor Shelf Rockfish;
- (c) Minor Slope Rockfish;
- (d) Black Rockfish;
- (e) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermilion Rockfish;
- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;

# ADMINISTRATIVE RULES

- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastodes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serviceps*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2007, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2007, the commercial landing caps are:

- (a) Black rockfish and blue rockfish combined of 104.6 metric tons.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 600 pounds in period 1;
- (b) 800 pounds in period 2;
- (c) 1600 pounds in each of periods 3 and 4;
- (d) 2000 pounds in period 5; and
- (e) 800 pounds in period 6.

(7) In each period, no vessel may land more than:

(a) 700 pounds of other nearshore rockfish, combined for period 5 and 6;

- (b) 4000 pounds of cabezon for period 5 and 6; or
- (c) 800 pounds of greenling species for period 5 and 6.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-8-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FDW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 140-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07

**Rule Caption:** Ocean sport Pacific halibut Re-opens September 15, North of Cape Falcon, Oregon.

**Adm. Order No.:** DFW 84-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-15-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Subject:** Amended rule re-opens the sport fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon, from 12:01 a.m. through 11:59 p.m. on Saturday, September 15, 2007 (1 day). This rule is consistent with in-season modifications to regulations implemented by the federal government and the International Pacific Halibut Commission for the 2007 Oregon recreational fishery for Pacific halibut.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-039-0085

### Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the **Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Volume 72, Number 49**, dated March 14, 2007 and as amended by Federal Regulations.

(2) Effective 11:59 p.m., Sunday August 12, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

(3) Effective 12:01 a.m. Friday, August 24 thru 11:59 p.m. Sunday, August 26, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) re-opens to the retention of Pacific halibut.

(4) Effective 12:01 a.m. through 11:59 p.m. Saturday, September 15, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) re-opens to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07

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**Rule Caption:** Commercial Troll Coho Salmon Season Re-opens from Cape Falcon to Humbug Mountain.

**Adm. Order No.:** DFW 85-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-10-07 thru 9-13-07

**Notice Publication Date:**

**Rules Amended:** 635-003-0004

**Subject:** Amended rule implements a re-opening of the Oregon ocean commercial troll non-selective coho salmon season in the area between Cape Falcon and Humbug Mountain, Oregon. This rule is effective at 12:01 a.m. Monday, September 10 through Thursday, September 13, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-003-0004

### Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery

# ADMINISTRATIVE RULES

Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subpart H).

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon/California border:

- (a) Open to all salmon except coho April 10–April 29;
  - (b) It is unlawful to take chinook salmon less than 28 inches in length;
  - (c) It is unlawful to retain incidentally caught halibut during the March/April salmon season;
- (d) It is unlawful to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;
- (e) It is unlawful to possess or land more than 100 salmon per vessel per calendar week (Sunday thru Saturday).

(f) A rectangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This rectangular area extends from Twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(6) South of Cape Falcon to Humbug Mountain, Oregon: The non-selective coho fishery is open to retention of coho salmon and chinook salmon effective 12:01 a.m. Monday, September 10 through Thursday, September 13, 2007.

(a) It is unlawful to possess or land more than 50 coho salmon and 150 chinook salmon per vessel for the open period described in section (6) above.

(7) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96, FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; FWC 34-1998, f. & cert. ef. 5-24-98; FWC 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; FWC 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; FWC 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; FWC 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; FWC 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; FWC 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; FWC 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; FWC 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; FWC 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; FWC 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; FWC 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; FWC 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; FWC 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; FWC 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; FWC 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; FWC 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; FWC 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; FWC 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; FWC 65-2002(Temp), f. 6-27-02, cert. ef. 7-1-02 thru 12-27-02; FWC 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; FWC 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; FWC 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; FWC 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; FWC 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; FWC 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; FWC 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; FWC 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 35-2003, f. 4-30-03, cert. ef. 5-1-03; FWC 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; FWC 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; FWC 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; FWC 25-2005, f. & cert. ef. 4-15-05; FWC 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; FWC 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07; FWC 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07; FWC 79-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 9-13-07; FWC 85-2007(Temp), f. 9-5-07, cert. ef. 9-10-07 thru 9-13-07

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**Rule Caption:** 2007 Sardine Permit Renewal Deadline Change.

**Adm. Order No.:** DFW 86-2007(Temp)

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07 thru 9-17-07

**Notice Publication Date:**

**Rules Amended:** 635-006-1075

**Subject:** Amend rule to modify the deadline for renewal of 2007 limited permits for the 2007 sardine fishery. These modifications authorize permittees who may have inadvertently not filed their completed renewal applications by the prior renewal deadline, but who have markets for sardines, to participate in the fishery.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-006-1075

### Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

- (a) Gillnet salmon — see ORS 508.781;
- (b) Troll salmon — see ORS 508.807;
- (c) Shrimp — see ORS 508.892;
- (d) Scallop — see ORS 508.849;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a \$75 fee and a complete application

- (f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

- (i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

- (j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

- (k) Sardine fishery. To renew a sardine permit:

(A) For the calendar year 2007 only, permits may be renewed by submitting to the Department a complete application date-stamped or postmarked by January 31, 2007 along with the logbooks required under OAR 635-006-1110.

(B) The Commission may waive the landing requirements of section (A) of this rule if it finds that the failure to meet these requirements is due to the permit holder's illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Commission may, at its discretion, waive the landing requirements of section (A) of this rule for all limited entry sardine permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by January 31, the individual shall not be considered to have applied for renewal in a timely manner.

# ADMINISTRATIVE RULES

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

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

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 23-2006, f. & cert. ef. 4-21-06; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 86-2007(Temp), f. & cert. ef. 9-10-07 thru 9-17-07

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**Rule Caption:** Ocean sport Pacific halibut bag limit change from Cape Falcon to Humbug Mountain, Oregon.

**Adm. Order No.:** DFW 87-2007(Temp)

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-14-07 thru 10-28-07

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Subject:** Amended rule increases the daily bag limit for sport Pacific halibut from one to two fish in the area between Cape Falcon and Humbug Mountain, Oregon on dates the fishery is open without depth restriction (Fridays, Saturdays and Sundays until quota taken) effective at 12:01 a.m. on Friday, September 14, 2007. This rule is consistent with in-season modifications to regulations implemented by the federal government for the 2007 Oregon recreational fishery for Pacific halibut.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-039-0085**

**Halibut Seasons**

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Volume 72, Number 49, dated March 14, 2007 and as amended by Federal Regulations.

(2) Effective 11:59 p.m., Sunday August 12, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

(3) Effective 12:01 a.m. Friday, August 24 through 11:59 p.m. Sunday, August 26, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) re-opens to the retention of Pacific halibut.

(4) Effective 12:01 a.m. Friday, September 14, 2007 (on dates the fishery is open without depth restriction: Fridays, Saturdays and Sundays) until the all-depth quota is taken, in the area between Cape Falcon and Humbug Mountain, Oregon the daily bag limit is two fish.

(5) Effective 12:01 a.m. through 11:59 p.m. Saturday, September 15, 2007 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) re-opens to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07

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**Rule Caption:** Treaty Indian Fall Salmon Fisheries Scheduled for Columbia River Above Bonneville Dam.

**Adm. Order No.:** DFW 88-2007(Temp)

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-11-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-041-0075

**Subject:** Amended rule schedules two additional fishing periods in the on-going Treaty Indian fall commercial gill net, platform and hook-and-line fisheries in the Columbia River above Bonneville

Dam (Zone 6). Modifications are consistent with action taken September 6, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-041-0075**

**Fall Salmon Season**

(1) Chinook and coho salmon, steelhead, carp, shad and walleye may be taken for commercial purposes in the Columbia River above Bonneville Dam (all of Zone 6) from:

(a) 6:00 a.m. Wednesday, August 22 to 6:00 p.m. Friday, August 24, 2007 (60 hours);

(b) 6:00 a.m. Tuesday, August 28 to 6:00 p.m. Friday, August 31, 2007 (84 hours);

(c) 6:00 a.m. Tuesday, September 4 to 6:00 p.m. Saturday, September 8, 2007 (108 hours);

(d) 6:00 a.m. Tuesday, September 11 to 6:00 p.m. Friday, September 14, 2007 (84 hours); and

(e) 6:00 a.m. Monday, September 17 to 6:00 p.m. Friday, September 21, 2007 (108 hours).

(2) Closed areas are set forth in OAR 635-041-0045, including the closure at the mouth of Spring Creek which is the larger area described in OAR 635-041-0045(11).

(3) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 12:01 a.m., Tuesday August 1 through December 31, 2007.

(a) Gear is restricted to: hoopnets, dipnets, and rod and reel with hook-and-line. Beginning September 1, 2007 a minimum mesh size restriction of 8 inches is required.

(b) Allowable sales include chinook, coho, steelhead, walleye, carp, and shad. Sockeye may be kept for subsistence use but not sold.

(c) Sturgeon may not be sold. However, sturgeon between 48 to 60 inches in length from The Dalles and John Day pools and sturgeon between 45 to 60 inches in length from Bonneville Pool, may be kept for subsistence use.

(d) Fish caught during Yakama Nation's scheduled open tributary fishing periods in the Klickitat and Big White Salmon rivers may be sold when the sale of platform and hook-and-line fish is allowed.

Stat. Auth.: ORS 183.325, 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & ef. 8-2-79; FWC 36-1979(Temp), f. & ef. 8-22-79; FWC 47-1979(Temp), f. & ef. 9-21-79; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 46-1980(Temp), f. & ef. 9-13-80; FWC 33-1981(Temp), f. & ef. 9-15-81; FWC 58-1982(Temp), f. & ef. 8-27-82; FWC 62-1982(Temp), f. & ef. 9-7-82; FWC 63-1982(Temp), f. & ef. 9-14-82; FWC 75-1982(Temp), f. & ef. 10-29-82; FWC 36-1983, f. & ef. 8-18-83; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 51-1983(Temp), f. & ef. 9-30-83; FWC 55-1983(Temp), f. & ef. 10-4-83; FWC 46-1984, f. & ef. 8-30-84; FWC 55-1984(Temp), f. & ef. 9-10-84; FWC 58-1984(Temp), f. & ef. 9-17-84; FWC 61-1984(Temp), f. & ef. 9-21-84; FWC 70-1984(Temp), f. & ef. 10-9-84; FWC 47-1985, f. & ef. 8-23-85; FWC 60-1985(Temp), f. & ef. 9-13-85; FWC 63-1985(Temp), f. & ef. 9-24-85; FWC 42-1986, f. & ef. 8-15-86; FWC 53-1986(Temp), f. & ef. 9-4-86; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 57-1986(Temp), f. & ef. 9-11-86; FWC 60-1986(Temp), f. & ef. 9-26-86; FWC 62-1986(Temp), f. & ef. 10-2-86; FWC 63-1987, f. & ef. 8-7-87; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-1-87; FWC 78-1987(Temp), f. & ef. 9-15-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 89-1987(Temp), f. & ef. 10-12-87; FWC 67-1988, f. & ef. 8-15-88; FWC 72-1988(Temp), f. & ef. 8-19-88; FWC 77-1988(Temp), f. & ef. 9-2-88; FWC 91-1988(Temp), f. & ef. 9-16-88; FWC 95-1988(Temp), f. & ef. 9-28-88; FWC 54-1989(Temp), f. & ef. 8-7-89; FWC 87-1989(Temp), f. & ef. 9-1-89; FWC 95-1989(Temp), f. & ef. 9-19-89; FWC 96-1989(Temp), f. & ef. 9-21-89; FWC 99-1989(Temp), f. & ef. 9-27-89; FWC 100-1989(Temp), f. & ef. 9-28-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. 9-14-90, cert. ef. 9-17-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. 9-17-91, cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. 9-1-92, cert. ef. 9-2-92; FWC 87-1992(Temp), f. 9-4-92, cert. ef. 9-7-92; FWC 91-1992(Temp), f. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. 10-2-92, cert. ef. 10-5-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. 8-26-94, cert. ef. 8-29-94; FWC 61-1994(Temp), f. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. 9-16-97, cert. ef. 9-17-97; FWC 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; FWC 76-1998(Temp), f. & cert. ef. 9-8-98 thru 9-25-98; DFW 77-1998(Temp), f. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; DFW 80-1998(Temp), f. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. 9-22-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-

# ADMINISTRATIVE RULES

2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 100-2001(Temp), f. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. 9-12-03 cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. 10-12-04 cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 115-2006(Temp), f. 10-13-06, cert. ef. 10-15-06 thru 12-31-06; Administrative correction 1-16-07; DFW 60-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; DFW 77-2007(Temp), f. 8-17-07, cert. ef. 8-22-07 thru 12-31-07; DFW 88-2007(Temp), f. 9-10-07, cert. ef. 9-11-07 thru 12-31-07

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**Rule Caption:** Implementation of the Rogue Spring Chinook Salmon Conservation Plan of 2007.

**Adm. Order No.:** DFW 89-2007

**Filed with Sec. of State:** 9-12-2007

**Certified to be Effective:** 9-12-07

**Notice Publication Date:** 8-1-07

**Rules Adopted:** 635-500-6525

**Subject:** Adopted rule implements the Rogue Spring Chinook Salmon Conservation Plan of 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-500-6525**

**Rogue Spring Chinook Conservation Plan**

(1) Background. The Rogue Spring Chinook Salmon Conservation Plan of 2007 (Rogue Spring Chinook Plan, available at Department offices) implements the Commission's strategy for the management of this population of naturally produced native fish by the Department, in cooperation with other state, federal and local partners. The Rogue Spring Chinook Plan is based on the general premise that habitat management and fishery management are critical to ensure the conservation and enhancement of this population of native fish. The Commission believes that habitat management is most likely to be successful by working cooperatively with the United States Army Corps of Engineers on reservoir management issues in the Rogue River Basin, and by encouraging the maintenance and improvement of aquatic and riparian habitat as outlined by the Oregon Plan for Salmon and Watersheds. This rule describes a strategy for the use of Department statutory authorities to implement the requirements of the Native Fish Conservation Policy (OAR 635-007-0502 thru 635-007-0505). The Rogue Spring Chinook Plan is not intended to be a rigid recipe, but does prescribe generalized management strategies the Department will pursue; and how the efficacy of those strategies and allied management actions will be evaluated.

(2) Species Management Unit and Population Description. The Species Management Unit (SMU) for Rogue spring chinook salmon includes that area of the Rogue River Basin upstream of Gold Ray Dam. Gold Ray Dam is located on the Rogue River at river mile 126. Only one population of spring chinook salmon is present in the SMU.

(3) Desired Status. The desired status goal is to manage Rogue spring chinook salmon and their habitat so that:

(a) The population is sustained for a minimum of 100 years;

(b) The productive capacity of the habitat is maintained in order to provide ecological, economic, and cultural benefits; and

(c) The opportunities for sport and commercial fishers are consistent with population status.

(d) The six measurable criteria that describe the desired status goal for Rogue spring chinook salmon are:

(A) Abundance;

(B) Migration timing;

(C) Age composition;

(D) Spawning distribution;

(E) Spawner composition; and

(F) Population persistence.

(e) The above measurable criteria are defined in Table 9 of the Desired Biological Status section of the Rogue Spring Chinook Plan, and are adopted by reference into this rule. The desired status goal for the SMU shall be judged to be achieved upon attainment of all of the measurable criteria. Other criteria related to productivity (standardized rate of population growth) and survival rate to each critical life history stage may be developed in the future if new information becomes available, or may be developed in the event that the fish counting station at Gold Ray Dam becomes inoperable. Implementation of any new criteria, or the deletion of any current criteria, will necessitate modification of this rule.

(4) Current Status. The current status of the Rogue Spring Chinook SMU, at the time of adoption of this rule, is described in Table 10 of the Current Status section of the Rogue Spring Chinook Plan. Criteria used to characterize current status shall be structured so as to allow for the direct comparison of current and desired status of the SMU. The Department shall annually update the current status of the SMU. Annual updates will serve as a measurement of progress toward desired status, and thus will not require rule modification of current status.

(5) Primary Limiting Factors.

(a) Numerous factors contribute to the gap between current and desired status of the Rogue spring chinook SMU.

(b) The primary non-manageable limiting factor is marine survival rates associated with variable ocean conditions. At the time of adoption of this Conservation Plan, manageable primary limiting factors responsible for the gap between current and desired status are:

(A) Limited spawning habitat;

(B) Reservoir operation of Lost Creek Lake; and

(C) Fishery impacts that exceed optimum for a portion of the population.

(6) Management Strategies. Department staff shall attempt to implement the following management strategies as mechanisms designed to result in the attainment of desired status for the Rogue Spring Chinook SMU. These strategies are directed at primary and secondary factors that currently limit attainment of desired status, or are judged to be potential risks to attainment of desired status in future years:

(a) Short-term Strategies (1 to 5 years):

(A) Decrease rates of predation on naturally produced spring chinook salmon with intent to increase the survival rates of naturally produced spring chinook salmon.

(b) Long-term Strategies (1 to 25 years):

(A) Implement actions designed to ensure that Lost Creek Lake is managed to maintain a viable population of naturally produced spring chinook salmon that exhibits, as much as possible, historic life history characteristics and continue actions designed to protect habitat in the Rogue River downstream of Lost Creek Lake with intent to maintain and enhance quantity and quality of habitat available to naturally produced spring chinook salmon that spawn in the Rogue River Basin.

(B) Manage spring chinook salmon of hatchery origin so as to minimize the risk of genetic changes among naturally produced fish and to maintain the genetic integrity, and life history characteristics, of that portion of the natural population that historically spawned in upstream areas prior to the construction of Lost Creek Dam with intent to maintain the genetic integrity of naturally produced spring chinook salmon.

(C) Enhance the production of naturally produced spring chinook salmon in Big Butte Creek. The intent of this strategy is to increase the amount of habitat available for the production of naturally produced spring chinook salmon.

(D) Manage fisheries to sustain productivity for all segments of the population of naturally produced spring chinook salmon, with a secondary objective of increasing harvest opportunities for hatchery fish produced to mitigate for blocked habitat. The intent of this strategy is to ensure sustainability of the historic life history characteristics of naturally produced spring chinook salmon while maximizing freshwater harvest opportunities for spring chinook salmon of hatchery origin.

(7) Deterioration in Status.

(a) Additional conservation actions, or plan modification, will be employed by the Department if monitoring shows the SMU status has dropped below criteria levels defined in Table 23 in the Criteria Indicating Deterioration in Status section of the Rogue Spring Chinook Plan and are adopted by reference into this rule.

(b) Additional conservation actions to be taken will be dependent on Department assessments that predict which criteria will be reached and the degree of criteria deterioration.

# ADMINISTRATIVE RULES

(c) Implementation of any new criteria, or the deletion of any current criteria, will necessitate modification of this rule.

(8) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of achieving the desired status goal for the Rogue Spring Chinook SMU. The adaptive management approach employed by the Department will include five elements: research, monitoring, evaluation, reporting, and modification of corrective strategies.

(a) Research: The Department shall identify and support research that, as funding and staffing allows, addresses uncertainties related to management strategies and actions needed to achieve desired status. Research needs, at the time of plan adoption, are identified in the Rogue Spring Chinook Plan (but which are not intended to be the exclusive research projects to be pursued). Future research needs may be identified, or research needs described at the time of plan adoption may be modified, as a result of periodic assessments of the Rogue Spring Chinook Plan.

(b) Monitoring: The Department shall identify, implement, and support monitoring needed to assess the status of the Rogue Spring Chinook SMU relative to desired status criteria, current status criteria, and criteria indicating significant deterioration in status. Future monitoring needs may be identified during periodic assessments of the Rogue Spring Chinook Plan.

(c) Evaluation: The Department shall identify and support evaluation that is needed, as funding and staffing allows, to determine the effectiveness of management strategies and actions in achieving intended outcomes. Future evaluation needs may be identified, or evaluation needs described at the time of plan adoption may be modified, as a result of periodic assessments of the Rogue Spring Chinook Plan.

(d) Reporting: The Department will develop, and will make available to the public:

(A) Annual reports of SMU status. Annual reports will present:

- (i) Current SMU status as assessed by monitoring;
- (ii) A summary of results from research or evaluation activities; and
- (iii) Department rationale associated with any adaptive changes made to management actions.

(B) summary reports of SMU status. Summary reports will outline progress made towards attainment of desired status every five years; and

(C) comprehensive assessments of the Conservation Plan efficacy. Comprehensive assessments of plan efficacy will be completed for intervals that do not exceed 15 years, beginning with the year 2020.

(9) Process to Modify Strategies.

(a) In the event that a status review indicates that criteria indicative of status deterioration will likely be realized, the Department will craft management options to address the need to temporarily modify the Rogue Spring Chinook Plan. These options will be presented in the annual report, and the Department will solicit public input prior to selection of a course of action.

(b) In the event that a status review indicates that management strategies should be modified to ensure attainment of desired status, or in the event of critical changes in local, state, or federal laws, the Department will develop revised options for management strategies to address the need to modify the Rogue Spring Chinook Plan. These options will be presented in a special report, and the Department will solicit public input prior to selection of a course of action.

(c) Specific management actions for management strategies adopted into rule may be modified by the Department under the principle of adaptive management.

(d) Actions may be revised to improve performance, or actions may be terminated and be replaced by other actions that are determined to be more effective.

(e) Rationale associated with any changes in management actions will be detailed in annual status reports developed by the Department, and where applicable, will be linked to findings from monitoring, evaluation, and research efforts.

(10) Impact on Other Native Fish Species. Management strategies identified in the Rogue Spring Chinook Plan are likely to be collectively neutral or somewhat beneficial to other native fish species present in the SMU. New or modified management actions shall consider projected impacts to other native species of fish and if needed, will be modified to ensure compliance with:

- (a) Department policy; and
- (b) State, federal, and local laws.

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 506.109, 506.129

Hist.: DFW 89-2007, f. & cert. ef. 9-12-07

## Department of Forestry Chapter 629

**Rule Caption:** Amends classification criteria for the High Density Extreme classification and standards to be applied thereon.

**Adm. Order No.:** DOF 3-2007

**Filed with Sec. of State:** 8-23-2007

**Certified to be Effective:** 12-31-07

**Notice Publication Date:** 11-1-06

**Rules Amended:** 629-044-1005, 629-044-1020, 629-044-1075

**Subject:** Adds a definition for "Community Wildfire Protection Plan." Amends the criteria used by county forestland-urban interface classification committees or the State Forester to classify lands as "High Density Extreme." Amends the fuel break standards to be applied by landowners on lands which have been classified as "High Density Extreme."

**Rules Coordinator:** Gayle Birch—(503) 945-7210

### 629-044-1005

#### Definitions

(1) The definitions set forth in ORS 477.001, 477.015 and OAR 629-041-0005 shall apply to OAR 629-044-1000 to 629-044-1110, unless the context otherwise requires.

(2) The following words and phrases, when used in OAR 629-044-1000 to 629-044-1110, shall mean the following, unless the context otherwise requires:

(a) "Community Wildfire Protection Plan" means a plan developed pursuant to the federal Healthy Forests Restoration Act of 2003 and which has been approved, within the past five years, by the appropriate city or county, by the appropriate structural fire service provider and by the Oregon Department of Forestry.

(b) "Concentration of structures" means dwellings in a density of four or more per quarter of a quarter section (an area approximately 40 acres in size), as determined by the Public Land Survey.

(c) "Classification" means the process set forth in ORS 477.031 to 477.052 and 477.057.

(d) "Classified by a committee" means the end result of the classification process set forth in ORS 477.031 to 477.052 and 477.057.

(e) "Current zoning" means zoning which allows the siting of a dwelling as an outright use.

(f) "Driveway" means the primary, privately owned vehicle access road that serves a dwelling, which is controlled by the owner of the dwelling, and which is longer than 150 feet.

(g) "Dwelling" means a structure, or a part of a structure, that is used as a home, as a residence, or as a sleeping place by one or more people who maintain a household in the structure.

(h) "Fire resistant roofing" means roofing material that has been installed and is maintained to the specifications of the manufacturer and which:

(A) Is rated by Underwriter's Laboratory as Class A, Class B, Class C, or is equivalent thereto; or

(B) Is metal.

(i) "Fuel break" means a natural or a human-made area immediately adjacent to a structure or to a driveway, where material capable of allowing a wildfire to spread does not exist or has been cleared, modified, or treated to:

(A) Significantly reduce the rate of spread and the intensity of an advancing wildfire; and

(B) Create an area in which fire suppression operations may more safely occur.

(j) "Geographic area" means an area which results from the partitioning of all or portions of a district into smaller segments, based on the presence of differing hazard factors, risks, or dwelling concentrations.

(k) "Hazard factor" means one of the three factors which most influence the potential of a wildfire to spread. The three hazard factors are topography, natural vegetative fuels, and wildfire weather.

(l) "Homeowner's association" means a non-profit corporation organized under ORS chapter 65 and which is subject to the provisions of ORS 94.625 to 94.700.

(m) "Included rural lands" means lands which meet the definition of "rural" but which have been classified by a committee as "suburban."

(n) "Ladder fuel" means branches, leaves, needles, and other combustible vegetation that may allow a wildfire to spread from lower growing vegetation to higher growing vegetation.

# ADMINISTRATIVE RULES

- (o) "Lands" means one or more tax lots.
- (p) "Non-fire resistant roofing" means roofing material that is not fire resistant including, but not limited to, cedar shakes.
- (q) "Private fire department" means a private entity which provides structural fire prevention and suppression services and which meets the safety requirements set forth in OAR 437-002-0182.
- (r) "Road" means a road over which the public has a right of use that is a matter of public record.
- (s) "Rural" means a geographic area which has not been classified by a committee as suburban or urban and shall include:
- (A) Lands zoned primarily for farm or forestry uses;
  - (B) Lands which have an average tax lot size of 10 acres or larger;
  - (C) Lands not zoned to allow a concentration of structures; and
  - (D) Lands which do not contain a concentration of structures.
- (t) "Safety zone" means an adequately sized area, which is substantially free of flammable materials, and which can be used as a refuge to protect human life from an advancing wildfire.
- (u) "Standards" means the actions, efforts, or measures which owners of suburban and urban lands shall take on their property, prior to a wildfire occurrence which originates on the property.
- (v) "Structural fire service provider" means a local government agency or a private fire department which provides structural fire prevention and suppression services.
- (w) "Structure" means a permanently sited building, a manufactured home, or a mobile home that is either a dwelling or an accessory building, which occupies at least 500 square feet of ground space, and which has at least one side that is fully covered.
- (x) "Suburban" means a geographic area which includes one or more of the following:
- (A) Lands where a concentration of structures exists;
  - (B) Lands on which current zoning allows a concentration of structures; or
  - (C) Included rural lands.
- (y) "Urban" means a geographic area that includes one or more of the following:
- (A) Lands within a city limit; or
  - (B) Lands within an urban growth boundary.
- (z) "Urban growth boundary" is defined by ORS 197.295.
- (aa) "Wildfire" means an uncontrolled fire which is burning on forestland and which is damaging, or is threatening to damage, forest resources or structures.
- (ab) "Zoning" means a local governmental zoning ordinance, a land division ordinance adopted under ORS 92.044 or 92.046, or a similar general ordinance establishing standards for implementing a comprehensive plan.
- Stat. Auth.: ORS 477.027, 477.059 & 477.060  
Stats. Implemented: ORS 477.015 - 477.061  
Hist.: DOF 9-2002, f. 9-19-02, cert. ef. 11-15-02; DOF 3-2007, f. 8-23-07, cert. ef. 12-31-07
- 629-044-1020**
- High Density Extreme Classification**
- (1)(a) The purpose of the High Density Extreme classification is to identify those lands where vegetation modification around structures alone may not be sufficient to help protect lives during a wildfire.
- (b) Owners of lands classified High Density Extreme are required to provide fuel breaks adjacent to:
- (A) Property lines;
  - (B) Roads; or
  - (C) Both property lines and roads.
- (2) Lands may be classified by a committee as High Density Extreme when a geographic area meets all of the following criteria:
- (a) The lands have been classified by a committee as Extreme based on the hazard factors;
- (b) The lands have a current zoning for residential development;
- (c) The lands contain fuels which, if not modified or treated, will result in a wildfire having a significant rate of spread and intensity;
- (d) The lands have:
- (A) An average tax lot size of less than three acres; or
  - (B) A typical tax lot configuration which prevents the establishment of a 30 feet wide fuel break adjacent to structures;
- (e) The lands lack:
- (A) Safety zones; or (B) Effective vehicle egress which may hamper the safe evacuation of dwellings during a wildfire.
- (3) Notwithstanding subsection (2) of this rule, lands may be classified by a committee as High Density Extreme when all of the following apply to a geographic area which has current zoning for residential development:
- (a) The committee receives a written request for such classification from one or more of the following entities in which the lands are located:
    - (A) The county;
    - (B) The city;
    - (C) The structural fire service provider;
    - (D) The entity responsible for development of a Community Wildfire Protection Plan; or
    - (E) The homeowner's association.
  - (b) The written request contains:
    - (A) Certification that the request has been approved by the governing body of the entity;
    - (B) Justification for the requested classification, based upon:
      - (i) The existence of fuels which, if not modified or treated, will result in a wildfire having a significant rate of spread and intensity; or
      - (ii) A lack of effective vehicle egress which may hamper the safe evacuation of dwellings during a wildfire.
- (4) When lands are classified by a committee as High Density Extreme, the committee shall also specify which of the following options shall apply to the lands:
- (a) Option 1, where fuel breaks shall be provided adjacent to property lines pursuant to OAR 629-044-1075(1);
  - (b) Option 2, where fuel breaks shall be provided adjacent to roads pursuant to ORS 629-044-1075(2); or
  - (c) Option 3, where fuel breaks shall be provided adjacent to property lines and to roads pursuant to OAR 629-044-1075(1) and (2).
- (5) Written requests received by a committee under subsection (3) of this rule automatically terminate after a period of five years.
- Stat. Auth.: ORS 477.027  
Stats. Implemented: ORS 477.025 - 477.057  
Hist.: DOF 9-2002, f. 9-19-02, cert. ef. 11-15-02; DOF 3-2007, f. 8-23-07, cert. ef. 12-31-07
- 629-044-1075**
- Additional Standards For Lands Classified As High Density Extreme**
- (1) On all lands classified by a committee as High Density Extreme with Option 1, owners shall provide fuel breaks which comply with the requirements of OAR 629-044-1085 and which are immediately adjacent to all property lines, for a distance of twenty feet or to the adjacent property line, whichever is the shortest distance. The distance shall be measured along the slope.
- (2) On all lands classified by a committee as High Density Extreme with Option 2, owners shall provide fuel breaks which comply with the requirements of OAR 629-044-1085 and which are immediately adjacent to all road centerlines, for a distance of at least thirty feet, or to the property line, whichever is the shortest distance. The distance shall be measured along the slope and from the center of the driving surface.
- (3) On all lands classified by a committee as High Density Extreme with Option 3, owners shall comply with subsections (1) and (2) of this rule.
- Stat. Auth.: ORS 477.059  
Stats. Implemented: ORS 477.059  
Hist.: DOF 9-2002, f. 9-19-02, cert. ef. 11-15-02; DOF 3-2007, f. 8-23-07, cert. ef. 12-31-07
- \*\*\*\*\*
- Department of Human Services,  
Addictions and Mental Health Division:  
Mental Health Services  
Chapter 309**
- Rule Caption:** Amend the Psychiatric Security Review Board rules to correct a definition error.
- Adm. Order No.:** MHS 11-2007(Temp)
- Filed with Sec. of State:** 8-31-2007
- Certified to be Effective:** 8-31-07 thru 2-27-08
- Notice Publication Date:**
- Rules Amended:** 309-032-0455
- Subject:** The Department of Human Services, Addictions and Mental Health Division, is temporarily amending OAR 309-032-0455 "Psychiatric Security Review Board (PSRB)" rules to correct a definition error.
- Rules Coordinator:** Richard Luthe—(503) 947-1186
- 309-032-0455**
- Definitions**
- As used in these rules:

# ADMINISTRATIVE RULES

(1) "Case Number" means the unique identification number assigned to each client by the provider. No more than one such number shall be assigned to the client, and that number shall be identical for both the client's treatment record and CPMS enrollment. Once assigned, the case number must be retained for all subsequent admissions or periods of service for the client.

(2) "Client" means a person who is under the jurisdiction of the PSRB and receiving services under these rules.

(3) "Client Identifying Information" means specific personal, biographical, and demographic information about the client.

(4) "Community Mental Health Program" or "CMHP" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an omnibus contract with the Division.

(5) "Conditional Release" means placement by a court or the PSRB, of a person who has been found eligible under ORS 161.327(b) or 161.336, for supervision and treatment in a community setting.

(6) "CPMS" or "Client Process Monitoring System", means an automated client data system maintained by the Division. "CPMS" shall also mean any subsequent modification or change to this system.

(7) "Data Base" means that collection of client information obtained through the mental health assessment process. It includes, but is not limited to: Identifying information, behavioral description, presenting problem(s), psychosocial and medical histories, developmental history, mental status, and current health information.

(8) "Diagnosis" means a DSM diagnosis determined through the mental health assessment and any examinations, tests, procedures, or consultations suggested by the assessment.

(9) "DSM" means the current edition of the "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(10) "Division" means the Addictions and Mental Health Division of the Department of Human Services.

(11) "Goal" means the broad aspirations or more final objectives toward which the client is striving, and toward which all services are intended to assist the client.

(12) "Health History" means a review of the client's current and past state of health as reported by the client, including:

(a) History of any significant illnesses, injuries, allergies, or drug sensitivities; and

(b) History of any significant medical treatments, including hospitalizations and major medical procedures.

(13) "Informed Consent" means the client or guardian understands a specific diagnosis and consents to service procedures and is informed of the risks or benefits, alternative services and procedures and the consequences of not receiving a specific service or procedure.

(14) "Licensed Medical Professional" means a medically trained person who is licensed to practice in the State of Oregon and has one of the following degrees: MD (Medical Doctor); DO (Doctor of Osteopathy); NP (Nurse Practitioner); PA (Physician's Assistant); or RN (Registered Nurse).

(15) "Local Mental Health Authority", as described in ORS 430.620, means the county court or board of county commissioners or one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation.

(16) "Medication Use Record" means information kept in the client's treatment record which documents medications and/or agents prescribed or recommended by the provider's employed or contracted licensed medical professional who has prescriptive privileges, and includes medication progress notes as applicable.

(17) "Mental Health Assessment" means a process in which the client's need for mental health services is determined through evaluation of the client's strengths, goals, needs, and current level of functioning.

(18) "Mental Status Examination" means an overall assessment of a person's mental functioning that includes descriptions of appearance, behavior, speech, mood and affect, suicidal/homicidal ideation, thought processes and content, and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, abstraction abilities, judgment, and insight.

(19) "Objective" means an interim level of progress or a component step that is necessary or helpful in moving toward a goal.

(20) "Progress Note" means a written summary of how the client is progressing with respect to the client's treatment plan.

(21) "Provider" means:

(a) An organizational entity which is operated by, or contractually affiliated with, a community mental health program, and is responsible for the direct delivery of mental health services to clients; or

(b) A public agency or private corporation or an individual, as provided for in ORS 161.390.

Notwithstanding the conditions of certification in OAR Chapter 309, the Division may contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person.

(22) "Psychiatric Evaluation" means an assessment performed by a licensed medical professional with prescriptive privileges who is a qualified mental health professional.

(23) "Qualified Mental Health Associate" (QMHA) means a person who delivers services under the direct supervision of a qualified mental health professional, and who meets the following minimum qualifications:

(a) Has a bachelor's degree in a mental health related field; or

(b) Has a combination of at least one year's work experience and two years education, training or work experience in mental health.

(24) "Qualified Mental Health Professional" (QMHP) means a person who meets all of the following minimum qualifications:

(a) Fits one of these categories:

(A) Psychiatrist or physician, licensed to practice in the State of Oregon; graduate degree in psychology, social work, or other mental health related field; graduate degree in psychiatric nursing, licensed in the State of Oregon; registration as an occupational therapist; graduate degree in recreational therapy; or

(B) Any other person whose education and experience meet, in a determination process approved by the Division, a level of competence consistent with the standards established for qualified mental health professionals.

(b) Has demonstrated competence to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social, and work relationships; conduct a mental status assessment; document a DSM diagnosis; write and supervise a treatment plan; and provide individual, family, and/or group therapy.

(25) "Qualified Person" means a person who is a qualified mental health professional, or a qualified mental health associate, is identified by the PSRB in the Conditional Release Order and who is designated by the provider to deliver and/or arrange and monitor the provision of required reports and services in this rule.

(26) "Treatment plan" means an individualized, written plan defining specific treatment objectives and proposed service interventions derived from the client's mental health assessment, and the Conditional Release Order.

(27) "Treatment Record" means a separate file established and maintained under these rules for each client.

(28) "Service Supervisor" means a person who has two years of experience as a qualified mental health professional and who, in accordance with OAR 309-032-0505, reviews the services provided to clients by qualified persons.

(29) "Setting" means the location at which a service is provided, and includes, but is not limited to: CMHP office, client's residence, or other identified location.

(30) "Significant Procedure" means a diagnostic or service modality which may have a substantial adverse effect on the client's psychological or physical health, such as administration of medications which have serious side effects.

(31) "Supervision" means monitoring of client's compliance with Conditional Release Orders, Agreement to Conditional Release, the treatment plan requirements, and any additional monitoring and reporting requirements stipulated by the PSRB, the courts, or the Division, not otherwise specified in these rules.

(32) "Termination Summary" means a summary of client progress toward treatment objectives from the time of admission to the termination of services.

(33) "Utilization Review" means a process in which client treatment records are examined by a review committee to evaluate the need for, and appropriateness of services, as well as completeness of the record.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

# ADMINISTRATIVE RULES

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07; MHS 11-2007(Temp), f. & cert. ef. 8-31-07 thru 2-27-07

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**Rule Caption:** Amendment of the Adult Foster Homes Rule.

**Adm. Order No.:** MHS 12-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 8-31-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 309-040-0350

**Rules Repealed:** 309-040-0350(T)

**Subject:** The Department of Human Services, Addictions and Mental Health Division, is amending OAR 309-040-0350 "Home Alone" rules to allow certain residents to remain in the adult foster home while the provider is not present.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-040-0350

### Variance

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health, life, or safety of the residents, and the variance would not violate or compromise applicable ORS.

(2) No variance will be granted from a regulation or provision of these rules pertaining to the license capacity of the Adult Foster Home, inspections of the Adult Foster Home, civil, legal and human rights, and inspection of the public files. No variance related to fire and life safety will be granted by the Department without prior consultation with the local fire Department or its designee.

(3) A provider or applicant may apply to the Department for a variance specific to each individual resident under ORS 443.725, subject to the following requirements:

(a) The variance is effective only for the specific resident who has been assessed and meets the safety requirements prescribed by the Department. This assessment shall become part of the resident's PCP;

(b) A variance allowing a specific resident to be in the Adult Foster Home alone shall not exceed 4 hours in a 24 hour period;

(c) No variance allows a provider to leave a resident alone in the Adult Foster Home between the hours of 11:00 pm to 6:00 am; and

(b) 24 hour per day care shall continue for any resident that does not qualify to be in the Adult Foster Home alone.

(4) Variances will be granted or denied in writing. All variances granted will be reviewed with each license renewal under OAR 309-040-0345. A variance granted to one Adult Foster Home provider, or a variance granted regarding a specific resident, does not constitute a precedent for any other Adult Foster Home, provider or resident.

(5) The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Department. The Department will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Department will be final.

Stat. Auth.: ORS 409.010, 409.050

Stat. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0035, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 2-2007(Temp), f. & cert. ef. 5-4-07 thru 10-31-07; MHS 12-2007, f. & cert. ef. 8-31-07

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**Rule Caption:** Amendment of the definition of "abuse" administrative rules.

**Adm. Order No.:** MHS 13-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 8-31-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 309-035-0105, 309-035-0260, 309-040-0305

**Rules Repealed:** 309-035-0105(T), 309-035-0260(T), 309-040-0305(T)

**Subject:** The Department of Human Services, Addictions and Mental Health Division, is amending OAR's 309-035-0105; 309-035-0260 & 309-040-0305 to have a common definition of "abuse" across all facilities rules.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-035-0105

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(g) Abuse also includes:

(A) Failure to act and/or neglect that results in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to failure by a provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abusive conduct toward an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services;

(C) Placement of restrictions on a resident's freedom of movement. Restriction to an area of the residence or restricting access to ordinarily accessible areas of the residence is not allowed, unless arranged for and agreed to on the Personal Care Plan;

(D) Financial exploitation by a caregiver including, but not limited to, unauthorized rate increases, borrowing from or loaning money to residents, witnessing wills in which a caregiver is beneficiary, adding caregiver's name to resident's bank accounts or other personal property without approval of the resident or his/her guardian or conservator and the PCP team; and

(E) Inappropriate expenditure of a resident's personal funds, theft of a resident's personal funds, use of a resident's personal funds for caregivers own benefit, commingling of a resident's funds with caregiver or other resident's funds, or a caregiver becoming guardian or conservator.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the facility.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity who owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(8) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(9) "Community Mental Health Program (CMHP)" means the organization of all or a portion of 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 Office of Mental Health and Addiction Services (OMHAS).

(10) "Contract" means a formal written agreement between the community mental health program, Oregon Health Plan contractor or Office of

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Mental Health and Addiction Services (OMHAS) and a Residential Treatment Facility owner.

(11) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTF residents.

(12) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)," published by the American Psychiatric Association.

(13) "Department" means the Office of Mental Health and Addiction Services (OMHAS) of the Oregon Department of Human Services.

(14) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(15) "Emergency Admission" means an admission to an RTF made on an urgent basis due to the pressing service needs of the individual.

(16) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on NFPA 101A worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. OMHAS is authorized to determine evacuation capability for RTFs in accordance with the National Fire Protection Association (NFPA) 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(17) "Facility" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a Residential Treatment Facility.

(18) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(19) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

- (A) Physician licensed to practice in the State of Oregon;
- (B) Nurse Practitioner licensed to practice in the State of Oregon; or
- (C) Physician's Assistant licensed to practice in the State of Oregon; and

(b) Whose training, experience and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(20) "Licensee" means the person(s) or entity legally responsible for the operation of the facility to which the Department has issued a license.

(21) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with OMHAS to operate a CMHP or MHO for that county.

(22) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(23) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder, that limits an individual's ability to perform activities of daily living.

(24) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(25) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated pay-

ment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(26) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(27) "Office of Mental Health and Addiction Services (OMHAS)" means the Department of Human Services (DHS) agency responsible for the administration of state mental health and addiction services in accordance with federal and state laws, rules and regulations. OMHAS may delegate a portion of this responsibility to the CMHPs and to MHOs.

(28) "Owner" means the person(s) or entity legally responsible for the operation of the facility.

(29) "P.r.n. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered to be given as needed.

(30) "Program" means the residential treatment facility and may refer to the owner, staff and/or services as applicable to the context.

(31) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(32) "Protection" means the necessary actions taken by the program to prevent abuse or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property and funds.

(33) "Resident" means any adult residing in a facility who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(34) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the facility based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall plan for mental health treatment when the RTF is operated by a mental health service agency that provides other services to the resident.

(35) "Residential Treatment Facility (RTF)" means a facility that is operated to provide services on a 24-hour basis for six or more residents.

(36) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(37) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(38) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures. Such locking devices will be installed in accordance with Building Code requirements.

(39) "Services" means the care and treatment provided to residents as part of the Residential Treatment Facility program.

(40) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(41) "Termination of Residency" means the time at which the resident ceases to live in the RTF, and includes the transfer of the resident to another facility, but does not include absences from the facility for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(42) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07

## 309-035-0260

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

# ADMINISTRATIVE RULES

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(g) Abuse also includes:

(A) Failure to act and/or neglect that results in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to failure by a provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abusive conduct toward an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services;

(C) Placement of restrictions on a resident's freedom of movement. Restriction to an area of the residence or restricting access to ordinarily accessible areas of the residence is not allowed, unless arranged for and agreed to on the Personal Care Plan;

(D) Financial exploitation by a caregiver including, but not limited to, unauthorized rate increases, borrowing from or loaning money to residents, witnessing wills in which a caregiver is beneficiary, adding caregiver's name to resident's bank accounts or other personal property without approval of the resident or his/her guardian or conservator and the PCP team; and

(E) Inappropriate expenditure of a resident's personal funds, theft of a resident's personal funds, use of a resident's personal funds for caregivers own benefit, commingling of a resident's funds with caregiver or other resident's funds, or a caregiver becoming guardian or conservator.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the RTH.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity that owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Building Code" means the state building code as defined in ORS 455.010 and includes the **Oregon Structural Specialty Code, One and Two Family Dwelling Code** and other specialty codes adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(8) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming, or eating; management of money; transportation; recreation; and the providing of room and board.

(9) "Community Mental Health Program (CMHP)" means the organization of all or a portion of 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 Office of Mental Health and Addiction Services Department.

(10) "Contract" means a formal written agreement between the community mental health program, Mental Health Organization or the Office of Mental Health and Addiction Services Department and a residential treatment home owner.

(11) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTH residents.

(12) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)" published by the American Psychiatric Association.

(13) "Department" means the Office of Mental Health and Addiction Services (OMHAS) of the Oregon Department of Human Services.

(14) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(15) "Electrical Code" means the Uniform Building and Fire Codes adopted on October 1, 2004 by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(16) "Emergency Admission" means an admission to an RTH made on an urgent basis due to the pressing service needs of the individual.

(17) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined for SR Occupancies in the Uniform Building and Fire Codes adopted on October 1, 2004. The category of evacuation capability is determined by documented evacuation drill times or scores on the worksheet for rating residents in Group SR Occupancies in NFPA 101A. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR-1) for more than 16 residents) and (SR-4 for 6 to 16 residents): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes. SR-3 occupancies are those homes with five or fewer occupants having evacuation capabilities of impractical or slow with assistance.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. OMHAS is authorized to determine evacuation capability for RTFs in accordance with the **National Fire Protection Association (NFPA) 101A 2000 edition**. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(18) "Fire Code" means the **Oregon Fire Code** as adopted by the Office of State Fire Marshal and as amended by local jurisdictions.

(19) "Home" means the building and grounds where the residential treatment home program is operated.

(20) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon; and

(b) Whose training, experience, and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(21) "Licensee" means the person(s) or entity legally responsible for the operation of the RTH to which the Department has issued a license.

(22) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with OMHAS to operate a CMHP or MHO for that county.

(23) "Mechanical Code" means the Oregon Mechanical Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(24) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(25) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder, that limits an individual's ability to perform activities of daily living.

(26) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other jus-

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tification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(27) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(28) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(29) "Office of Mental Health and Addiction Services (OMHAS)" means the Department of Human Services (DHS) agency responsible for the administration of state mental health and addiction services in accordance with federal and state laws, rules and regulations. OMHAS may delegate a portion of this responsibility to the CMHPs and MHOs.

(30) "Owner" means the person(s) or entity legally responsible for the operation of the facility.

(31) "Plumbing Code" means the **Oregon Plumbing Specialty Code** adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(32) "P.r.n. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(33) "Program" means the residential treatment home and may refer to the owner, staff, and/or services as applicable to the context.

(34) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(35) "Protection" means the necessary actions taken by the program to prevent abuse or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property, and funds.

(36) "Qualified Health Care Professional" means a health care professional licensed to practice in the state of Oregon who is approved to perform certain health care tasks referenced in the relevant section of these rules consistent with the scope of practice specified by the licensing board for the profession. In accordance with the referenced health care task, the qualified health care professional may include a physician, a physician's assistant, a nurse practitioner, a registered nurse, or a pharmacist.

(37) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

- (a) Graduate degree in psychology;
- (b) Bachelor's degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work;
- (d) Graduate degree in behavioral science field;
- (e) Graduate degree in recreational, art, or music therapy; or
- (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(38) "Resident" means any adult residing in the RTH who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(39) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the RTH based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall plan for mental health treatment when the RTH is operated by a mental health service agency that provides other services to the resident.

(40) "Residential Treatment Home (RTH)" means a home that is operated to provide services on a 24-hour basis for five or fewer residents.

(41) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(42) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as

a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(43) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures.

(44) "Services" means the care and treatment provided to residents as part of the RTH program.

(45) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(46) "Termination of Residency" means the time at which the resident ceases to live in the RTH and includes the transfer of the resident to another facility, but does not include absences from the RTH for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(47) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

[Publications: Publications referenced are available from the agency.]

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07

## 309-040-0305

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(g) Abuse also includes:

(A) Failure to act and/or neglect that results in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to failure by a provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abusive conduct toward an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services;

(C) Placement of restrictions on a resident's freedom of movement. Restriction to an area of the residence or restricting access to ordinarily accessible areas of the residence is not allowed, unless arranged for and agreed to on the Personal Care Plan;

(D) Financial exploitation by a caregiver including, but not limited to, unauthorized rate increases, borrowing from or loaning money to residents, witnessing wills in which a caregiver is beneficiary, adding caregiver's name to resident's bank accounts or other personal property without approval of the resident or his/her guardian or conservator and the PCP team; and

(E) Inappropriate expenditure of a resident's personal funds, theft of a resident's personal funds, use of a resident's personal funds for caregivers own benefit, commingling of a resident's funds with caregiver or other resident's funds, or a caregiver becoming guardian or conservator.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and, OAR 410-009-0050

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through 410-009-0160, or any other rules established by the Department applicable to allegations of abuse of residents of an Adult Foster Home licensed by OMHAS.

(3) "Activities of Daily Living (ADL)" are those individual skills necessary for a resident's Continued well being including eating/nutrition, dressing, personal hygiene, mobility, and toileting.

(4) "Administration of Medication" means administration of medicine or a medical treatment to a resident as prescribed by a Licensed Medical Practitioner.

(5) "Adult Foster Home (AFH)" means any home licensed by the Department of Human Services (DHS), Office of Mental Health and Addiction Services (OMHAS) in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if an adult family member receives care, he/she must be included as one of the residents within the total license capacity of the home. A home or person that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults, is deemed to be an Adult Foster Home. For the purpose of these rules, an Adult Foster Home does not include facilities referenced in ORS 443.715(1)(2)(3)(4).

(6) "Applicant" means any person or entity that makes an application for a license that is also the owner of the business.

(7) "Assessment" means an evaluation of a resident and the resident's level of function completed by a case manager and provides the basis for the development of the resident's Personal Care Plan.

(8) "Authorized Department Representative" means an employee of the Department of Human Services (DHS), Office of Mental Health and Addiction Services (OMHAS) or the designee of the local Community Mental Health Program.

(9) "Behavioral Interventions" means those interventions that will modify the resident's behavior or the resident's environment.

(10) "Bill of Rights" means civil, legal or human rights afforded to Adult Foster Home residents, which are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the Adult Foster Home Bill of Rights as described in OAR 309-040-0390(7).

(11) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47, ORS 678.010 to 678.445.

(12) "Care" means the provision of but is not limited to services of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum resident independence and enhance quality of life.

(13) "Case Management" means identified services provided by qualified persons to residents by local, regional or state allied agencies or other service providers. Case management includes advocating for the resident's treatment needs, providing assistance in obtaining entitlements based on mental or emotional disability, accessing housing or residential programs, coordinating services including mental health treatment, educational or vocational activities, and arranging alternatives to inpatient hospital services.

(14) "Case Manager" means a person employed by a local, regional, or state allied agency approved by OMHAS to provide case management services. In accordance with OAR 309-032-0545(2)(g-j), Standards for Adult Mental Health Services, when a resident resides in a Adult Foster Home, the case manager will assist in development of the Personal Care Plan. Additionally, the case manager must evaluate the appropriateness of services in relation to the consumer's assessed need and review the Personal Care Plan every 180 days.

(15) "Community Mental Health Program (CMHP)" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, 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 Department of Human Services, Office of Mental Health and Addiction Services (OMHAS).

(16) "Compensation" means payments made by or on behalf of a resident to a provider in exchange for room and board, care and services, including services described in the resident's Personal Care Plan.

(17) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, which is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

(18) "Condition" means a provision attached to a new or existing license, which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(19) "Contested Case Hearing" means an arbitrated hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or OMHAS in response to an action, sanction, or notice of finding issued by OMHAS that would result in the loss of license of the provider or other sanctions that would adversely affect the license of the provider. The hearing group is composed of:

(a) The provider and if the provider chooses, the provider's attorney;

(b) The Office of Mental Health and Addiction Services as represented by the Attorney General's Office; and

(c) The Office of Administration Hearings Administrative Law Judge.

(20) "Contract" means a written agreement between a provider and the Department to provide room and board, care and services for compensation for residents of a licensed Adult Foster Home.

(21) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(22) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and/or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

(23) "Day Care" means care and services in an Adult Foster Home for a person who is not a resident of the Adult Foster Home. Children under the age of five living in the Adult Foster Home are included in the licensed capacity of the home.

(24) "Declaration for Mental Health Treatment" means a document that states the consumer's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(25) "Department" means the State of Oregon, Department of Human Services.

(26) "Director" means the Director of the Department of Human Services or that person's designee.

(27) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the resident's individualized personal care plan, regardless of outcome or attainment of goals described in the resident's individualized personal care plan. In addition, the discharge summary addresses resident's monies, financial assets and monies, medication and personal belongings at time of discharge.

(28) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of Adult Foster Homes which the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and which has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(29) "Family Member" for the purposes of these rules, means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(30) "Home" means the Adult Foster Home.

(31) "Homelike Environment" means an Adult Foster Home setting, which promotes the dignity, safety, independence, security, health and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision making of the residents.

(32) "House Rules" means those written standards governing house activities developed by the provider and approved by the Department or designee. These standards must not conflict with the Adult Foster Home Bill of Rights.

(33) "Incident Report" means a written description and account of any occurrence including but not limited to, any injury, accident, acts of physical aggression, use of physical restraints, medication error, any unusual incident involving a resident or the home and/or providers.

(34) "Informed Consent for Services" means that the services to be provided by the Adult Foster Home provider to the person have been explained to the person and guardian, if applicable, and explained in a manner that they may comprehend.

(35) "Initial Personal Care Plan (IPCP)" means a written document developed for a resident within 24 hours of admission to the home. The document must address the care and services to be provided for the resident during the first 30 days or less until the Personal Care Plan can be devel-

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oped. At a minimum the IPCP must contain goals that address the following: Immediate health care support needs, medication management issues, safety and supervision needs, Activities of Daily Living that the resident needs assistance with completing as well as any pertinent information as required by the case manager or their designee at the time of the admission. The provider must develop an Initial Personal Care Plan (IPCP) within 24 hours of admission to the Adult Foster Home.

(36) "Level One Adult Foster Home" means an Adult Foster Home licensed by the Office of Mental Health and Addiction Services to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(37) "License" means a document issued by the Department to applicants who are determined by the Department or designee to be in substantial compliance with these rules.

(38) "Licensed Medical Practitioner (LMP)" means any person who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:

- (a) Physician licensed to practice in the State of Oregon; or
- (b) Nurse practitioner licensed to practice in the State of Oregon.

(39) "Licensee" means the person or entity to whom a license is issued and whose name(s) is on the license.

(40) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation which directly contracts with the Department to operate a CMHP for that county.

(41) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(42) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(43) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the person's social, educational, or economic functioning. Medical diagnosis and classification must be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."

(44) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

(45) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(46) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.

(47) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(48) "Nursing Delegation" means that a registered nurse authorizes an unlicensed person to perform special tasks of client/nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client in a specific situation, eval-

uation of the ability of the unlicensed person, teaching the task and ensuring supervision.

(49) "Personal Care Plan (PCP)" means a written plan outlining the care and services to be provided to a resident. The PCP is based upon the review of current assessment, referral, observations, resident preference, and input from members of the Personal Care Plan Team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the resident's recovery and independence.

(50) "Personal Care Plan Team (PCP Team)" means a group composed of the resident, the case manager or other designated representative CMHP representative, the provider and/or resident manager, and others needed including the resident's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the resident receiving services. If the resident is unable or does not express a preference, other appropriate team membership must be determined by the PCP team members.

(51) "Personal Care Services" means services prescribed by a physician or other designated person in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those Adult Foster Home individuals who are Medicaid eligible, Personal Care services are funded under Medicaid.

(52) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching and supervising care which promotes the person's optimum health and independence.

(53) "Provider" means the person or entity licensed to operate and is responsible for the daily operation of the Adult Foster Home. "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the Adult Foster Home.

(54) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400 and OAR 309-032-0450 through 309-032-0515.

(55) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and 851.

(56) "Related" means spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(57) "Relative" means any person identified as family members.

(58) "Resident" means any person age 18 or older who receives room, board, care, and services in an Adult Foster Home.

(59) "Resident Manager" means an employee of the provider who is approved by the Department to live in the Adult Foster Home and is responsible for the care and services of residents on a day-to-day basis.

(60) "Residential Care" means the provision of room, board, and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation. Residential care includes 24 hour supervision; being aware of the residents' general whereabouts; monitoring the activities of the resident while on the premises of the Adult Foster Home to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(61) "Residents' Bill of Rights" means residents of the Adult Foster Home have the following rights as defined in ORS 443.739. Each resident has a right to:

- (a) Be treated as an adult, with respect and dignity;
- (b) Be informed of all resident rights and all house rules;
- (c) Be encouraged and assisted to exercise legal rights, including the right to vote;
- (d) Be informed of the resident's medical condition and the right to consent to or refuse treatment;
- (e) Receive appropriate care and services, and prompt medical care as needed;
- (f) A safe and secure environment;
- (g) Be free from mental and physical abuse;
- (h) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;
- (i) Complete privacy when receiving treatment or personal care;

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- (j) Associate and communicate privately with any person the resident chooses;
- (k) Send and receive personal mail unopened;
- (l) Participate in activities of social, religious and community groups;
- (m) Have medical and personal information kept confidential;
- (n) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;
- (o) Manage the resident's own money and financial affairs unless legally restricted;
- (p) Be free from financial exploitation. The provider must not charge or ask for application fees or nonrefundable deposits and must not solicit, accept or receive money or property from a resident other than the amount agreed to for services;
- (q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;
- (r) Not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738(11)(a), or for the welfare of the resident or other residents, or for nonpayment;
- (s) Be free of discrimination in regard to race, color, national origin, sexual orientation, disability, sex or religion;
- (t) Make suggestions and complaints without fear of retaliation.
- (62) "Respite Care" means the provision of room, board, care, and services in an Adult Foster Home for a period of up to 14 days. Respite care residents will be counted in the total licensed capacity of the home. Respite care is not crisis respite care.
- (63) "Restraints" means any physical hold, device, or chemical substance, which restricts, or is meant to restrict, the movement or normal functioning of a resident.
- (64) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.
- (65) "Seclusion" means the involuntary confinement of an individual to a room or area where the person is physically prevented from leaving.
- (66) "Self-Administration of Medication" means the act of a resident placing a medication in or on their own body. The resident identifies the medication and the times and manners of administration, and placed the medication internally or externally on their own body without assistance.
- (67) "Self Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety without assistance.
- (68) "Services" means those activities which are intended to help the residents develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure residents access to necessary medical care, treatment, and/or services identified in the resident's personal care plan.

(69) "Substitute Caregiver" means any person meeting the qualifications of a caregiver who provides care and services in an Adult Foster Home under the jurisdiction of the Department in the absence of the provider or resident manager. A resident may not be a substitute caregiver.

(70) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a resident requiring a non-routine visit to a health care practitioner, suicide attempts, death of a resident, a fire requiring the services of a fire Department, or any incident requiring an abuse investigation.

(71) "Variance" means an exception from a regulation or provision of these rules, granted in writing by the Department, upon written application from the provider.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 409.010, 409.050  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0005, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07

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## Department of Human Services, Administrative Services Division and Director's Office Chapter 407

**Rule Caption:** Establishment of a Department-wide customer service complaint process.

**Adm. Order No.:** DHSD 7-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 7-1-07

**Rules Adopted:** 407-005-0100, 407-005-0105, 407-005-0110, 407-005-0115, 407-005-0120

**Subject:** Defines customer service complaints, establishes criteria for the reporting, investigating and resolving customer service complaints received by the Department.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-005-0100

### Purpose and Scope

(1) These rules (OAR 407-005-0100 through 407-005-0120) describe the process for reporting, investigating, and resolving Department of Human Services' customer or client complaints about staff conduct, or customer service or lack of customer service received from Department personnel or Department contractors.

(2) OAR 407-005-0100 through 407-005-0120 applies to Department personnel and Department contractors:

(a) Department contractors shall have established processes for addressing customer service complaints received from Department customers or clients served by Department contractors that meet or exceed the requirements set forth in these rules (OAR 407-005-0100 through 407-005-0120);

(b) Department contractors must cooperate with the Department's customer service complaint process and investigation if complaints are filed against them with the Department;

(c) Department contractors shall provide a copy of their established process upon request of the Department.

(3) The customer service complaint process described in these rules does not apply to the following situations:

(a) The customer or client is entitled to, or is requesting an administrative or contested case hearing;

(b) The subject matter of the complaint should be or already has been decided by a judge;

(c) The subject matter of the complaint is dissatisfaction or disagreement with a decision subject to review under OAR 582-020-0005 through 582-020-0125 (Vocational Rehabilitation Service Program);

(d) The subject matter of the complaint is subject to review under OAR 413-010-0420 (Review of DHS Child Welfare Decisions):

(A) Adoption committee decision;

(B) Child Protective Services disposition;

(C) Juvenile court ruling.

(e) The subject matter of the complaint is a report of discrimination subject to review under OAR 407-005-0025 through 407-005-0030;

(f) The subject matter of the complaint is subject to review under OAR 410-141-0260 through 410-141-0266 (Oregon Health Plan Prepaid health plan grievance system: PHP complaint and appeal procedures);

(g) The subject matter of the complaint is subject to review under OAR 309-118-0000 through 0050 (Oregon State Hospital patient grievance process);

(h) Complaints filed anonymously. Anonymous complaints will be reviewed by the Governor's Advocacy Office.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 and 411.977

Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-005-0105

### Definitions

The following definitions apply to OAR 407-005-0100 through 407-005-0120:

(1) "Customers or Clients" means any individual or entity having contact with the Department seeking information, services, or reimbursement. This includes, but is not limited to: clients and their family members, informal client supports, advocates, Department staff, taxpayers, public officials, service providers, community based organizations, media, and other interested parties;

(2) "Customer Service Complaint" means a written complaint filed by a customer or client that expresses dissatisfaction with staff conduct, customer service or lack of customer service received from Department personnel or Department contractors;

(3) "Department" means the Department of Human Services.

(4) "Department Contractors" means employees, volunteers, trainees, and other individuals or entities who contract with the Department to provide services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 and 411.977

Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

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## 407-005-0110

### Customer Service Complaint Procedure

(1) Customers or clients who are dissatisfied with staff conduct or some aspect of customer services received from Department personnel or Department contractors may file a customer service complaint with the Department.

(2) A customer service complaint must be filed within 60 calendar days from the date of the event that caused the dissatisfaction. Untimely complaints will not be processed.

(3) Written customer service complaints may be filed by:

- (a) Postal mail;
- (b) In person at any Department office; or

(c) By contacting the Governor's Advocacy Office for assistance in filing a written customer service complaint.

(4) The Department will assist customers or clients in completing a customer service complaint in writing at the request of a customer or client or when Department staff identifies a need for assistance.

(5) Customer service complaints will be considered filed on the day the written complaint is received and date stamped by the Department.

(6) Within five business days of receipt of a written customer service complaint, filed in a Department office, a copy will be sent to the Governor's Advocacy Office.

(7) Within two business days of receipt of a written customer service complaint filed with the Governor's Advocacy Office, the complaint will be reviewed and sent to the appropriate Department office.

(8) The Department will develop a process for tracking filed written customer service complaints. The tracking process will be utilized to assure compliance with these rules.

(9) The Department shall post the customer service complaint process in an easily identifiable format in each local office of the Department.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 and 411.977

Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-005-0115

### Resolution of Customer Service Complaints

(1) Customers, clients, or their representatives may resolve customer service complaints verbally, by contacting the involved individual or a manager, or by filing a written customer service complaint.

(2) Within two business days of receipt of a written customer service complaint, the Department will screen the complaint to determine whether the subject matter of the complaint is subject to review under the customer service complaint process. If the subject matter of the complaint is not subject to review under the customer service complaint process, the Department will immediately notify and redirect the customer or client to the alternative process for addressing the customer's or client's issue.

(3) There are four possible levels of written customer service complaint review. At the first level, the customer service complaint will be reviewed by a first level manager. If the complaint is not resolved at the first level, further review will be conducted by a second or third level manager. The Governor's Advocacy Office will facilitate the final level of review.

(4) For all levels of review and investigation the following processes and timelines apply:

(a) Within five business days of receipt of a written customer service complaint, the reviewing manager will review the customer service complaint. If the written customer service complaint generates no questions, the reviewing manager may begin investigating the matter before contacting the complainant. If there are questions regarding the customer service complaint, the reviewing manager will contact the complainant within five business days of receipt of the written complaint, to discuss the matter before taking any action. The reviewing manager must make the following efforts to contact the complainant:

(A) The reviewing manager must make at least two attempts to contact the complainant, using the complainant's preferred method of communication as indicated in the written complaint. If the complainant does not respond within ten business days from the date of the last contact attempt, the manager may consider the complaint closed;

(B) If the complainant does not specify a preferred method of communication or the reviewing manager cannot reach the complainant by telephone, the reviewing manager will communicate to the complainant, in writing, requesting that the complainant contact the manager.

(b) If contacting the complainant to gather additional information is required, the reviewing manager will begin an investigation regarding the issues of the customer service complaint within five business days from the date of contact with the complainant. If the outcome cannot be determined

within ten business days from the date of contact with the complainant, the manager will notify the complainant of the estimated extension of time needed:

(A) A reviewing manager will notify the complainant of the outcome of the investigation in a manner that complies with all Department confidentiality and privacy rules;

(B) If the complainant indicates that the outcome is satisfactory, the reviewing manager will close the complaint;

(C) At levels one through three, the reviewing manager will inform the complainant that if the complainant is dissatisfied with the outcome, the complainant may request the next level of review within five days of the date of notification of the outcome. If the complainant requests the next level of review, the reviewing manager will immediately forward the customer service complaint to the next reviewing level manager or the Governor's Advocacy Office.

(c) At the fourth level, the Governor's Advocacy Office will facilitate and issue a final determination and the complainant will have no further review rights under the Department's customer service complaint process.

(5) All customer service complaints, both resolved and unresolved, will be sent to the Governor's Advocacy Office for review and follow-up. Follow-up may include contacting the complainant by telephone or in writing.

(6) These customer service complaint procedures shall be administered in such a manner as to protect the confidentiality of client and personnel records.

(7) The Department will maintain records of all customer service complaints received, including responses and supporting documentation, for five years from the date the customer service complaint is closed.

(8) The Department shall compile a monthly report summarizing each customer service complaint filed. The report will be available to the public upon request. Customer service complaints related to Children, Adults and Families Division, Self-Sufficiency program issues will be provided monthly to the Family Services Review Commission.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 411.977

Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-005-0120

### Retaliation Prohibited

No individual filing a customer service complaint or otherwise participating in any of the actions authorized under OAR 407-005-0100 through 407-005-0120 shall be subject to reprimand or retaliatory action by any division or employee of the Department for having filed a customer service complaint.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010 and 411.977

Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07

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**Rule Caption:** Renumbering of DHS Criminal History Check Rules; Change in Subject Individual's Access to Fingerprint Results.

**Adm. Order No.:** DHSD 8-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 8-1-07

**Rules Renumbered:** 410-007-0200 to 407-007-0200, 410-007-0280 to 407-007-0280, 410-007-0350 to 407-007-0350, 410-007-0360 to 407-007-0360, 410-007-0370 to 407-007-0370, 410-007-0380 to 407-007-0380

**Rules Ren. & Amend:** 410-007-0210 to 407-007-0210, 410-007-0220 to 407-007-0220, 410-007-0230 to 407-007-0230, 410-007-0240 to 407-007-0240, 410-007-0250 to 407-007-0250, 410-007-0260 to 407-007-0260, 410-007-0270 to 407-007-0270, 410-007-0290 to 407-007-0290, 410-007-0300 to 407-007-0300, 410-007-0310 to 407-007-0310, 410-007-0320 to 407-007-0320, 410-007-0330 to 407-007-0330, 410-007-0340 to 407-007-0340

**Subject:** The DHS criminal history check rules are being moved to the DHS department-wide rule chapter due to the broad scope of the rules across several DHS divisions. All references to "410" rules have been amended to "407" rules.

2005 legislation amended ORS 181.537. Subject individuals desiring to review information concerning themselves maintained in the OSP Criminal Offender Information System, if fingerprinted during the criminal history check process, may request copies of the result-

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ing Oregon and national criminal history record. OAR 407-007-0340 is amended to reflect this statutory change.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-007-0200

### Statement of Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they should not be allowed to oversee, live or work closely with, or provide services to vulnerable people.

(2) Authority. These rules are authorized under ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 441.022, 441.055, 443.730, 443.735(3), 688.655 and 688.660.

(3) When Rules Apply. These rules are to be applied when evaluating criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee employment or placement.

Stat. Auth.: ORS 181.537, 409.010, 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0210

### Definitions

As used in OAR chapter 407, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Adult Foster Home" has the same definition as is provided in ORS 443.705.

(2) "Approved" means that a subject individual has completed the criminal history check process, including any required fitness determination, and is eligible to provide care or reside in an environment covered by these rules.

(3) "Authorized Designee" means a person who is designated by an approved qualified entity and authorized by the Department to receive and process criminal history check request forms from subject individuals and criminal history information from the Department. The authorized designee conducts fitness determinations under the authority of the Department.

(4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, transportation, recreation or support to children, the elderly or persons with disabilities.

(5) "Client" means any person who receives care, or funding for care, through the Department.

(6) "Contact Person" means a person who is designated by an approved qualified entity to receive and process criminal history check request forms from subject individuals, but who is not authorized to receive criminal history information from the Department. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make the preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(7) "Conviction" means that the subject individual was convicted in a court of law, or was adjudicated in a juvenile court and found responsible for the crime. "Conviction" as used in these rules includes a finding of "guilty except by reason of insanity," "guilty except for insanity," "not guilty by reason of insanity," or similarly worded findings. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges.

(8) "Criminal History Check Rules" or "These Rules" means OAR chapter 407, division 007.

(9) "Criminal History Check" or "CHC" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and the processes and procedures required by these rules.

(10) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information obtained by or provided to the Department pursuant to these rules for the purpose of conducting a fitness determination. "Criminal history information" does not include violations or infractions (See ORS 161.505-161.585).

(11) "Denied" means that a subject individual following a fitness determination, including a weighing test, has been found to be not eligible to hold the position, be employed, certified, licensed, registered or otherwise authorized by the Department to provide care or to reside in an environment covered by these rules.

(12) "Department" means the Oregon Department of Human Services or any subdivision thereof.

(13) "Employer," if the qualified entity is a corporation, means the corporation or parent corporation.

(14) "Facility" means any entity that is licensed or certified by the Department and which provides care.

(15) "Homecare Worker" or "Home Care Worker" means a provider who is enrolled in the Department's client-employed provider program and who provides either hourly or live-in services, as defined in ORS 410.600.

(16) "Independent Provider" means a person who meets the qualifications described in OAR 411-305-0020, 411-330-0020 or 411-340-0020.

(17) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources.

(18) "Oregon Criminal History Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal History Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(19) "Personal Care Services Provider" means a person who is directly employed by a client of the Department to provide assistance with activities of daily living and other activities as described in OAR chapter 411, division 34.

(20) "Potentially Disqualifying Crime" means a crime listed in OAR 407-007-0280.

(21) "Probationary Status" means a condition in which a subject individual may be allowed by the authorized designee to work, volunteer, be trained or reside in an environment covered by these rules following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe prior to a final fitness determination.

(22) "Qualified Entity" means the Department; local government agency; community mental health or developmental disability program, local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(23) "Qualified Vendor" means a supplier of criminal history information who is approved by the Department of Human Services as having access to substantially the same criminal offender information as the Law Enforcement Data System.

(24) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(25) "Service Provider" means a person or entity that is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and that provides care.

(26) "State-Specific Criminal History Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal history information resources located in a state or jurisdiction outside Oregon.

(27) "Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules.

(a) "Subject individual" includes:

(A) An employee of the Department, person who has been offered employment by the Department, volunteer or student over whom the Department has direction and control.

(B) A person who is licensed, certified, registered or otherwise regulated or authorized for payment by the Department and who provides care.

(C) An employee or volunteer who provides care within any entity or agency licensed, certified, registered or otherwise regulated by the Department.

(D) A direct care staff person secured through the services of a personnel services or staffing agency who works in any long term care facility licensed by the Department pursuant to ORS chapter 441.

(E) Except as provided in paragraphs (27)(b)(C) and (D) of this rule, a person who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care.

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(F) An individual working for a private, licensed child caring agency or system of care contractors providing child welfare services pursuant to ORS chapter 418.

(G) A homecare worker, personal care services provider or an independent provider employed by a Department client and who provides services to the client if the Department helps to pay for the services.

(H) A child care provider reimbursed through the Department's child care program, and employees and other persons in child care facilities that are exempt from certification or registration by the Child Care Division of the Employment Department. This includes all persons who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children. (REF: OAR chapter 461, division 165.)

(I) A contact person or authorized designee as defined in OAR 407-007-0210.

(J) A person providing training to staff within a long term care facility.

(K) Any person serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(L) Any person applying for a paid or volunteer position, any employee, any volunteer, any contractor, or any employee of any contractor of a State-operated group home within the Department's State-Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon Training Center, and Oregon State Hospital.

(M) Notwithstanding subsection (27)(b) of this rule, any person who is required to complete a criminal history check pursuant to a contract or written agreement with the Department or by other Oregon Administrative Rules of the Department, if the requirement is within the statutory authority granted to the Department. Specific statutory authority must be specified in the contract.

(b) "Subject Individual" does not include:

(A) Any person under 16 years of age.

(B) A person receiving training in a DHS-licensed facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0310, and

(ii) Not allowed to have unsupervised access to vulnerable people.

(C) Residents of facilities licensed, certified or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in subsection (27)(a) of this rule.

(D) Persons who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the Employment Department.

(F) Individuals receiving spousal pay from the Department for care of a spouse.

(G) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.

(H) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporarily providing such services in an environment regulated by the Department. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(I) Individuals employed by a private business in which a client of the Department is working as part of an employment service program sponsored by the Department. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(J) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005. This exclusion does not apply to subject individuals in State-operated group homes within the Department's State-Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon

Training Center, or Oregon State Hospital as defined in subsection (27)(a) of this rule.

(K) Volunteers who are not under the direction and control of the Department or any entity licensed, certified, registered or otherwise regulated by the Department.

(L) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(M) People working in restaurants or at public swimming pools.

(N) Hemodialysis technicians.

(O) Individuals employed by Alcohol and Drug Programs that are certified, licensed, or approved by the Office of Mental Health and Addictions Services to provide Prevention, Evaluation or Treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal history checks in accordance with these rules.

(P) Persons working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(Q) Persons being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.

(R) Provider group categories that were authorized for payment by the Department for care if such provider group categories were not covered by a Department criminal record check process prior to 2004.

(S) Foster and adoptive parents providing care for children pursuant to ORS chapter 418.

(T) Emergency Medical Technicians and First Responders certified by the Department of Human Services Emergency Medical Services and Trauma Systems program.

(U) A person employed by an entity that provides services solely contracted under ORS 414.022.

(28) "Weighing Test" means a process carried out by one or more authorized designees in which known negative and positive information is considered to determine if a subject individual is approved or denied. See OAR 407-007-0320(5)(c).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0220

### Criminal History Check Required

(1) Who Conducts Check. The Department, or a qualified entity authorized by the Department, conducts criminal history checks on all subject individuals.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) A person who becomes a subject individual on or after the effective date of these rules is required to have a criminal history check in accordance with these rules.

(b) The subject individual changes employers. If the subject individual's employer merges with another agency or changes names, this would not be considered a change of employers.

(c) The subject individual changes positions, licenses, certifications or registrations. NOTE: "Licenses," "certifications" and "registrations" refers only to licenses, certifications and registration issued by the Department.

(d) A check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department.

(e) The Department or the authorized designee has reason, such as any indication of possible criminal behavior, to believe that a check is justified.

(3) When a Check is Not Required. A new check is not required only under the following circumstances:

(a) A personal care services provider, respite care provider or an independent provider who is paid with funds received from the Department changes clients or adds another client, and the prior, documented criminal history check conducted within the previous twenty-four (24) months through the Department has been approved without a restriction as described in OAR 407-007-0320(5)(c)(C).

(b) The subject individual is a child care provider as described in OAR 461-165-0180 who changes clients or begins providing services to another client.

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(c) There is no change of employer, there are no new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous fitness determination identified no potentially disqualifying history and the authorized designee determines that the previous fitness determination is sufficient for the new position.

(B) The authorized designee determines that the new position requires the same or less contact with vulnerable persons, personal information, financial information, or client funds.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0230

### Qualified Entity

(1) Approval Required. A qualified entity must be approved in writing by the Department pursuant to these rules in order to appoint an authorized designee or contact person. Unless specifically indicated in these rules, all qualified entities discussed are considered approved.

(2) Appointment of Authorized Designees and Contact People. Unless indicated under section (3) of this rule, all qualified entities are responsible for ensuring the completion of criminal history checks for subject individuals who are the qualified entity's employees, volunteers, or other subject individuals under the direction or control of the qualified entity. Qualified entities approved by the Department must appoint authorized designees or contact persons within 30 days of Department approval.

(a) Unless indicated under section (3) of this rule, all qualified entities must appoint one or more authorized designees, or have a written agreement with another qualified entity to handle the responsibilities of an authorized designee.

(b) All qualified entities may also appoint one or more contact persons, or have a written agreement with another qualified entity to handle the responsibilities of a contact person.

(3) The Department Acts as Authorized Designee. The Department will handle the responsibilities of an authorized designee listed in OAR 407-007-0240(3)(c)(A) through 407-007-0240(3)(c)(C) in the following circumstances:

(a) Private qualified entity with fewer than 10 employees. These entities are not eligible to appoint authorized designees.

(A) The private qualified entity with fewer than 10 employees may use another qualified entity to handle the responsibilities of a authorized designee instead of using the Department. If another qualified entity is used, there must be a written agreement between the two qualified entities and the Department must be notified.

(B) The private qualified entity with fewer than 10 employees must appoint one or more contact persons, or must have a written agreement with another qualified entity to handle the responsibilities of a contact person and the Department must be notified.

(b) Qualified entities with subject individuals not under the direction and control of the qualified entity but who provide care under programs administered by the qualified entity.

(A) For these subject individuals, the qualified entity must appoint one or more contact persons, or use an authorized designee or contact person appointed under section (2) of this rule to handle the responsibilities of a contact person.

(B) Notwithstanding section (3)(b), the qualified entity will appoint an authorized designee for these subject individuals if the qualified entity chooses to do so, or is required to do so under other DHS program administrative rules or contract with DHS. The qualified entity must notify the Department of which programs are affected and which qualified entity will handle the responsibilities of authorized designee for each program.

(4) Revocation of Approval. Approval of the qualified entity may be revoked by the Department if the Department determines that the qualified entity, or a contact person or authorized designee appointed by the qualified entity, has failed to comply with these rules.

(5) Managing CHC Process. The qualified entity will appoint authorized designees and contact persons as needed to remain in compliance with these rules.

(6) Training and Technical Assistance. The Department will provide qualified entities with periodic training and on-going technical assistance for contact persons and authorized designees.

Stat. Auth.: ORS 181.537, 409.010, 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0240

### Contact Person and Authorized Designee

(1) Requirements. All requirements in this section must be completed within a 90-day time period. To be approved by the Department, all contact persons and authorized designees must:

(a) Be appointed by a qualified entity, and apply to and be registered by the Department. The application must be in writing on a form provided by the Department.

(b) Complete both an Oregon and a national criminal history check in accordance with these rules and must have:

(A) No conviction for a potentially disqualifying permanent review crime,

(B) No convictions for any other crime in the past fifteen years, and

(C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 407-007-0290.

(c) Complete a training program and successfully pass any testing as required by the Department.

(2) Denial of Contact Person or Authorized Designee Status. A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the qualified entity.

(a) If the Department denies the person to be an authorized designee or contact person, the qualified entity may request an exception under this rule in writing. If an exception is requested, the Department will review the qualified entity's exception request, the person's application, criminal history, and any supplemental information as listed in OAR 407-007-0300, to determine if the appointment of the person would pose a significant risk to the physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(b) Denial or termination of contact person or authorized designee status under OAR 407-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position. Persons losing employment or position have the same hearing rights as other subject individuals under these rules.

(3) Responsibilities.

(a) A contact person must:

(A) Ensure that adequate measures are taken to protect the confidentiality of the records required by these rules.

(B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license) and confirming information written on the DHS Criminal History Request form with information on the photo identification.

(C) Ensure that when a subject individual must be on probationary status, the need for active supervision pursuant to OAR 407-007-0310 is understood by each person responsible for ensuring that active supervision is provided.

(D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision.

(E) Monitor status of criminal history check applications and investigate any delays in processing.

(F) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(b) The contact person may review the DHS Criminal History Request form completed by the subject individual to determine if the subject individual has any potentially disqualifying history.

(A) The contact person may allow a subject individual to work or function on probationary status only after the contact person has reviewed the DHS Criminal History Request form and determined there is no indication that the subject individual has any potentially disqualifying history or condition.

(B) The contact person must not allow a subject individual who discloses any potentially disqualifying history to work or function on probationary status.

(C) An authorized designee has all the responsibilities of a contact person as listed in (3)(a)(A) through (3)(a)(F) of this rule, and in addition must:

(A) Review the DHS Criminal History Request form completed by the subject individual (if not already done so by a contact person) and conduct a preliminary fitness determination under the authority of the

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Department in accordance with OAR 407-007-0320 prior to forwarding the DHS Criminal History Request form to the Department to determine eligibility for probationary status.

(B) Conduct a final fitness determination under the authority of the Department in accordance with OAR 407-007-0320.

(C) Participate in the appeal process if requested by the Department.

(4) Conflict of Interest (Authorized Designee). An authorized designee must not have access to LEDS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.

(a) A conflict of interest exists when one or more of the following circumstances is true:

(A) The authorized designee is related to the subject individual.

(B) The authorized designee has a close personal or financial relationship, other than an employee-employer relationship, with the subject individual.

(b) When there is a conflict of interest, and the qualified entity has no other authorized designees available to conduct the fitness determination, the qualified entity must submit the application to the Department and the Department will complete the determination.

(5) Termination of Contact Person or Authorized Designee Status.

(a) When the authorized designee's or contact person's position with the qualified entity ends, or when the qualified entity terminates the appointment, the Department's registration of a contact person or authorized designee is revoked. The qualified entity must notify the Department immediately upon the termination of the appointment.

(b) The Department or the qualified entity must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Department or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable. After suspending or revoking the appointment, the qualified entity taking the action must notify the Department's Criminal Records Unit in writing immediately. If the Department takes the action, it must notify the qualified entity in writing immediately.

(6) Not Transferable. If the person holding the status of a contact person or authorized designee leaves employment of the qualified entity for any reason, the person will no longer be considered a contact person or authorized designee. If the person finds employment with another qualified entity, a new appointment, application and registration must be conducted under these rules.

(7) Review of Appointment. The Department will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal history check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Department has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, indication of criminal behavior.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0250

### Oregon Criminal History Check Process

(1) Forms Required. A qualified entity, authorized designee and subject individual must use the Department's form to request the criminal history check. The Department will make the DHS Criminal History Request form and other forms required under these rules available for use or reproduction to all qualified entities.

(2) Processing.

(a) The Department obtains criminal history information from the Oregon State Police Law Enforcement Data System and from what other sources of criminal, judicial and motor vehicle information as the Department determines necessary to complete the check.

(b) Only an approved qualified entity, working through an authorized designee, may:

(A) Receive and evaluate Oregon criminal history information from the Department as allowed by applicable statutes.

(B) Conduct fitness determinations.

(c) The Department or the authorized designee may require that a subject individual obtain and provide additional criminal, judicial or other background information.

(d) Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State

Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15)

(3) Additional Information Required. In order to conduct an Oregon check and fitness determination, the Department may require additional information from the subject individual as necessary, such as but not limited to proof of identity; or additional criminal, judicial, or other background information.

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0260

### State-Specific Criminal History Check Process

(1) State-Specific Check. Notwithstanding the provisions of OAR 407-007-0270, the Department may conduct a state-specific criminal history check in lieu of a national check when the Department has reason to believe that out-of-state history may exist and that a nationwide criminal history check is not warranted.

(2) Supplement to National Check. The Department may conduct a state-specific check in addition to a national check in order to clarify incomplete or conflicting information.

(3) Additional Information Required. In order to conduct a state-specific check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0260, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0270

### National Criminal History Check Process

(1) National Criminal History Check. In addition to an Oregon check (OAR 407-007-0250), a national criminal history check may be required by the Department under any of the following circumstances:

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(a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years with the following exceptions:

(A) Child Care Providers (18 months). The subject individual is a child care provider or other person included in OAR 407-007-0210(27)(a)(H) who has lived outside Oregon for 60 or more consecutive days during the previous eighteen months.

(B) Child Welfare System (5 years). The subject individual is working for private, licensed child caring agencies and system of care contractors providing child care pursuant to ORS chapter 418 and has lived outside Oregon for 60 or more consecutive days during the previous five years.

(b) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Department, indicates there may be criminal history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.

(c) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Department on the DHS Criminal History Request form, the subject individual has no Oregon driver's license or Oregon identification card, or the Department has other reason to question the identity or history of the subject individual.

(d) Oregon State Institutions. The subject individual meets the definition under OAR 407-007-0210(27)(a)(L).

(2) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.

(3) Processing. The subject individual must complete and submit a fingerprint card when requested by the Department.

(a) Fingerprint Cards. The subject individual must use a fingerprint card (Example: FBI Form FD 258) provided by the Department.

(b) Time Frame for Return. The card must be submitted within 21 days of the request to the Department's Criminal Records Unit to avoid closure of application pursuant to OAR 407-007-0320(5)(e).

(c) Extension. The Department may extend the time allowed for good cause.

(4) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses potentially disqualifying out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0270, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0280

### Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

- (a) ORS 162.155, Escape II;
- (b) ORS 162.165, Escape I;
- (c) ORS 162.325, Hindering prosecution;
- (d) ORS 163.005, Criminal homicide;
- (e) ORS 163.095, Aggravated murder;
- (f) ORS 163.115, Murder;
- (g) ORS 163.118, Manslaughter I;
- (h) ORS 163.125, Manslaughter II;
- (i) ORS 163.145, Criminally negligent homicide;
- (j) ORS 163.160, Assault IV;
- (k) ORS 163.165, Assault III;
- (l) ORS 163.175, Assault II;
- (m) ORS 163.185, Assault I;
- (n) ORS 163.187, Strangulation;
- (o) ORS 163.200, Criminal mistreatment II;
- (p) ORS 163.205, Criminal mistreatment I;
- (q) ORS 163-205, Female genital mutilation;
- (r) ORS 163.208, Assault of Public Safety Officer;

- (s) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
- (t) ORS 163.225, Kidnapping II;
- (u) ORS 163.235, Kidnapping I;
- (v) ORS 163.257, Custodial interference I;
- (w) ORS 163.355, Rape III;
- (x) ORS 163.365, Rape II;
- (y) ORS 163.375, Rape I;
- (z) ORS 163.385, Sodomy III;
- (aa) ORS 163.395, Sodomy II;
- (bb) ORS 163.405, Sodomy I;
- (cc) ORS 163.408, Unlawful Sexual penetration II;
- (dd) ORS 163.411, Unlawful Sexual penetration I;
- (ee) ORS 163.415, Sexual abuse III;
- (ff) ORS 163.425, Sexual abuse II;
- (gg) ORS 163.427, Sexual abuse I;
- (hh) ORS 163.515, Bigamy;
- (ii) ORS 163.525, Incest;
- (jj) ORS 163.535, Abandonment of a child;
- (kk) ORS 163.537, Buying or selling a person under 18 years of age;
- (ll) ORS 163.545, Child neglect II;
- (mm) ORS 163.547, Child neglect I;
- (nn) ORS 163.555, Criminal nonsupport;
- (oo) ORS 163.575, Endangering the welfare of a minor;
- (pp) ORS 163.670, Using child in display of sexually explicit conduct;
- (qq) ORS 163.673, Dealing sexual condition of children;
- (rr) ORS 163.675, Sale sexual condition of children;
- (ss) ORS 163.680, Paying for sexual view of children;
- (tt) ORS 163.684, Encouraging child sexual abuse I;
- (uu) ORS 163.686, Encouraging child sexual abuse II;
- (vv) ORS 163.687, Encouraging child sexual abuse III;
- (ww) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (xx) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (yy) ORS 163.693, Failure to report child pornography;
- (zz) ORS 163.732, Stalking;
- (aaa) ORS 164.057, Aggravated theft I;
- (bbb) ORS 164.075, Theft by extortion;
- (ccc) ORS 164.125, Theft of services;
- (ddd) ORS 164.225, Burglary I;
- (eee) ORS 164.325, Arson I;
- (fff) ORS 164.395, Robbery III;
- (ggg) ORS 164.405, Robbery II;
- (hhh) ORS 164.415, Robbery I;
- (iii) ORS 165.581, Cellular counterfeiting I;
- (jjj) ORS 166.005, Treason;
- (kkk) ORS 166.015, Riot;
- (lll) ORS 166.085, Abuse of corpse II;
- (mmm) ORS 166.087, Abuse of corpse I;
- (nnn) ORS 166.155, Intimidation II;
- (ooo) ORS 166.165, Intimidation I;
- (ppp) ORS 166.220, Unlawful use of weapon;
- (qqq) ORS 166.270, Possession of weapons by certain felons;
- (rrr) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (sss) ORS 166.275, Possession of weapons by inmates of institutions;
- (ttt) ORS 166.429, Firearms used in felony;
- (uuu) ORS 166.720, Racketeering activity unlawful;
- (vvv) ORS 167.012, Promoting prostitution;
- (www) ORS 167.017, Compelling prostitution;
- (xxx) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
- (yyy) ORS 167.065, Furnishing obscene materials to minors;
- (zzz) ORS 167.070, Sending obscene materials to minors;
- (aaaa) ORS 167.075, Exhibiting an obscene performance to a minor;
- (bbbb) ORS 167.080, Displaying obscene materials to minors;
- (cccc) ORS 167.087, Disseminating obscene material;
- (dddd) ORS 167.262, Adult using minor in commission of controlled substance offense;
- (eeee) ORS 167.315, Animal abuse II;
- (ffff) ORS 167.320, Animal abuse I;
- (gggg) ORS 167.322, Aggravated animal abuse I;
- (hhhh) ORS 167.333, Sexual assault of animal;

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- (iii) ORS 181.599, Failure to report as sex offender;  
(jjj) ORS 475.525, Sale of drug paraphernalia prohibited;  
(kkkk) ORS 475.805, Providing hypodermic device to minor prohibited;  
(llll) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;  
(mmmm) ORS 475.986, Application of controlled substance to the body of another person;  
(nnnn) ORS 475.992, Prohibited acts generally (regarding drug crimes);  
(oooo) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);  
(pppp) ORS 475.995, Distribution to minors;  
(qqqq) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;  
(rrrr) ORS 677.080, Prohibited acts (regarding the practice of medicine);  
(ssss) Any federal crime.  
(tttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule.  
(uuuu) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.  
(vvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155.  
(wwww) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.  
(xxxx) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.  
(yyyy) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.
- (2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed.
- (a) ORS 162.015, Bribe giving;  
(b) ORS 162.025, Bribe receiving;  
(c) ORS 162.065, Perjury;  
(d) ORS 162.075, False swearing;  
(e) ORS 162.117, Public investment fraud;  
(f) ORS 162.145, Escape III;  
(g) ORS 162.175, Unauthorized departure;  
(h) ORS 162.185, Supplying contraband;  
(i) ORS 162.195, Failure to appear II;  
(j) ORS 162.205, Failure to appear I;  
(k) ORS 162.247, Interfering with a peace officer;  
(l) ORS 162.265, Bribing a witness;  
(m) ORS 162.275, Bribe receiving by a witness;  
(n) ORS 162.285, Tampering with a witness;  
(o) ORS 162.295, Tampering with physical evidence;  
(p) ORS 162.305, Tampering with public records;  
(q) ORS 162.335, Compounding;  
(r) ORS 162.355, Simulating legal process;  
(s) ORS 162.365, Criminal impersonation;  
(t) ORS 162.367, Criminal impersonation of peace officer;  
(u) ORS 162.369, Possession of false law enforcement identification card;  
(v) ORS 162.375, Initiating a false report;  
(w) ORS 162.385, Giving false information to police officer for a citation;  
(x) ORS 162.405, Official misconduct II;  
(y) ORS 162.415, Official misconduct I;  
(z) ORS 162.425, Misuse of confidential information;  
(aa) ORS 163.190, Menacing;  
(bb) ORS 163.195, Recklessly endangering another person;  
(cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;  
(dd) ORS 163.245, Custodial interference II;
- (ee) ORS 163.275, Coercion;  
(ff) ORS 163.435, Contributing to the sexual delinquency of a minor;  
(gg) ORS 163.445, Sexual misconduct;  
(hh) ORS 163.465, Public indecency;  
(ii) ORS 163.467, Private indecency;  
(jj) ORS 163.700, Invasion of personal privacy;  
(kk) ORS 163.750, Violating court's stalking protective order;  
(ll) ORS 164.043, Theft III;  
(mm) ORS 164.045, Theft II;  
(nn) ORS 164.055, Theft I;  
(oo) ORS 164.085, Theft by deception;  
(pp) ORS 164.095, Theft by receiving;  
(qq) ORS 164.135, Unauthorized use of a vehicle;  
(rr) ORS 164.140, Criminal possession of rented or leased personal property;  
(ss) ORS 164.162, Mail theft or receipt of stolen mail;  
(tt) ORS 164.215, Burglary II;  
(uu) ORS 164.235, Possession of burglar's tools;  
(vv) ORS 164.255, Criminal trespass I;  
(ww) ORS 164.265, Criminal trespass while in possession of firearm;  
(xx) ORS 164.272, Unlawful entry into motor vehicle;  
(yy) ORS 164.315, Arson II;  
(zz) ORS 164.335, Reckless burning;  
(aaa) ORS 164.354, Criminal Mischief II;  
(bbb) ORS 164.365, Criminal Mischief I;  
(ccc) ORS 164.369, Interfering with police animal;  
(ddd) ORS 164.377, Computer crime;  
(eee) ORS 165.007, Forgery II;  
(fff) ORS 165.013, Forgery I;  
(ggg) ORS 165.017, Criminal possession of a forged instrument II;  
(hhh) ORS 165.022, Criminal possession of a forged instrument I;  
(iii) ORS 165.032, Criminal possession of a forgery device;  
(jjj) ORS 165.037, Criminal simulation;  
(kkk) ORS 165.042, Fraudulently obtaining a signature;  
(lll) ORS 165.055, Fraudulent use of a credit card;  
(mmm) ORS 165.065, Negotiating a bad check;  
(nnn) ORS 165.070, Possessing fraudulent communications device;  
(ooo) ORS 165.074, Unlawful factoring of credit card transaction;  
(ppp) ORS 165.080, Falsifying business records;  
(qqq) ORS 165.085, Sports bribery;  
(rrr) ORS 165.090, Sports bribe receiving;  
(sss) ORS 165.095, Misapplication of entrusted property;  
(ttt) ORS 165.100, Issuing a false financial statement;  
(uuu) ORS 165.102, Obtaining execution of documents by deception;  
(vvv) ORS 165.540, Obtaining contents of communication;  
(www) ORS 165.543, Interception of communications;  
(xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;  
(yyy) ORS 165.572, Interference with making a report;  
(zzz) ORS 165.577, Cellular counterfeiting III;  
(aaaa) ORS 165.579, Cellular counterfeiting II;  
(bbbb) ORS 165.692, Making false claim for health care payment;  
(cccc) ORS 165.800, Identity theft;  
(dddd) ORS 166.025, Disorderly conduct;  
(eeee) ORS 166.065, Harassment;  
(ffff) ORS 166.076, Abuse of a memorial to the dead;  
(gggg) ORS 166.115, Interfering with public transportation;  
(hhhh) ORS 166.180, Negligently wounding another;  
(iiii) ORS 166.190, Pointing firearm at another;  
(jjjj) ORS 166.240, Carrying of concealed weapon;  
(kkkk) ORS 166.250, Unlawful possession of firearms;  
(llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;  
(mmmm) ORS 166.382, Possession of destructive device prohibited;  
(nnnn) ORS 166.384, Unlawful manufacture of destructive device;  
(oooo) ORS 166.470, Limitations and conditions for sales of firearms;  
(pppp) ORS 166.480, Sale or gift of explosives to children;  
(qqqq) ORS 166.649, Throwing an object off an overpass II;  
(rrrr) ORS 166.651, Throwing an object off an overpass I;  
(ssss) ORS 166.660, Unlawful paramilitary activity;  
(tttt) ORS 167.007, Prostitution;  
(uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;  
(vvvv) ORS 167.212, Tampering with drug records;

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(www) ORS 167.222, Frequenting a place where controlled substances are used;

(xxxx) ORS 167.325, Animal neglect II;

(yyyy) ORS 167.330, Animal neglect I;

(zzzz) ORS 167.355, Involvement in animal fighting;

(aaaaa) ORS 167.365, Dogfighting;

(bbbb) ORS 167.370, Participation in dogfighting;

(cccc) ORS 167.820, Concealing the birth of an infant;

(ddddd) ORS 411.630, Unlawfully obtaining public assistance;

(eeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);

(fffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;

(ggggg) ORS 417.990, Penalty for placement of children in violation of compact;

(hhhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;

(iiii) ORS 418.140, Sharing assistance prohibited;

(jjjjj) ORS 418.250, Supervision of child-caring agencies;

(kkkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;

(llll) ORS 433.010, Spreading disease (willfully) prohibited;

(mmmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;

(nnnn) ORS 475.950, Failure to report precursor substance;

(ooooo) ORS 475.955, Failure to report missing precursor substances;

(ppppp) ORS 475.960, Illegally selling drug equipment;

(qqqqq) ORS 475.965, Providing false information on precursor substances report;

(rrrr) ORS 474.991, Unlawful delivery of imitation controlled substance;

(sssss) ORS 475.992, Prohibited acts generally (regarding misdemeanor drug crimes);

(tttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);

(uuuuu) ORS 475.994, Prohibited acts involving records and fraud;

(vvvvv) ORS 475.996, Commercial drug offense;

(wwwww) ORS 657A.280, Failure to certify child care facility

(xxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration

(yyyy) ORS 807.620, Giving false information to police officer

(zzzz) ORS 811.140, Reckless driving

(aaaaaa) ORS 811.540, Fleeing or attempting to elude police officer;

(bbbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;

(cccccc) ORS 811.705, Failure to perform duties of driver to injured persons;

(dddddd) ORS 819.300, Possession of a stolen vehicle;

(eeeeee) ORS 830-475, Failure to perform the duties of an operator (boat);

(ffffff) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.

(gggggg) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.

(hhhhhh) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.

(iiiiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee.

(jjjjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(kkkkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed.

(a) ORS 162.085, Unsworn falsification;

- (b) ORS 162.235, Obstructing governmental or judicial administration;
- (c) ORS 162.315, Resisting arrest;
- (d) ORS 164.245, Criminal trespass II;
- (e) ORS 164.345, Criminal mischief III;
- (f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;
- (g) ORS 166.075, Abuse of venerated objects;
- (h) ORS 166.090, Telephonic harassment;
- (i) ORS 166.095, Misconduct with emergency telephone calls;
- (j) ORS 167.340, Animal abandonment;
- (k) ORS 418.630, Operate uncertified foster home;
- (l) ORS 811.182, Criminal driving while suspended or revoked;
- (m) ORS 813.010, Driving under the influence of intoxicants (DUII);
- (n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
- (o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.
- (p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (3)) as determined by the authorized designee.
- (q) A combination of any three crimes not listed in these rules which were committed on three different dates within the previous five years.
- (r) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.
- (s) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.
- (4) Evaluation Based on Oregon Laws. Evaluations of crimes shall be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.
- (5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.
- Stat. Auth.: ORS 181.537, 409.010 & 409.050  
Stats. Implemented: ORS 181.537  
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;  
Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0290

### Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

- (1) False Statement. A "false statement" by the subject individual to the qualified entity, authorized designee or Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.
- (2) Sex Offender. The subject individual is a registered sex offender in Oregon or any other jurisdiction.
- (3) Warrants. An outstanding warrant against the subject individual for any crime in any jurisdiction.
- (4) Deferred Sentence, Diversion Program, Parole or Probation. The subject individual has a deferred sentence, conditional discharge, is participating in a diversion program, or has not completed a required diversion program or any condition of post-prison supervision, parole or probation, for any potentially disqualifying crime listed in OAR 407-007-0280.
- (5) Parole or Probation Violation. A post-prison supervision, parole or probation violation during the previous five years for any potentially disqualifying crime listed in OAR 407-007-0280.
- (6) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment, for a potentially disqualifying crime. (Example: An unresolved arrest for a ten-year review crime during the previous ten years).
- Stat. Auth.: ORS 181.537, 409.010 & 409.050  
Stats. Implemented: ORS 181.537  
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;  
Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0300

### Other Information Considered

- (1) Consideration of Other Information. When other information is disclosed by the subject individual, or is otherwise known by the authorized

# ADMINISTRATIVE RULES

designee, the authorized designee must consider such information in addition to potentially disqualifying crimes and conditions when making the fitness determination, including but not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions. These may include, but are not limited to:

- (A) Age of the subject individual at time of the crime.
- (B) Domestic relationships or situations, when applicable.

(C) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(D) Facts that support the conviction, pending indictment, the making of a false statement, or other potentially disqualifying condition.

(E) Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, qualified entity or service provider, in regard to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The authorized designee must also consider factors when relevant information is provided by the Department or the subject individual including, but not limited to:

(A) Other information related to criminal activity including charges, arrests, and convictions.

- (B) Periods of incarceration of the subject individual.

- (C) Passage of time since commission of the crime.

- (D) Parole or probation status.

(E) Evidence of drug or alcohol issues, including history of use, manufacturing, delivery, treatment, and rehabilitation.

(F) Evidence of other treatment or rehabilitation related to criminal activity or other factors listed in this rule.

(G) Likelihood of repetition of criminal behavior, including, but not limited to, the subject individual's acknowledgment and honesty relative to past behavior, patterns of criminal activity, and whether the subject individual appears to accept responsibility for past actions, as determined by the authorized designee.

(H) Changes in circumstances subsequent to the criminal activity or disqualifying condition.

(I) Information from Department protective services investigations and other investigations.

- (J) Education.

- (K) Work history (employee or volunteer).

(L) Written recommendations from current or past employer(s), including DHS client employers.

(M) Indication that criminal history or protective services history has been disclosed to employer, DHS client, or qualified entity.

(N) Indication of the subject individual's cooperation and honesty during the criminal history check process as described in these rules.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history to the paid or volunteer position, or to the environment in which the subject individual will reside or work, must be considered.

(2) Fitness Information with Available Information. If the authorized designee requests other information for the purpose of conducting a weighing test under OAR 407-007-0320(5)(c), and the subject individual does not respond in a stated time period, the authorized designee will make a fitness determination based on the potentially disqualifying crimes or conditions, and the available information.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0310

### Probationary Status

A subject individual may work, volunteer, reside, or be trained in a facility or other environment identified in these rules prior to a final fitness determination only under the following conditions and will be considered to be on probationary status:

(1) DHS Criminal History Request Form Completed. A DHS Criminal History Request form must have been completed by the subject individual and reviewed by the contact person or authorized designee.

(2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 407-007-0320.

(3) Active Supervision. A subject individual who is on probationary status must be actively supervised at all times by someone who completes a history check and is approved pursuant to these rules.

(a) Duties. The person providing active supervision at all times must meet all of the following conditions:

(A) Be in the same building as the subject individual or be within line-of-sight, except as provided in subsection (5)(b) of this rule,

(B) Know where the person on probationary status is and what the person is doing, and

(C) Periodically observe the actions of the person on probationary status.

(b) Supervision by Exempt Person. A client of the Department, an adult client's related adult family member, or a child's parent or guardian, may provide active supervision if authorized in section (5)(b) or (5)(c) of this rule without a history check.

(c) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or prior DHS criminal history check rules may function on probationary status without active supervision. The qualified entity must maintain the documentation.

**NOTE:** Time frame (24 months) is based on length of time between date of previous approval and date starting new position. This exemption is not allowed:

(A) If the subject individual discloses criminal history that occurred within the previous 24 months.

(B) If the subject individual is currently involved in an appeal under these rules.

(C) If, as determined by the authorized designee or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for probationary status be allowed to work, volunteer, reside, or be trained in a facility prior to a final fitness determination.

(5) Criteria for Specific Provider Types.

(a) Adult Foster Homes (AFH).

(A) Before a new license or a license renewal is issued, the AFH provider and all subject individuals living or working in the AFH must complete the final fitness determination and be approved by the Department.

(B) Substitute caregivers in AFHs must complete the Oregon criminal history check and, when required, have submitted fingerprint cards, before being allowed to work in an AFH. An expedited review process is available when requested by an AFH because of an immediate staffing need.

(b) Child Care Providers. Responsibility for providing active supervision in the case of child care providers is with the child's parent or guardian, but the supervision is not required to be performed by someone in the building.

(c) Homecare Worker, Personal Care Services Provider and Independent Provider.

(A) A homecare worker, personal care services provider, or independent provider may be actively supervised by the client if the client makes an informed decision to employ the provider.

(B) The Department may allow a homecare worker, personal care services provider, Department volunteer or an independent provider to be actively supervised by someone related to the client.

(d) Child Foster Care. Probationary status is not allowed in child foster care.

(6) Termination of Probationary Status.

(a) Probationary status may be terminated by the qualified entity or the Department immediately for the following reasons:

(A) There is any indication of falsification of application.

(B) The criminal history check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual.

(C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest.

(D) The subject individual failed to disclose an arrest that did not result in a conviction.

(E) The qualified entity or Department determines that probationary status is not appropriate, based on the application, criminal history, position duties, or Oregon Administrative Rules regarding the program.

(b) Termination of probationary status is not subject to appeal under these rules.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0310, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

# ADMINISTRATIVE RULES

407-007-0320

## Fitness Determinations

(1) Fitness Determination Before Work or Placement. The qualified entity must not allow a subject individual to be certified or licensed, or to work, volunteer, reside or be trained in a facility or other environment, prior to a fitness determination.

(2) Termination Following Denial. When a subject individual is denied, the individual must not be allowed to provide care, work, volunteer, reside or be trained in an environment covered by these rules and must be terminated immediately. A denial applies only to the position and application in question.

(3) Preliminary Fitness Determination. A preliminary fitness determination must be completed prior to allowing a subject individual to be on probationary status. The preliminary fitness determination must be made by an authorized designee, or when allowed by subsection (3)(a) of this rule, by a contact person. A person on probationary status must meet all the criteria in either subsection (a) or (b) as listed below:

(a) No Indication of Potentially Disqualifying Crime. If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the authorized designee or contact person has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be placed on probationary status.

(b) Self-Disclosed Criminal History. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be on probationary status only after a preliminary fitness determination using a weighing test is completed by an authorized designee. An authorized designee may complete a preliminary fitness determination regardless of whether the disclosed information occurred in Oregon or outside Oregon.

(4) Final Fitness Determination. Upon receipt of the criminal history, the authorized designee must complete the fitness determination on a timely basis. The fitness determination must be completed within 21 days after receiving the history.

(a) The deadline may be extended by the authorized designee when a criminal history check generates a need to obtain or consider additional information.

(b) The deadline may be extended by the authorized designee when the decision is based on a pending charge for a potentially disqualifying crime.

### (5) Potential Outcomes.

(a) Probationary Status. A subject individual may be placed on probationary status following a preliminary fitness determination as described in section (3) of this rule.

(b) Automatic Approval. A subject individual is approved in a final fitness determination without a weighing test if after all required criminal history information is received the subject individual meets all of the following conditions:

(A) No potentially disqualifying crimes, warrants, sex offender registration, or probation or parole status;

(B) No unresolved arrests for potentially disqualifying crimes within the previous five years; and

(C) No discrepancies, and no failure to disclose conviction history or out-of-state arrests.

(c) Weighing Test. Only authorized designees may conduct and participate in a weighing test. The weighing test must be used to assess fitness unless the subject individual receives automatic approval pursuant to subsection (5)(b) of this rule or the application is closed pursuant to subsection (5)(e) of this rule. In the weighing test, the authorized designee must consider the criminal history disclosed by the subject individual and other information as described in OAR 407-007-0280, 407-007-0290 and 407-007-0300 in order to assess fitness. When the weighing test is used in a final fitness determination, criminal history discovered during the criminal history check must also be considered. The authorized designee may rely on official written communications and records from law enforcement agencies and judicial systems, and on criminal history provided by the subject individual. Possible outcomes of a weighing test are as follows:

(A) Probationary Status. In a weighing test for a preliminary fitness determination, the outcome is either to allow, or to disallow, probationary status. Probationary status is not a possible outcome in a final fitness determination.

(B) Approval. A subject individual may be approved by one or more authorized designees after a weighing test.

(C) Restricted Approval. If the subject individual has potentially disqualifying history, the authorized designee:

(i) May restrict the approval to specific client(s), job duties, or environment(s).

(ii) Must complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

(D) Denial. A subject individual who, following such consideration, is determined to pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities, must be denied by the authorized designee.

(i) Volunteered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history disclosed by the subject individual without conducting an Oregon, state-specific, or national criminal history check.

(ii) Discovered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history discovered by the authorized designee or the Department following an Oregon, state-specific, or national criminal history check.

(d) Fitness Determination by the Department. In addition to situations in which the Department will act as authorized designee as listed in OAR 407-007-0230(3), the Department will conduct the fitness determination in the following circumstances:

(A) A qualified entity must request that the Department conduct the fitness determination when the qualified entity is temporarily unable to provide an authorized designee qualified to conduct a fitness determination as required under OAR 407-007-0230.

(B) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal history check and conduct a fitness determination.

(C) The Department may review fitness determinations made by local authorized designees and make a new fitness determination at its discretion.

(D) If a national or state-specific check identifies potentially disqualifying history, the final fitness determination must be made by the Department. When the Department obtains criminal history information through the Federal Bureau of Investigation that is not in itself potentially disqualifying, but which is related to potentially disqualifying Oregon history, the Department may assess fitness.

**NOTE:** The Department may not disseminate information obtained through the Federal Bureau of Investigation.

### (e) Closed Case.

(A) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete. Discontinuance or failure to cooperate includes, but is not limited to, the following circumstances, and will result in a closed case:

(i) The subject individual refuses to be fingerprinted when required by these rules.

(ii) The subject individual fails to respond within a stated period of time to a request from the authorized designee or the Department for corrections to the application, fingerprints, any other information necessary to conduct a criminal history check under these rules, or any information described in OAR 407-007-0300.

(iii) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the authorized designee.

(iv) The subject individual is determined to not be eligible for the position for reasons other than the criminal history check.

(B) The incomplete application is closed without a final fitness determination and there is no right to a contested case hearing.

(6) Independent Choices. Clients receiving services through the DHS Independent Choices program (OAR chapter 411, division 36) are not bound by the fitness determination conducted under these rules when selecting care providers.

(7) Notice to Subject Individual. Upon completion of a final fitness determination resulting in a denial or restricted approval, the authorized designee must provide written notice to the subject individual. The notice must be:

(a) In a format approved by the Department, and

(b) Mailed or hand-delivered to the subject individual as soon as possible, but in no case later than fourteen days after the decision. The date of the decision must be recorded on the form.

(8) Documentation. Preliminary and final fitness determinations must be documented in writing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

# ADMINISTRATIVE RULES

407-007-0330

## Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process described in this rule.

(b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Department, the Department will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available by contacting the DHS Criminal Records Unit.

(b) Deadline for Appeal. The completed and signed form must be received by the Department not later than:

(A) 10 days after the notice of the fitness determination is mailed for subject individuals who are employees, applicants, and volunteers of the Department (subject individuals under OAR 407-007-0210(27)(a)(A) and 407-007-0210(27)(a)(L)).

(B) 45 days after the notice of the fitness determination is mailed for all other subject individuals.

(c) Extension of Deadline. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond the reasonable control of the subject individual.

(d) Hearing on timeliness. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(4) Informal Administrative Review (Mandatory). When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Department conducts an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, must participate in the informal administrative review.

(A) Participation may include, but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 407-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Department will review a request to reinstate hearing rights if received in writing by the Department within 14 days.

(b) Criminal history check.

(A) If the denial was based on disclosed criminal history, the Department will conduct a criminal history check during the informal administrative review.

(B) The Department may conduct additional criminal history checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Department will use the weighing test as described in these rules during the administrative review.

(d) Content of Administrative Review. The Department representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(3). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial.

(B) Ensure the subject individual understands the reason for the denial.

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law (See OAR 407-007-0340(2)).

(D) Give the Department and subject individual an opportunity to research or provide additional information to consider as listed in OAR 407-007-0300.

(E) Give the Department and the subject individual the opportunity to correct any misunderstanding of the facts.

(F) Provide an opportunity for the Department and the subject individual to resolve the situation, including developing an agreement whereby the subject individual may be approved with restrictions.

(G) Determine if the subject individual wishes to have any witness subpoenas issued should formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Department in writing of the finding within 14 days.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Department reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.

(b) Department Representation. Employees of the Department may in accordance with ORS 183.452 be authorized by the Department's Director to represent the Department for the contested case hearing. Authorization from the Office of Attorney General is also required. The Department retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal history check information as follows:

(A) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Department may also provide out-of-state information received from other official sources.

(B) In the case of Oregon criminal history, the Department may provide a copy of the LEDS print-out, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(C) Criminal history information and correspondence regarding the subject individual's criminal history check are prima facie evidence if certified by the Department representative as a true copy.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. The informal conference and hearing are not open to the public.

(f) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the subject individual.

(6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Department or the Office of Administrative Hearings. A dismissal order will be issued by the Department or the Office of Administrative Hearings. The subject individual may cancel the withdrawal up to 14 days after the date the order is served.

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## (7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Department will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Department will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Department within 14 days after the service of the proposed order, the proposed order becomes the final order.

(d) Exceptions. If timely written exceptions to the proposed order are received by the Department, the Department Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(e) Results to qualified entity. The Department may provide the qualified entity with the results of the appeal after the informal administrative review or contested case hearing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537, 183.341

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0340

### Record Keeping, Confidentiality

#### (1) LEDS Reports.

(a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access. The subject individual may not inspect or receive copies of the LEDS report. NOTE: Photocopies of the LEDS report should not be made under any circumstances.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

#### (2) National (FBI) Information.

(a) Confidentiality and Dissemination. National criminal information provided by the FBI is confidential and may not be disseminated by the Department with following exceptions:

(A) If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual will be provided a copy of the records if requested.

(B) If requested by the subject individual, the state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

#### (3) DHS Forms and Other Documentation.

(a) Confidentiality. All completed DHS Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.

#### (b) Retention.

(A) DHS forms and other records documenting the criminal history check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(B) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.

(4) DHS Criminal History Database. The Department maintains a database regarding criminal history checks.

(a) Data. The Department will develop a system that maintains information regarding criminal history checks and minimizes the administrative burden that these rules impose upon subject individuals and providers.

(b) Confidentiality. Records maintained under section (4) of this rule are confidential and are not disseminated by the Department except for the purpose of this section and in accordance with the rules of the Department and the Department of State Police (Oregon State Police).

(c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0350

### Immunity from Liability

The qualified entity has immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537(7) that a subject individual is not fit to hold a position, provide services, or be employed, licensed, certified or registered. A qualified entity and an employer or employer's agent who in good faith comply with ORS 181.537(7) and with the decision of the qualified entity are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. No employee of the state, a business or an organization is liable for defamation, invasion of privacy, negligence or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537(7).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0360

### Alternate Qualified Vendors

(1) Alternate Vendors Allowed. The criminal history check required by these rules may be conducted by an alternate qualified vendor of criminal history information if the vendor is approved by the Department of Human Services to provide such information pursuant to ORS 181.537.

(2) Access to Information. In order to be approved by the Department, the vendor must demonstrate to the satisfaction of the Department that it has access to substantially the same information that is available to the Department, including, but not limited to the Law Enforcement Data System, the Oregon Judicial Information Network, and the Federal Bureau of Investigation.

(3) Compliance. The qualified vendor must comply with these rules.

(4) Re-Approval. The period of approval is one year. The alternate qualified vendor may request re-approval 90 days prior to the end of the approval period.

(5) Revocation of Approval. The Department may immediately revoke approval of the vendor if the vendor provides incorrect or incomplete information or fails to adhere to these rules.

(a) A vendor whose approval is revoked may request a contested case hearing in accordance with ORS Chapter 183.

(b) A vendor that has had approval by the Department revoked is not eligible to reapply for 180 days following revocation.

(6) Qualified Entity Serving as Vendor. A qualified entity may serve as a qualified vendor in order to process the qualified entity's own criminal history checks as provided by this rule.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0360, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0370

### Variances

(1) Criteria for a Variance. The Department may grant a variance to any section of these rules based upon a demonstration by the qualified entity that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(2) Variance Application. The qualified entity requesting a variance must submit in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

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(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance period is in effect.

(3) Department Review. The Administrator for the Department or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the qualified entity of the decision. This notice must be sent within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal Application. Appeal of the denial of a variance request must be made in writing to the Administrator of the Department, whose decision is final.

(6) Duration of Variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the duration of the variance expires.

(7) Implementation. The provider may implement a variance only after written approval from the Department is received.

(8) No Precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

## 407-007-0380

### Fees

(1) National Check. The fingerprint processing fee for nursing facilities, assisted living facilities, and residential care facilities and adult foster homes licensed under OAR chapter 411 is \$12 per check.

(2) Fees Established by Contract. The Department may establish fees by contract or written agreement with a qualified entity. Fees may not exceed the cost of providing the service.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0380, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07

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### Department of Human Services, Children, Adults and Families Division: Child Welfare Programs Chapter 413

**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 15-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 8-1-07

**Rules Repealed:** 413-300-0000, 413-300-0005, 413-300-0010, 413-300-0020, 413-300-0030, 413-300-0040, 413-300-0050, 413-300-0060, 413-300-0070, 413-300-0080, 413-300-0090, 413-300-0100, 413-300-0110, 413-300-0120, 413-320-0000, 413-320-0010, 413-320-0020, 413-320-0030, 413-320-0040, 413-320-0050, 413-320-0060, 413-330-0400, 413-330-0410, 413-330-0420, 413-330-0430

**Subject:** The Department is repealing rules about: audits, auditing, and quality control review; parking; and contract writing.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

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### Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 8-2007(Temp)

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 461-190-0195

**Subject:** OAR 461-190-0195 is being amended to state that the definition of “educational institution” as it applies to the Degree Completion Initiative (DCI) is limited to a four-year college or university or a community college that is approved or accredited by the Northwest Commission on Colleges and Universities or its region-

al equivalent. Two-year vocational training programs outside of community colleges will not be considered part of DCI.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-190-0195

### Degree Completion Initiative Component

(1) The Degree Completion Initiative (DCI) assists TANF parents who are undergraduates to complete their education at a four-year college or university, or a community college. DCI is an *activity* (see OAR 461-001-0025) of the JOBS program for certain TANF clients. A participant in the DCI *component* (participant) receives TANF cash assistance as well as support services provided through the JOBS program. JOBS support services does not pay for the cost of tuition, fees, books, or supplies associated with enrollment by a participant at an *educational institution*.

(2) The following definitions apply to DCI:

(a) “DCI” refers to Degree Completion Initiative;

(b) “Educational institution” refers to a post-secondary institution for education which is both:

(A) Approved or accredited by the Northwest Commission on Colleges and Universities (NWCCU), for those schools located in the accrediting region of the NWCCU or by the regional equivalent of the NWCCU for any school that is outside the accrediting region of the NWCCU; and

(B) A four-year college or university, or a community college.

(c) “Participant” refers to a participant in the DCI component of the JOBS program.

(3) The number of *participants* at any time may not exceed one hundred households receiving TANF.

(4) Applying for DCI; Waiting List:

(a) A parent who is applying for or receiving TANF may apply for DCI by completing and signing the DCI application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (DCI), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301;

(b) The Department will follow the following procedure for DCI applications received by the Department:

(A) Applications will be processed in the order in which the Department receives them:

(i) When the 100 DCI slots have not been filled, the Department will notify applicants when they have been approved;

(ii) When the 100 DCI slots have been filled and there is a waiting list, the Department will notify the next applicant on the waiting list when an opening becomes available.

(B) The priority population for the first 100 DCI slots will be applicants who are undergraduates and who require 12 months or less to complete a degree at an *educational institution*;

(C) If the department does not have 100 DCI slots filled, applications will be open to applicants who are undergraduates and who require between 13 and 24 months to complete a degree at an *educational institution*.

(c) The Department will inform each applicant for DCI who does not qualify or no longer qualifies for placement on the waiting list.

(5) Selection Requirements:

(a) A DCI applicant must meet the financial and nonfinancial eligibility requirements for TANF;

(b) Subject to the priority established by paragraph (4)(b)(B) of this rule, a DCI applicant must demonstrate that they are an undergraduate who requires 24 months or less to complete a degree at an *educational institution*;

(c) A DCI applicant who is not applying for or receiving TANF at the time of selection may not participate in DCI or remain on the waiting list;

(d) A DCI application must include documentation that the DCI applicant has been accepted for full-time attendance into or is enrolled full-time at an *educational institution*. If the DCI applicant does not include such documentation with the DCI application, the applicant must submit documentation to the Department no later than 60 days from the date the application is submitted. An applicant who does not provide this documentation within 60 days is not eligible to participate in the DCI component. This deadline may be extended beyond 60 days in special circumstances beyond the control of the client.

(6) Requirements of Participants; Limitations:

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the *educational institution*, that the participant is making satisfactory academic progress, as defined by the *educational institution*, toward a degree;

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(b) A participant who does not provide the documentation required by subsection (6)(a) of this rule, or who is not making satisfactory academic progress as defined by the *educational institution*, is not eligible to continue to participate;

(c) A participant must attend classes full-time as defined by the *educational institution*, unless there is *good cause* (see OAR 461-130-0327) to limit attendance to less than full-time;

(d) Unless there is *good cause* (see OAR 461-130-0327) for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the *educational institution*; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes.

(e) A participant must provide attendance information to the Department no less frequently than once every two weeks;

(f) Eligibility for DCI is limited to 12 months and may not be extended;

(g) Upon completing the last semester or term of the educational program of the participant, the participant must engage in work preparation activities, which may include resume preparation, employment research, interviews, work experience, and other activities related to job placement;

(h) The following requirements apply to a participant who is required to participate in the JOBS program:

(A) A mandatory participant who does not attend classes year round may be required to participate in other activities of the JOBS program;

(B) A mandatory participant found to be ineligible to participate in DCI must meet the participation requirements of the JOBS program.

(i) A participant may not simultaneously receive services from both the ERDC-SBG program and from the TANF or JOBS program;

(j) Except as provided in subsection (6)(k) of this rule, a participant must remain eligible for TANF; if the participant becomes ineligible for TANF, the participant is ineligible for DCI;

(k) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their DCI slot when school resumes if the participant meets all of the following requirements:

(A) The time of the participant in DCI will be no longer than 12 months;

(B) The participant regains TANF eligibility;

(C) DCI is still an appropriate activity for the participant.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 8-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07

(b) A penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085); or

(c) A pending hearing request on the issue of whether the client will have an active JOBS disqualification or a penalty for failure to seek treatment for substance abuse or mental health.

(2) The Department will remove the disqualification of any client who is on a current disqualification or penalty described in section (1) of this rule if the client completes the following actions after August 31, 2007 and prior to the close of business on September 28, 2007:

(a) Meet with a Department representative;

(b) Complete a DHS 7823;

(c) Complete a DHS 7819; and

(d) Complete a new case plan (see OAR 461-001-0025).

(3) This rule expires at the close of business September 28, 2007.

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

Stat. Auth.: ORS 411.060, 411.070, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 411.070, 418.040, 418.045, 418.100, 418.134

Hist.: SSP 9-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 9-28-07

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

**Rule Caption:** Disease Reporting.

**Adm. Order No.:** PH 11-2007(Temp)

**Filed with Sec. of State:** 8-22-2007

**Certified to be Effective:** 8-22-07 thru 2-18-08

**Notice Publication Date:**

**Rules Amended:** 333-018-0015

**Subject:** The Department of Human Services, Public Health Division (Division) is temporarily amending Oregon Administrative Rule (OAR) 333-018-0015 to correct a filing error. On April 17, 2006, the Division permanently amended OAR 333-018-0015 to create a requirement that licensed laboratories report the results of all tests of CD4+ T-lymphocyte counts, percent of total lymphocytes that are CD4 positive, and viral load tests. On September 13, 2006, when the Division permanently amended the same rule to include the reporting of mumps, the aforementioned requirement was inadvertently left out of the rule.

**Rules Coordinator:** Cat McGinnis—(971) 673-1291

**333-018-0015**

**What Is to Be Reported and When**

(1) Health Care Providers shall report all cases or suspected cases of the diseases, infections, microorganisms, and conditions specified below. The timing of Health Care Provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When Local Public Health Authorities cannot be reached within the specified time limits, reports shall be made directly to DHS, which shall maintain an around-the-clock public health consultation service.

(3) Licensed Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); Severe Acute Respiratory Syndrome (SARS) and infection by SARS-coronavirus; *Yersinia pestis* (plague); intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombrotoxicosis); any known or suspected common-source outbreaks; any uncommon illness of potential public health significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); measles (rubeola); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Pesticide Poisoning; poliomyelitis; rabies (human or animal); rubella; and *Vibrio* (all species).

(c) Within one Local Public Health Authority working day: *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); *Campylobacter* (campylobacteriosis); *Chlamydophila*

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 9-2007(Temp)

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-1-07 thru 9-28-07

**Notice Publication Date:**

**Rules Adopted:** 461-130-0331

**Subject:** OAR 461-130-0331 is being adopted to offer a one-time re-engagement opportunity during the month of September, 2007 for clients with active JOBS disqualifications or active penalties for failure to seek treatment for substance abuse or mental health. This rule supports the implementation transition to the new statutory disqualification structure (described in HB 2469, 2007 Or. Laws ch. 861) for clients in the Temporary Assistance for Needy Families (TANF) and Refugee (REF) programs. Clients covered by this rule will be offered a one-time opportunity to have their current disqualifications or penalties lifted and prior disqualification codes removed. It is estimated that there are over 400 clients affected by this rule.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

**461-130-0331**

**September Re-engagement for Clients with Disqualifications or Penalties; JOBS, REF, TANF**

(1) During the month of September 2007, each client in the REF and TANF programs has a one-time opportunity to have the current disqualification lifted and prior disqualification codes removed if the client has:

(a) A current active JOBS disqualification (see OAR 461-130-0330);

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(Chlamydia) *psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydiosis; lymphogranuloma venereum); *Clostridium tetani* (tetanus); *Coxiella burnetii* (Q fever); *Creutzfeldt-Jakob* disease and other transmissible spongiform encephalopathies; *Cryptosporidium* (cryptosporidiosis); *Cyclospora cayetanensis* (cyclosporiasis); *Escherichia coli* (Shiga-toxigenic, including E. coli O157 and other serogroups); *Francisella tularensis* (tularemia); Giardia (giardiasis); *Haemophilus ducreyi* (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); HIV infection (does not apply to anonymous testing) and AIDS; *Legionella* (legionellosis); *Leptospira* (leptospirosis); *Listeria monocytogenes* (listeriosis); mumps; Mycobacterium tuberculosis and M. bovis (tuberculosis); *Neisseria gonorrhoeae* (gonococcal infections); *pelvic inflammatory disease* (acute, non-gonococcal); Plasmodium (malaria); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (salmonellosis, including typhoid); *Shigella* (shigellosis); *Taenia solium* (including cysticercosis and undifferentiated *Taenia* infections); *Treponema pallidum* (syphilis); *Trichinella* (trichinosis); *Yersinia* (other than pestis); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, yellow fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); human bites by any other mammal; and hemolytic uremic syndrome.

(d) Within seven days: Suspected Lead Poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

(5) Licensed laboratories shall report, within seven days, the results of all tests of CD4+ T-lymphocyte counts, percent of total lymphocytes that are CD4 positive, and viral load tests.

Stat. Auth.: ORS 433.004

Stats. Implemented: ORS 433.001, 433.004, 433.006, 433.012, 433.106, 433.110, 433.130,

433.235 - 433.284, 437, 616 & 624

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2006, f. & cert. ef. 4-17-06; PH 13-2006(Temp), f. 6-27-06, cert. ef. 7-1-06 thru 12-27-06; PH 19-2006, f. & cert. ef. 9-13-06; PH 11-2007(Temp), f. & cert. ef. 8-22-07 thru 2-18-08

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

**Rule Caption:** Developmental Disability Services Health Care Representative.

**Adm. Order No.:** SPD 11-2007

**Filed with Sec. of State:** 8-20-2007

**Certified to be Effective:** 8-20-07

**Notice Publication Date:**

**Rules Renumbered:** 309-041-1500 to 411-365-0100, 309-041-1510 to 411-365-0120, 309-041-1520 to 411-365-0140, 309-041-1530 to 411-365-0160, 309-041-1540 to 411-365-0180, 309-041-1550 to 411-365-0200, 309-041-1560 to 411-365-0220, 309-041-1570 to 411-365-0240, 309-041-1580 to 411-365-0260, 309-041-1590 to 411-365-0280, 309-041-1600 to 411-365-0300, 309-041-1610 to 411-365-0320

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is renumbering Oregon Administrative Rule (OAR) 309-041-1500 through 309-041-1610 to OAR 411-365-0100 through 411-365-0320 relating to Developmental Disability Services Health Care Representative.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-365-0100

### Statement of Purpose, Mission Statement and Statutory Authority

(1) Purpose. These rules prescribe standards by which a health care representative may be appointed for adults with developmental disabilities who reside in a home or facility licensed under OAR 309-049-0030 through 309-049-0220 or 309-041-0550 through 309-041-0830.

(2) Mission Statement. The overall mission of the State of Oregon Mental Health and Developmental Disability Services Division is to provide support services that will enhance the quality of life of persons with developmental disabilities.

(a) The division is entrusted with the health and safety of individuals residing in homes and facilities providing 24 hour residential services. Access to health care is essential to their health and safety and inability to give informed consent is a major barrier to that access. In addition, ORS 430.210 requires informed consent to receive services;

(b) The Division recognizes and supports the rights of adults to make informed choices which include refusal of and consent to health care. The intent of this rule is to maximize access to health care by allowing the appointment of a health care representative when an adult is incapable of making health care decisions, as determined by OAR 309-041-1540;

(c) This rule encourages the use of health care representatives as provided under ORS 127.505 to 127.660 and provides for the appointment of a health care representative in situations not covered by ORS 127.505 to 127.660 (provisions permitting capable individuals to appoint a health care representative to make health care decisions in the event they are incapable) and when there is no legally appointed guardian with authority over health care decisions. ORS 127.635 provides for appointment of a health care representative to decide whether life-sustaining procedures may be withheld or withdrawn for incapable individuals. This rule provides for appointment of a health care representative for making other health decisions for incapable individuals in situations where there is concurrence by the ISP team regarding the individual's incapacity, the identity of the health care representative, and significant health care decisions.

(3) **Statutory Authority.** These rules are authorized by ORS 430.041, 443.450 and 127.505 to 127.660.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1500, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0120

### Definitions

As used in these rules:

(1) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights or interests are at risk or have been violated.

(2) "Artificially administered nutrition and hydration" means a medical intervention to provide food and water by tube, mechanical device or other medically assisted method. Artificially administered nutrition and hydration does not include the usual and typical provision of nutrition and hydration, such as the provision of nutrition and hydration by cup, hand, bottle, drinking straw or eating utensil.

(3) "Attending physician" means the physician who has primary responsibility for the care and treatment of the individual.

(4) "Case manager" means an employee of the community mental health program or other agency which contracts with the County or Division, who plans, procures, coordinates and monitors individual support plan services and acts as a proponent for persons with developmental disabilities.

(5) "Concurrence" means all members of the team agree that a decision has sufficient worth that they do not object to the decision.

(6) "Developmental disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial limitation to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification shall be consistent with the Manual of Terminology and Classification in Mental Retardation by the American Association on Mental Deficiency, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(7) "Division" means the Mental Health and Developmental Disability Services Division.

(8) "Health care" means diagnosis, treatment or care of disease, injury and congenital or degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, main-

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tenance, withdrawal or withholding of artificially administered nutrition and hydration.

(9) "Health care decision" means consent, refusal of consent or withholding or withdrawal of consent to health care, and includes decisions relating to admission or discharge from a health care facility as defined in ORS 442.015 or a hospice program as defined in ORS 443.850. As used in this rule, it does not include decisions relating to admission or discharge from a residential facility as defined in ORS 443.400 or an adult foster home as defined in ORS 443.705.

(10) "Health care facility" means a health care facility as defined in ORS 442.015, a domiciliary care facility as defined in ORS 443.205, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or a hospice program as defined in ORS 443.850.

(11) "Health care representative" means:

- (a) A health care representative as defined in ORS 127.505(12); or
- (b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.

(12) "Incapable" means that an individual lacks the ability to make and communicate decisions, including any means of communication, including communication through persons familiar with the individual's manner of communicating. Incapable of making a health care decision does not necessarily mean being incapable of appointing a health care representative. Incapable of making a health care decision means that the individual lacks the ability to make and communicate health care decisions to health care providers. Incapable of appointing a health care representative means that the individual lacks the ability to make and communicate the decision to appoint a health care representative to the witnesses required by ORS 127.510 through 127.515. These require separate evaluations. Capable means not incapable.

(13) "Individual" means an adult with developmental disabilities who has a health care representative or for whom one is sought and who resides in a home or facility licensed under OAR 309-049-0030 through 309-049-0220 or 309-041-0550 through 309-041-0830.

(14) "Individual Support Plan Team" or "ISP team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, the individual's advocate and others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(15) "Life-sustaining procedure" means any medical procedure, pharmaceutical, medical device, or medical intervention that maintains life by sustaining, restoring or supplanting a vital function. For purposes of this rule, it includes decisions about emergency procedures started when an individual's heart stops or breathing stops, commonly called "code procedures." Life-sustaining procedure does not include routine care necessary to sustain patient cleanliness and comfort.

(16) "Physician" means an individual licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(17) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood or behavior. This includes, but is not limited to, anti-psychotic, antidepressants, anxiolytic (anti-anxiety) and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(18) "Significant medical procedure or treatment" means:

- (a) Any starting, stopping or change in psychotropic medication that is anticipated to involve risk;
- (b) Any treatment or procedure that requires general anesthesia;
- (c) Any treatment or procedure that incurs a 1% or greater risk of death, in the opinion of the physician;
- (d) Any treatment or procedure that could decrease the ability of an individual to participate in a valued activity for longer than 48 hours; or
- (e) Any treatment or procedure that is likely to cause severe pain.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1510, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0140

### Limits on Rule

- (1) These rules apply only to adults who:
  - (a) Have a developmental disability; and

(b) Live in a facility or home licensed as a 24 hour residential service under OAR 309-049-0030 through 309-049-0220 or certified as a supported living service under OAR 309-041-0550 through 309-041-0830.

(2) If the adult has a guardian, appointed pursuant to ORS Chapter 126, with the powers and duties to make health care decisions, or a health care representative appointed under statute, the guardian or health care representative appointed under statute is not bound by provisions of these rules to which the guardian or health care representative appointed under statute is not otherwise bound because of other statutes or regulation. The guardian or health care representative appointed under statute shall be invited by the ISP team to use this process set forth in these rules.

(3) These rules do not impair or supersede the existing laws of this state relating to:

(a) Any requirement of notice to others of proposed health care;

(b) The standard of care required of a health care provider in the administration of health care;

(c) Whether consent is required for health care;

(d) The elements of informed consent for health care under ORS 677.097 or other law;

(e) The provision of health care in an emergency;

(f) Any right a capable person may have to consent or withhold consent to health care administered in good faith pursuant to religious tenets of the individual requiring health care;

(g) Delegation of authority by a health care representative;

(h) Any legal right or responsibility any person may have to effect the providing, withholding or withdrawal of life-sustaining procedures including artificially administered nutrition and hydration in any lawful manner;

(i) Guardianship or Conservatorship proceedings; or

(j) Any right persons may otherwise have to make their own health care decisions, or to make health care decisions for another.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1520, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0160

### Entitlement to Decisions

(1) Adults are entitled to make their own health care decisions when they are capable and shall be offered the opportunity to appoint a health care representative as described in ORS 127.505 to 127.660.

(2) Adults who are determined incapable of making a health care decision under OAR 309-041-1540, shall be assessed by the ISP team and case manager for capability for appointing a health care representative. If found capable, they shall be offered the opportunity by the ISP team to appoint a health care representative as described in ORS 127.505 to 127.660.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1530, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0180

### Incapability Determinations

Incapability of an adult to make a health care decision for purpose of this rule may occur by any of the following procedures:

(1) A court renders an opinion that the adult is incapable of making health care decisions; and/or

(2) The adult's attending physician determines the adult is incapable and, for the purpose of this rule, the ISP team concurs with that opinion.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1540, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0200

### Naming a Health Care Representative

(1) If an adult is determined incapable of making a health care decision under OAR 309-041-1540 and incapable of appointing a health care representative, a health care representative may be designated by the persons listed below who can be located upon reasonable effort, provided that no person or entity listed below objects to the designation:

(a) Spouse of the individual;

(b) Guardian appointed pursuant to ORS Chapter 126 but who lacks the power to make health care decisions;

(c) Adult children of the individual who can be located through reasonable effort;

(d) Parents of the individual who can be located through reasonable effort;

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(e) Adult siblings of the individual who can be located through reasonable effort; and

(f) The ISP team members for the individual, including the individual and any available advocates or friends.

(2) The health care representative shall be a capable adult and must be willing to serve as a health care representative.

(3) The appointment shall be valid for only one year and shall be reviewed for revocation sooner if there is any indication that the duties of these rules are not being fulfilled, or if the individual regains capability to make a health care decision.

(4) The appointment shall be valid only when the form approved by the Division is completed.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1550, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0220

### Disqualifications

(1) Except as may be allowed by court order, the following may participate in the process of naming a health care representative, but may not serve as the health care representative appointed under this rule if unrelated to the individual by blood, marriage or adoption:

(a) The attending physician or an employee of the attending physician;

(b) An owner, operator or employee of a health care facility in which the individual is a patient or resident, unless the health care representative was appointed before the individual's admission to the facility;

(c) The owner, operator, or employee of a residential service provider for the adult for which a health care representative is being appointed, licensed in OAR 309-049-0030 through 309-049-0220 or certified in OAR 309-041-0550 through 309-041-0830; and

(d) The owner, operator or employee of the vocational service provider for the adult, if the vocational service provider also provides residential services to the adult.

(2) At any time, the individual may disqualify any person from being their health care representative appointed under this rule by any means of communication.

(3) A health care representative whose authority has been revoked by a court or hearing process is disqualified.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1560, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0240

### Authority and Responsibility of Health Care Representative

(1) When making any health care decision for an individual, the health care representative shall first consider any preference indicated by any means of communication (verbal or nonverbal) by the individual and attempt to make the decision that the individual would have made if capable. If this is not possible, the decision should be made in what the health care representative believes to be the individual's best interest.

(2) The health care representative has all the authority over the individual's health care that the individual would have if not incapable, subject to the limitations of the appointment, OAR 309-041-1580, and statute.

(3) A health care representative is not personally responsible for the cost of health care provided to the individual solely because the health care representative makes health care decisions for the individual.

(4) The health care representative shall have access to all medical records necessary to make health care decisions. Re-release or publication of this information is only permitted when it is in the individual's best interest or as otherwise permitted by rule or statute.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1570, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0260

### Limits on Authority

(1) If the individual objects to any decision made by a health care representative pursuant to OAR 309-041-1500 through 309-041-1610, that decision or determination is null and void unless authorized by statute or other administrative rule.

(2) A health care representative appointed by these rules does not have the authority to and cannot make the following health care decisions on behalf of the individual:

(a) Admission to or retention in a health care facility for care or treatment of mental illness;

(b) Convulsive treatment;

(c) Psychosurgery;

(d) Sterilization;

(e) Abortion;

(f) Withholding or withdrawing of a life-sustaining procedure;

(g) Withholding or withdrawing artificially administered nutrition and hydration, other than hyperalimentation, necessary to sustain life;

(h) Testing for HIV, unless testing is required to obtain treatment or care for the individual;

(i) Assisted suicide or mercy killing; and

(j) Experimentation, unless the medication or medical treatment prescribed is part of a study protocol approved by a human rights committee and is determined to be in the best interests of the person.

(3) Health care representatives appointed under ORS 127.505 to 127.660 may make decisions concerning withholding or withdrawal of life-sustaining procedures or withholding or withdrawal of artificially administered nutrition and hydration, but only according to the provisions of those statutes.

(4) A health care representative (other than a duly appointed guardian with authority over health care decisions) shall not have the authority to make the health care decisions for the individual that the individual is capable of making herself or himself.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1580, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0280

### Significant Medical Procedures

(1) If the health care decision involves a significant medical procedure or treatment, the individual's ISP team must concur with the decision of the individual's health care representative prior to administration of the significant procedure or treatment. This will involve discussion and documentation of:

(a) The alternatives to the proposed procedure or treatment;

(b) The risks and benefits of the proposed procedure or treatment;

(c) The risks and benefits of not receiving the proposed procedure or treatment;

(d) The impact of the proposed procedure or treatment on the individual's lifestyle;

(e) Any preferences indicated by any verbal or nonverbal communication by the individual; and

(f) Any additional information that may need to be obtained that might affect the decision, such as a second opinion.

(2) When a health care decision involves a significant medical procedure or treatment, the ISP team must include the individual's case manager.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1590, SPD 11-2007, f. & cert. ef. 8-20-07

## 411-365-0300

### Safeguards

(1) When the ISP team is discussing issues of capability, appointing a health care representative, or discussing a significant medical treatment or procedure, the individual and any advocate named to the ISP team by the individual must be included in the ISP team and may not be excluded.

(2) The composition of the ISP team may not be changed to override the objection of any member of the ISP team.

(3) In following the decision of a health care representative, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decisions of the individual if the individual were capable.

(4) Case managers and at least one person who is a residential provider from each ISP team shall receive approved training from the Division before using this rule to designate a health care representative.

(5) When this rule is used to appoint a Health Care Representative, information and data specified by the Division shall be submitted to the Community Mental Health Program and the Division.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1600, SPD 11-2007, f. & cert. ef. 8-20-07

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**411-365-0320**

## Notification and Appeal

(1) The case manager shall notify the individual, give the individual the opportunity to object, and document the notification and/or objection in the case management record, of any and all of the following that apply:

- (a) The individual is determined to be incapable of either making a health care decision or appointing a health care representative;
- (b) A health care representative is being sought for the individual;
- (c) The name of the appointed health care representative; and
- (d) The proposed decision about any significant medical procedure or treatment.

(2) The case manager shall give any Health Care Representative appointed under these rules a copy of the rules and document this in the individual's records.

(3) The following may appeal any decision or determination made under this rule to the Assistant Administrator for the Division in writing:

- (a) The individual;
- (b) Any advocate;
- (c) The case manager;
- (d) The guardian;
- (e) Any member of the ISP team; or
- (f) Any family member.

(4) The Assistant Administrator or designee shall respond in writing within 15 working days of receipt of the appeal. Their decision is final.

Stat. Auth.: ORS 430.041, 443.450, 127.505 - 127.660

Stats. Implemented: ORS 430.041, 443.450

Hist.: MHD 1-1996, f. & cert. ef. 1-10-96; Renumbered from 309-041-1610, SPD 11-2007, f. & cert. ef. 8-20-07

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**Rule Caption:** Pre-Admission Screening, Pre-Admission Assessment and Pre-Admission Screening and Resident Review.

**Adm. Order No.:** SPD 12-2007

**Filed with Sec. of State:** 8-30-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 411-070-0005, 411-070-0040, 411-070-0043

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending Oregon Administrative Rule (OAR) 411-070-0005, 411-070-0040 and 411-070-0043 to clarify the Pre-Admission Screening, Private Admission Assessment and Pre-Admission Screening and Resident Review processes related to nursing facility admission.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

**411-070-0005**

## Definitions

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized service plan developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior.

(4) "Alternative Services" means individuals or organizations offering services to persons living in a community other than a nursing facility or hospital.

(5) "AMHD" means the Department of Human Services, Addictions and Mental Health Division.

(6) "Area Agency on Aging (AAA)" means an established public agency designated under the Older Americans Act, 42 USC 3025, and which has a responsibility for local administration of senior and disability programs as described in ORS chapter 410.

(7) "Basic Flat Rate Payment" and "Basic Rate" mean the statewide standard payment rate for all long term care services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the all-inclusive payment rate unless the resident qualifies for the complex med-

ical add-on rate (in addition to the basic rate) or the all-inclusive pediatric rate (instead of the basic rate).

(8) "Case Manager" means a SPD/AAA employee who assesses the service needs of an applicant or eligible individual, determines eligibility and offers service choices to eligible individuals. The Case Manager authorizes and implements the service plan and monitors the services delivered.

(9) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(10) "Categorical Determination" means the provision in the Code of Federal Regulations (42 CFR 483.130) for creating categories that describe certain diagnoses, severity of illness or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

(a) Membership in a category may be made by the evaluator only if existing data on the individual is current, accurate and of sufficient scope.

(b) An individual with Mental Illness or Developmental Disabilities may enter a nursing facility without PASRR Level II evaluation if criteria of a categorical determination are met as described in OAR 411-070-0043(2)(a)–(2)(c).

(11) "Certification" and "Certification for the Categorical Determination of Exempted Hospital Discharge" means that the attending physician has written orders for the individual to receive skilled care services at the nursing facility.

(12) "Certified Program" means a hospital, private agency or an Area Agency on Aging certified by the Department to conduct Private Admission Assessments in accordance with ORS 410.505 through 410.530.

(13) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract. This subsection is not intended to include changes which are merely changes in personnel, e.g., a change of administrators.

(14) "Client" means a resident for whom payment is made under the Medicaid Program.

(15) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator or other employee. They include but are not necessarily limited to the following:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

(16) "Complex Medical Add-On Payment" and "Medical Add-On" mean the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose care is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures or rehabilitation services listed in OAR 411-070-0091.

(17) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(18) "Costs Not Related to Resident Care" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. They include, for example, costs of meals sold to visi-

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tors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop, and similar items.

(19) "Costs Related to Resident Care" means all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident services include nursing costs, administrative costs, costs of employee pension plans, and interest expenses.

(20) "CPI" means the Consumer Price Index for all items and all urban consumers.

(21) "Department" means the Department of Human Services.

(22) "Developmental Disabilities" as defined in OAR 411-320-0020, means a disability that originates in childhood that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation; and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder or sensory impairment.

(23) "Direct Costs" means costs incurred to provide services required to directly meet all the resident nursing and activity of daily living service needs. These costs are further defined in these rules. Examples: The person who feeds food to the resident is directly meeting the resident's needs, but the person who cooks the food is not. The person who is trained to meet the resident's needs incurs direct costs whereas the person providing the training is not. Costs for items that are capitalized or depreciated are excluded from this definition.

(24) "DRI Index" means the "HCFA Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw — Hill in the publication Health Care Costs.

(25) "Exempted Hospital Discharge" for PASRR means an individual seeking temporary admission to a nursing facility from a hospital as described in OAR 411-070-0043(2)(a).

(26) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department as a Nursing Facility. A Nursing Facility also means a Medicaid Certified Nursing Facility only if identified as such.

(27) "Facility Financial Statement" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department for reimbursement.

(28) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(29) "Generally Accepted Accounting Principles" means accounting principles currently approved by the American Institute of Certified Public Accountants.

(30) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired or the excess of the price paid for an asset over its fair market value.

(31) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees, and engineering studies. It does not include "start-up costs" as defined in this rule.

(32) "Hospital-Based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(33) "Indirect Costs" means the costs associated with property, administration, and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry, and housekeeping). These costs are further described in OARs 411-070-0359, 411-070-0428, and 411-070-0465.

(34) "Interrupted-Service Facility" means an established facility recertified by the Department following decertification.

(35) "Level I" means a component of the Federal PASRR requirement. It refers to the identification of individuals who are potential nursing

facility admissions who have indicators of Mental Illness or Developmental Disabilities (42 CFR 483.128(a)).

(36) "Level II" means a component of the Federal PASRR requirement. It refers to the evaluation and determination of whether nursing facility services and specialized services are needed for individuals with Mental Illness or a Developmental Disability who are potential nursing facility admissions, regardless of the source of payment for the nursing facility service (42 CFR 483.128(a)). Level II evaluations include assessment of the individual's physical, mental and functional status (42 CFR 483.132).

(37) "Level of Care Determination" means an evaluation of the intensity of a client's health care needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(38) "Medical Add-On" or "Complex Medical Needs Additional Payment" has the meaning provided in OAR 411-070-0027.

(39) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders; bipolar (manic-depressive) and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizo-affective disorders or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(40) "Mental Retardation" as defined in OAR 411-320-0020, means significantly sub-average general intellectual function defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have Mental Retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of Mental Retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of Mental Retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50-69. Individuals with IQ's in the 70-75 range can be considered as having mental retardation if there is significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20-34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(41) "Necessary Costs" means costs that are appropriate and helpful in developing and maintaining the operation of resident care facilities and activities. These costs are usually costs that are common and accepted occurrences in the field of long term care nursing services.

(42) "New Admission" for PASRR purposes means an individual admitted to any nursing facility for the first time. It does not include individuals moving within a nursing facility, transferring to a different nursing facility or individuals who have returned to a hospital for treatment and are being admitted back to the nursing facility. New admissions are subject to the PASRR process (42 CFR 483.106(b)(1), (3), (4)).

(43) "New Facility" means a nursing facility commencing to provide services to SPD recipients.

(44) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS chapter 678 and the rules adopted pursuant thereto.

(45) "Ordinary Costs" means costs incurred that are customary for the normal operation.

(46) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of care, need for care, and quality of care.

(47) "Pediatric Rate" means the statewide standard payment rate for all long term care services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(48) "Perquisites" means privileges incidental to regular wages.

(49) "Personal Incidental Funds" means resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(50) "Placement" means the location of a specific place where health care services can be adequately provided to meet the care needs.

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(51) "Pre-Admission Screening (PAS)" means the assessment and determination of a potential Medicaid-eligible individual's need for nursing facility services, including the identification of individuals who can transition to community based service settings and the provision of information about community based alternatives. This assessment and determination is required when potentially Medicaid-eligible individuals are at risk for admission to nursing facility services. PAS may include the completion of the Federal PASRR Level I requirement (42 CFR, Part 483, (C)-(E)), to identify individuals with Mental Illness or Mental Retardation or Developmental Disabilities.

(52) "Pre-Admission Screening and Resident Review (PASRR)" means the Federal requirement, (42 CFR, Part 483, (C)-(E)), to identify individuals who have Mental Illness or Developmental Disabilities and determine if nursing facility service is required and if specialized services are required. PASRR includes Level I and Level II functions.

(53) "Private Admission Assessment (PAA)" means the assessment that is conducted for non-Medicaid individuals as established by ORS 410.505-410.545 and OAR chapter 411, division 071, who are potential admissions to a Medicaid-certified nursing facility. Service needs are evaluated and information is provided about long-term care choices. A component of PAA is the Federal PASRR Level I requirement, (42 CFR, Part 483.128(a)), to identify individuals with Mental Illness or Developmental Disabilities.

(54) "Provider" means an organization that has entered into an agreement with the Department to provide services for Department clients.

(55) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(56) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has five percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(57) "Resident" or "Individual" means those for whom payment is made under the Medicaid Program.

(58) "Resident Review" means a review conducted by the Addictions and Mental Health Division (AMHD) for individuals with Mental Illness or by Seniors and People with Disabilities Division (SPD) for individuals with Developmental Disabilities who are residents of nursing facilities. The findings of the Resident Review may result in referral to PASRR Level II (42 CFR 483.114).

(59) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted Fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(60) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(61) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(62) "Specialized Services for Mental Retardation/Developmental Disabilities" means:

(a) For individuals with Mental Retardation/Developmental Disabilities under age 21, specialized services are equal to school services; and

(b) For individuals with Mental Retardation/Developmental Disabilities over age 21, specialized services means:

(A) A consistent and ongoing program that includes participation by the individual in continuous, aggressive training and support to prevent loss of current optimal function; and

(B) Promotes the acquisition of function, skills and behaviors necessary to increase independence and productivity; and

(C) Is delivered in community-based care or vocational settings at a minimum of 25 hours a week.

(63) "Start-up Costs" means one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. They do not include such costs as feasibility studies, engineering studies, architect's fees or other fees that are part of the historical cost of the facility.

(64) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(65) "Title XVIII" and "Medicare" mean Title XVIII of the Social Security Act.

(66) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(67) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department for providers to use in reporting their costs.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; 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 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07

## 411-070-0040

### Client Screening, Assessment and Review

(1) INTRODUCTION. All individuals who are candidates for admission to a Medicaid-certified nursing facility must be assessed to evaluate their service needs, preferences and must receive information about community based, alternative services and resources that can meet the individual's service needs and are safe, least restrictive and potentially less costly than comparable nursing facility services.

(2) PRE-ADMISSION SCREENING. A Pre-Admission Screening (PAS) as described in OAR 411-070-0005 is required for potentially Medicaid eligible individuals who are at risk for nursing facility services.

(a) PAS includes:

(A) An assessment;

(B) The determination of an individual's service eligibility for Medicaid-paid long term care or post-hospital extended care services in a nursing facility;

(C) The identification of individuals who can transition to community based service settings;

(D) The provision of information about community based services and resources to meet the individual's needs; and

(E) Transition planning assistance as needed.

(b) PAS is conducted in conjunction with the individual and any representative designated by the individual.

(c) The PAS assessment will be conducted by a case manager or other qualified SPD or AAA representative using SPD's Client Assessment and Planning System (CA/PS) tool, and other standardized assessment tools and forms approved by SPD.

(d) A PAS may be completed based on information obtained by phone or fax only to authorize Title XIX post-hospital benefits in a nursing facility when short-term nursing facility services are needed. A face-to-face assessment including the discussion of alternative community based services and resources shall be completed within seven days of the initial, short term nursing facility service approval.

(e) Payment for nursing facility services will not be authorized by SPD until PAS has established that nursing facility services are required based on the individual's service needs and Medicaid financial eligibility has been established.

(3) PRIVATE ADMISSION ASSESSMENT. A Private Admission Assessment (PAA) is required for individuals with private funding who are referred to Medicaid-certified nursing facilities established by ORS 410.505 through ORS 410.545 and OAR chapter 411, division 071.

(4) PRE-ADMISSION SCREENING AND RESIDENT REVIEW. A Pre-Admission Screening and Resident Review (PASRR) as described in OAR 411-070-0043 is required for individuals regardless of payment source, with either Mental Illness or Developmental Disabilities who need nursing facility services.

(5) CLIENT REVIEW. Title XIX regulations require utilization review and quality assurance reviews of Medicaid residents in nursing facilities. The reviews carried out by the authorized utilization review organization must meet these requirements:

(a) Staff associated with SPD are required to maintain service plans on all SPD clients in nursing facilities. The frequency of their service plan update will vary depending on such factors as the resident's potential for transition to home or community based care and federal or state requirements for Resident Review;

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(b) Authorized representatives of SPD or the authorized utilization review organization must have immediate access to SPD residents and to facility records. "Access" to facility records means the right to personally read charts and records to document continuing eligibility for payment, quality of care or alleged abuse. The SPD or the authorized utilization review organization representative must be able to make and remove copies of charts and records from the facility's property as required to carry out the above responsibilities;

(c) SPD or the authorized utilization review organization representatives must have the right to privately interview any SPD residents and any facility staff in carrying out the above responsibilities; and

(d) SPD or the authorized utilization review organization representatives must have the right to participate in facility staffings on SPD residents.

Stat. Auth.: ORS 410.535, 410.070 & 414.065

Stats. Implemented: ORS 410.070, 414.065 & 410.535

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0060 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 2-1983, f. 3-4-83, ef. 4-1-83; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07

## 411-070-0043

### Pre-Admission Screening and Resident Review (PASRR)

(1) INTRODUCTION. PASRR was mandated by Congress as part of the Omnibus Budget Reconciliation Act of 1987 and is codified in Section 1919(e)(7) of the Social Security Act. Final regulations are contained in 42 CFR, Part 483, subparts C through E. The purpose of PASRR is to prevent the placement of individuals with Mental Illness or Mental Retardation or Developmental Disabilities in a nursing facility unless their medical needs clearly indicate that they require the level of service provided by a nursing facility. Categorical determination, as described in sections (2)(a) through (2)(c) of this rule, are groupings of individuals with Mental Illness or Developmental Disabilities who may be admitted to a nursing facility without a PASRR Level II evaluation.

#### (2) CATEGORICAL DETERMINATIONS.

(a) Exempted hospital discharge:

(A) The individual is admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital; or

(B) The individual is admitted to the nursing facility directly from a hospital after receiving care as an observation-status patient; and

(C) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and

(D) The individual's attending physician has certified before admission to the facility that the individual is likely to require nursing facility services for 30 days or less.

(b) End of life care for terminal illness. The individual is admitted to the nursing facility to receive end of life care and the individual has a life expectancy of six months or less.

(c) Emergency situations with nursing facility admission not to exceed seven days unless authorized by AAA or SPD staff.

(A) The individual requires nursing facility level of service; and

(B) The emergency is due to unscheduled absence or illness of the regular caregiver; or

(C) Nursing facility admission is the result of protective services action.

#### (3) PASRR includes three components.

(a) PASRR LEVEL I. This is a screening process that is conducted prior to nursing facility admission for all individuals applying as new admissions to a Medicaid certified nursing facility regardless of the individual's source of payment. The purpose of the screening is to identify indicators of Mental Illness or Mental Retardation or Developmental Disabilities that may require further evaluation {42 CFR 483.128} or if categorical determinations, as described in sections (2)(a) through (2)(c) of this rule, which verify that the nursing facility service is required.

(A) PASRR Level I screening is performed by AAA/SPD authorized staff, Private Admission Assessment (PAA) programs, professional medical staff working directly under the supervision of the attending physician or by organizations designated by the Department.

(B) Documentation of PASRR Level I screening is completed using an SPD-designed form.

(C) If there are no indicators of Mental Illness or Mental Retardation or Developmental Disabilities or if the individual belongs to a categorically determined group, the individual may be admitted to a nursing facility subject to all other relevant rules and requirements.

(D) Mental Illness Indicators. If PASRR Level I screening determines that an individual has indicators of Mental Illness and no categorical determinations are met, then the individual cannot be admitted to a nursing facil-

ity. The Level I assessor must contact the Addictions and Mental Health Division (AMHD) and request a PASRR Level II evaluation.

(E) Mental Retardation or Developmental Disabilities Indicators. If PASRR Level I screening determines that an individual has indicators of Mental Retardation or Developmental Disabilities and no categorical determinations are met, then the individual cannot be admitted to a nursing facility. The Level I assessor must contact SPD and request a PASRR Level II evaluation.

(F) PASRR Level I Screening Form Requirement. Except as provided in section (3)(a)(F)(ii) of this rule, nursing facilities must not admit an individual without a completed and signed PASRR Level I screening form in the individual's resident record.

(i) Completion of the PASRR Level I form under sections (3)(a)(A) through (3)(a)(F) of this rule does not constitute prior authorization of payment. Nursing facilities must still obtain prior authorization from the local AAA or SPD office as required in OAR 411-070-0035.

(ii) A nursing facility may admit an individual without a completed and signed PASRR Level I form in the client record provided the facility has received verbal confirmation from the Level I assessor that the screening has been completed and a copy of the PASRR Level I form will be sent to the facility as soon as is reasonably possible.

(iii) The original or a copy of the PASRR Level I form must be retained as a permanent part of the individual's clinical record and must accompany the individual if he or she transfers to another nursing facility.

(b) PASRR LEVEL II. This is an evaluation and determination of whether nursing facility service and specialized services are needed for an individual who has been identified through the PASRR Level I screening process with indicators of Mental Illness or Mental Retardation or Developmental Disabilities who does not meet categorical determination criteria {42 CFR 483.128}.

(A) PASRR Level II Referral. Individual's identified with indicators or Mental Illness or Mental Retardation or Developmental Disabilities as a result of PASRR Level I screening are referred for PASRR Level II evaluation and determination.

(B) PASRR Level II Evaluations. PASRR Level II evaluations and determinations are conducted by AMHD for individuals with Mental Illness or by SPD for individuals with Mental Retardation or Developmental Disabilities.

(C) PASRR Level II Determination. PASRR Level II evaluation will result in a determination of an individual's need for nursing facility services and specialized services {42 CFR 483.128-136} consistent with Federal Regulations established by the Social Security Act, Section 1919(e)(7)(C).

(D) Pursuant to 42 CFR 483.130(l) the written determination will include the following findings:

(i) Whether a nursing facility level of services is needed;

(ii) Whether specialized services are needed;

(iii) The placement options that are available to the individual consistent with these determinations; and

(iv) The rights of the individual to appeal the determination.

(E) The PASRR Level II evaluation report must be sent to the individual or their legal representative, the individuals attending physician, and the admitting or retaining nursing facility. In the case of an individual being discharged from the hospital, the discharging hospital must receive a copy of the PASRR evaluation report as well {42 CFR 483.128 (l)(1)-(3)}.

(F) Denials of nursing facility service are subject to appeal {OAR 137-003, OAR 461-025 & 42 CFR Subpart E}.

(c) Resident Review. Resident Reviews are conducted by AMHD for individuals with indicators of Mental Illness or SPD for individuals with Mental Retardation or Developmental Disabilities who are residents of nursing facilities. Based on the findings of the Resident Review, a PASRR Level II may be requested. {42 CFR 483.114}.

(A) Mental Illness. All residents of a Medicaid certified nursing facility may be referred for Resident Review when symptoms of Mental Illness develop.

(i) Resident Review for individuals with indicators of Mental Illness that require further evaluation must be referred to the local Community Mental Health Program who will determine eligibility for PASRR Level II evaluations.

(ii) The Resident Review Form, Part A, must be completed by the nursing facility. The Resident Review must be performed in conjunction with the Comprehensive Assessment Form specified by the AMHD, in accordance with OAR 411-086-0060.

(B) Mental Retardation or Developmental Disabilities. All individuals identified as having Mental Retardation or Developmental Disabilities through the PASRR Level I screening process that are admitted to a nurs-

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ing facility must receive a Resident Review. A Resident Review must be conducted within seven days if the nursing facility admission is due to an emergency situation {OAR 411-070-0043(2)(c)(A)-(C)}, within 20 days if the nursing facility admission is due to other categorical determinations {OAR 411-070-0043(2)(a)-(b)}, and annually, or as dictated by changes in resident's needs or desires.

- (i) The Resident Review must be completed by SPD or designee.
- (ii) The Resident Review must be completed using forms designated by the Department.

#### (4) SPECIALIZED SERVICES.

(a) Specialized services for individuals with Mental Illness are not provided in nursing facilities. Individuals with Mental Illness who are determined to need specialized services as a result of PASRR Level II evaluation and determination, must be referred to another setting.

(b) Specialized services for individuals with Mental Retardation or Developmental Disabilities under age 21 are equal to school services and must be based on the Individualized Education Plan.

(c) Specialized services for individuals with Mental Retardation or Developmental Disabilities over age 21 are not provided in nursing facilities. Individuals with Mental Retardation or Developmental Disabilities over age 21 that are determined to need specialized services as a result of PASRR Level II evaluation and determination must be referred to another setting.

(5) RESPITE CARE. Respite care in nursing facilities for individuals with Mental Illness, Mental Retardation or Developmental Disabilities is approved under the following conditions:

(a) For individuals with Mental Illness, a nursing facility admission for respite care must be authorized by AMHD and for individuals with Mental Retardation or Developmental Disabilities, a nursing facility admission for respite care must be authorized by SPD Central Office; and

(b) Nursing facility respite stay must be limited to no more than a total of 56 respite days within a calendar year although SPD may grant exceptions to this limit at its discretion; and

(c) Nursing facility level of service must be required to meet a severe medical condition that excludes care needs due to Mental Illness, Mental Retardation or Developmental Disabilities; and

(d) There must not be a viable community care setting available that is appropriate to meet the individual's respite care needs as determined by section (5)(a) of this rule.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, 535 & 414.065

Hist.: SSD 5-1989(Temp), f. & cert. ef. 4-20-89; SSD 15-1989, f. & cert. ef. 10-20-89; SSD 3-1994, f. 4-29-94, cert. ef. 5-1-94; SDS 1-1998, f. 1-30-98, cert. ef. 2-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07

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**Rule Caption:** Contracted In-Home Care Agency Services.

**Adm. Order No.:** SPD 13-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 9-4-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 411-030-0090

**Rules Repealed:** 411-030-0090(T)

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending Oregon Administrative Rule, 411-030-0090, relating to Contracted In-Home Care Agency services.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-030-0090

### Contracted In-Home Care Agency Services

(1) Contracted In-Home Care Agency services are one of the in-home support service options for individuals eligible for Oregon's Home and Community-Based Services Waiver.

(2) In-Home Care Agencies must be licensed in accordance with OAR 333-536-0000 through OAR 333-536-0100. The geographic service area in which the agency provides services must comply with OAR 333-536-0050. The specific services provided will be described in each contract's statement of work.

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 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 2-2007(Temp), f. & cert. ef. 3-30-07 thru 9-25-07; SPD 13-2007, f. 8-31-07, cert. ef. 9-4-07

**Rule Caption:** Residential Care and Assisted Living Facilities.

**Adm. Order No.:** SPD 14-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 11-1-07

**Notice Publication Date:** 5-1-07

**Rules Adopted:** 411-054-0000, 411-054-0005, 411-054-0008, 411-054-0010, 411-054-0012, 411-054-0013, 411-054-0016, 411-054-0019, 411-054-0025, 411-054-0027, 411-054-0028, 411-054-0030, 411-054-0034, 411-054-0036, 411-054-0040, 411-054-0045, 411-054-0055, 411-054-0060, 411-054-0065, 411-054-0070, 411-054-0080, 411-054-0085, 411-054-0090, 411-054-0093, 411-054-0100, 411-054-0105, 411-054-0110, 411-054-0120, 411-054-0130, 411-054-0135, 411-054-0140, 411-054-0200, 411-054-0300

**Rules Repealed:** 411-055-0000, 411-055-0003, 411-055-0005, 411-055-0010, 411-055-0015, 411-055-0019, 411-055-0024, 411-055-0029, 411-055-0034, 411-055-0039, 411-055-0045, 411-055-0051, 411-055-0061, 411-055-0081, 411-055-0085, 411-055-0091, 411-055-0101, 411-055-0111, 411-055-0115, 411-055-0121, 411-055-0131, 411-055-0141, 411-055-0151, 411-055-0161, 411-055-0170, 411-055-0180, 411-055-0190, 411-055-0200, 411-055-0210, 411-055-0220, 411-055-0230, 411-055-0240, 411-055-0250, 411-055-0260, 411-055-0270, 411-055-0280, 411-056-0000, 411-056-0005, 411-056-0007, 411-056-0008, 411-056-0010, 411-056-0015, 411-056-0018, 411-056-0020, 411-056-0030, 411-056-0035, 411-056-0040, 411-056-0045, 411-056-0055, 411-056-0060, 411-056-0070, 411-056-0075, 411-056-0085, 411-056-0090, 411-056-0095

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently adopting rules in chapter 411, division 054 to combine the requirements for residential care and assisted living facilities. With the combination of the residential care and assisted living facilities rules, SPD is repealing the rules in chapter 411, division 055 related to residential care facilities and the rules in chapter 411, division 056 related to assisted living facilities. The effective date of the permanent rulemaking is November 1, 2007.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-054-0000

### Purpose

The purpose of these rules is to establish standards for assisted living and residential care facilities that promote the availability of a wide range of individualized services for elderly and persons with disabilities, in a homelike environment. The standards are designed to enhance the dignity, independence, individuality and decision making ability of the resident in a safe and secure environment while addressing the needs of the resident in a manner that supports and enables the individual to maximize abilities to function at the highest level possible.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0005

### Definitions

For the purpose of these rules, the following definitions apply:

(1) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and B Area Agencies on Aging that contract with DHS to perform specific activities in relation to residential care and assisted living facilities including: conducting inspections and investigations regarding protective service, abuse and neglect; monitoring; and making recommendations to the Seniors and People with Disabilities Division regarding facility license approval, denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would be able to prevent, such as those resulting from hitting, pinching, striking, rough handling or corporal punishment. These instances of abuse are presumed to cause physical injury, including pain, to all residents,

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including those in a coma or those who are otherwise incapable of expressing injury or pain.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort or serious loss of human dignity. Abuse under this definition includes abandonment.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a facility by: physical force; physical or verbal threat of harm or deprivation to the resident or others; use of position, authority or misinformation to compel a resident to do what the resident would not otherwise do; or where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident's property, including money, personal property and medications; illegal or improper use of a resident's resources for the personal benefit, profit or gain of another person; borrowing resident funds; spending resident funds without the resident's consent; if the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal or mental abuse that includes, in extreme forms: the use of oral, written or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend or disability; humiliation; intimidation; harassment; threats of punishment or deprivation directed toward the resident; and unwanted or inappropriate crude or sexual language, questions, comments, or other communication. Examples of verbal and mental abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that the resident will never be able to see the resident's family again; and making unwanted sexual comments. Verbal and mental abuse are distinguished from resident rights violations by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline. Involuntary seclusion is defined as the separation of a resident from other residents or from their room or confinement to their room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short-term, monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention until professional staff can develop a plan of care to meet the resident's needs, or as part of an inter-disciplinary care plan after other interventions have been attempted.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well being, health and safety. ADLs consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior.

(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(5) "Assisted Living Facility" means a building, complex or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(6) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(7) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070(1) and (2) (Staffing Requirements and Training) to provide personal care services to residents. The employee may be either a Direct Care Staff or Universal Worker as defined in this rule.

(8) "Change of Condition — Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(9) "Change of Condition — Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to: broken bones; stroke, heart attack or other acute illness/condition onset; unmanaged high blood sugar levels; uncontrolled pain; fast decline in activities of daily living; significant unplanned weight loss; pattern of refusing to eat; level of consciousness change; and pressure ulcers (stage 2 or greater).

(10) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(11) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(12) "DHS" or "Department" means the Department of Human Services.

(13) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy supports dignity, as does delivering services in a manner that shows courtesy and respect.

(14) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These services may include: medication administration; resident-focused activities; assistance with activities of daily living; supervision and support of residents; and serving meals, but not meal preparation.

(15) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(16) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services and operations.

(17) "Entity" means an individual, a trust, an estate, a partnership, a corporation or a state or governmental unit, including associations, joint stock, companies and insurance companies, a state, or a political subdivision or instrumentality including a municipal corporation.

(18) "Exception" means a written variance granted by SPD from a regulation or provision of these rules.

(19) "Facility" means the residential care or assisted living licensee, operations, policies, procedures and employees of the facility.

(20) "FPS" means the Facilities Planning and Safety Program within the Department of Human Services, Public Health Division.

(21) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. It is also supported by the use of residential building materials and furnishings.

(22) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(23) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(24) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(25) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(26) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(27) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(28) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(29) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct the day-to-day operation of a facility.

(30) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes). These diets include, but are

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not limited to: small frequent meals; no added salt; reduced or no added sugar; and simple textural modifications. Medically complex diets are not included.

(31) "New Construction" means a new building; an existing building or part of a building that is not currently licensed; a major alteration to an existing building; or additions, conversions, renovations or remodeling of existing buildings.

(32) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and Oregon Administrative Rules adopted by the Oregon State Board of Nursing in OAR chapter 851, division 047.

(33) "Owner" means a person with an ownership interest.

(34) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(35) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(36) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(37) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(38) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior or cognitive processes. This term includes antidepressants, antipsychotics, sedatives, hypnotics, and antianxiety medications.

(39) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(40) "Residential Care Facility" means a building, complex or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult persons with disabilities may reside. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(41) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(42) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.)

(43) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(44) "Service Area" means a geographic area within a 15-mile radius of the proposed site.

(45) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative that reflects the resident's capabilities, choices and if applicable, measurable goals and managed risk issues. The plan defines the division of responsibility in the implementation of the services.

(46) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036(4) (Service Plan – General), who assist the resident in determining what services and care are needed, preferred, and will be provided to the resident.

(47) "Services" means supervision or assistance provided in support of a resident's needs, preferences and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial and physical functioning.

(48) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(49) "These Rules" means the rules in chapter 411, division 054.

(50) "Underserved" means services are significantly unavailable within the service area in a comparable setting for the general public, a specific population, (e.g., residents with dementia or traumatic brain injury), or recipients of Medicaid.

(51) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom and adequate storage areas.

(52) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building mainte-

nance staff or licensed nurses who provide services as specified in OAR 411-054-0034 (Resident Move-In and Evaluation).

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0008

### Licensing Moratorium

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2009. The Department of Human Services, Seniors and People with Disabilities Division may issue a license to an applicant for operation of a residential care or assisted living facility that complies with these rules under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-054-0013 (Application for Initial Licensure and License Renewal) and is not seeking an increase in licensed units or capacity;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of SPD that the proposed facility will serve a targeted population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) Effective August 3, 2005, a non-refundable fee of \$5,000 must be paid to DHS by the applicant who submitted schematic plans or drawings before August 16, 2001, that has not yet begun construction on the project by December 31, 2005. This \$5,000 fee does not apply to any applicant who has begun construction by December 31, 2005.

(a) If, on or before December 31, 2005, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to SPD as soon as possible but no later than January 30, 2006.

(b) The Department must receive the \$5,000 fee no later than January 31, 2006. If payment is not received, the project will be considered to be withdrawn.

(3) In addition to the fee required by section (2) of this rule that must be paid by January 31, 2006, a non-refundable fee of \$5,000 must be paid to DHS by the applicant who submitted schematic plans or drawings before August 16, 2001, that has not yet begun construction on the project by December 31, 2006. This \$5,000 fee does not apply to any applicant who has begun construction by December 31, 2006.

(a) If, on or before December 31, 2006, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to SPD as soon as possible but no later than January 30, 2007.

(b) The Department must receive the \$5,000 fee no later than January 31, 2007. If payment is not received, the project will be considered to be withdrawn.

(4) A construction permit, building permit, or other permit necessary to begin construction must be secured by the applicant or the entity to whom the business rights on the project has been sold or transferred, no later than August 3, 2007, and must be submitted to SPD no later than September 4, 2007, or the project will be considered withdrawn.

(5) In the event of two competing applicants within a service area that meet the condition in section (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents in an area where there are insufficient Medicaid resources and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area; and

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(6) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis, completed by a third party professional, that validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

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- (b) A description of the area and regional economy and the effect on the market for the project;
- (c) Identification of the number of persons in the service area who are potential residents;
- (d) Information on similar proposed facilities in the service area that have received plans approval from the DHS, Public Health Division, Facilities Planning and Safety Program;
- (e) Description of available amenities, (e.g., transportation, hospital, shopping center, traffic conditions, etc.);
- (f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400 to 443.455; and
- (g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(7) Licensees of a facility with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100 may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0010

### Licensing Standard

(1) No person, entity, or governmental unit acting individually or jointly with any other person, entity, or governmental unit may establish, maintain, conduct, or operate a residential care or assisted living facility, use the term residential care or assisted living facility, or hold itself out as being a residential care or assisted living facility or as providing residential care or assisted living services, without being duly licensed as such.

(2) Each license to operate a residential care or assisted living facility will expire two years following the date of issuance unless revoked, suspended, terminated earlier, or issued for a shorter specified period.

(3) Each residential care and assisted living facility must be licensed, maintained and operated as a separate and distinct facility.

(4) A license will not be required:

- (a) For a building, complex, or distinct part thereof, where six or more individuals reside where activities of daily living assistance and health services are not offered or provided by the facility; and

- (b) Facility representatives and written materials do not purport that such care and services are offered or provided by the facility; and

- (c) Prospective and actual tenants have no expectations that such care and services are offered or will be provided by the facility.

(5) The Assistant Director of SPD, or their designee, will determine whether a residential care or assisted living facility license is required in cases where the definition of a facility's operations is in dispute.

(6) NOT TRANSFERABLE. No residential care or assisted living facility license is transferable or applicable to any location, facility, management agent or ownership other than that indicated on the application and license.

(7) SEPARATE BUILDINGS. Separate licenses are not required for separate buildings of the same license type located contiguously and operated as an integrated unit by the same licensee. Distinct staffing plans are required for each building.

(8) IDENTIFICATION. Every facility must have distinct identification or name and must notify SPD of any intention to change such identification.

(9) DESCRIPTIVE TITLE. A residential care or assisted living facility licensed by SPD will neither assume a descriptive title nor be held under any descriptive title other than what is permitted within the scope of its license.

(10) VOLUNTARY CLOSURE. The licensee must notify SPD 60 days prior to a voluntary closure of a facility.

(11) The license must be returned to SPD immediately upon suspension or revocation of the license or when operation is discontinued.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0012

### Requirements for New Construction or Initial Licensure

For purposes of this rule "New Construction" means a new building, an existing building or part of a building that is not currently licensed, a major alteration to an existing building, additions, conversions or renova-

tion or remodeling of existing buildings. The following information applies to applicants who have met the requirements of OAR 411-054-0008 (Licensing Moratorium).

(1) LETTER OF INTENT. Prior to application for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to SPD a letter of intent that includes the following:

- (a) Identification of potential applicant(s);

- (b) Identification of the city and street address, the intended number of units, maximum resident capacity, and intended payer sources;

- (c) An independent market analysis conducted within the twelve months prior to the submission of the letter of intent to SPD; and

- (d) Description of the intended population to be served, including special needs population as applicable.

(2) BUILDING PLANS. After the letter of intent has been submitted to SPD, one set of building plans and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675 (Submission of Project Plans and Specifications for Review).

- (a) Building plans must be submitted to FPS:

- (A) Prior to beginning construction of any new building;

- (B) Prior to beginning construction of any addition to an existing building;

- (C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

- (D) Subsequent to application for an initial license of a facility not previously licensed under this rule.

- (b) Plans must comply with the Oregon Structural Specialty Code and Oregon Fire Code as required for the occupancy classification and construction type.

- (c) Plans must be drawn to a scale of one-fourth inch or one-eighth inch to the foot, and must specify the date when construction, modification or conversion is expected to be completed.

- (d) Construction containing 4,000 square feet or more must be prepared by, and bear the stamp of an Oregon licensed architect or engineer.

(3) SIXTY-DAYS PRIOR. At least 60 days prior to anticipated licensure the applicant must submit to SPD:

- (a) A completed application form with the required fee;

- (b) A copy of the facility's written rental agreements;

- (c) Disclosure information; and

- (d) Facility policies and procedures, ensuring that the facility's administrative, personnel and resident care operations are conducted in compliance with these rules.

(4) THIRTY-DAYS PRIOR. Thirty days prior to anticipated licensure the applicant must submit:

- (a) To SPD, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a Criminal History Request; and

- (b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests that an onsite licensing inspection be scheduled.

(5) TWO-DAYS PRIOR. At least two working days prior to the scheduled onsite licensing inspection of the facility the applicant must submit to SPD and FPS, a completed and signed Project Completion/Inspection Checklist that confirms that the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection will not be conducted until this document has been received by both FPS and SPD.

(b) Should the scheduled, onsite licensing inspection reveal that the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist, the onsite licensing inspection may be rescheduled at SPD's convenience.

(6) CERTIFICATE OF OCCUPANCY. The applicant must submit to SPD and FPS, a copy of the Certificate of Occupancy issued by the Building Codes Agency having jurisdiction that indicates the intended occupancy classification and construction type.

(7) CONFIRMATION OF LICENSURE. The applicant, prior to admitting any resident into the facility, must receive a written confirmation of licensure issued by SPD.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0013

### Application for Initial Licensure and License Renewal

(1) APPLICATION. Applicants for initial licensure and license renewal must complete an application on a form provided by SPD. The form must be signed by the applicant's legally authorized representative,

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dated, contain all information requested by SPD and be accompanied by the required licensing fee.

(a) Applicants must provide all information and documentation as required by SPD including, but not limited to, identity and financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of ten percent or more, or ten percent of a lease agreement for the facility.

(b) If the owner of the assisted living or residential care facility is a different entity from the operator or management company of the facility, an application for licensure is required from both the operator and the owner. Only one license fee is required.

(c) The application will require the identification of any individual with ten percent incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state.

(d) The application will require the identification of all states where the applicant, or person(s) having a ten percent or more incident of ownership in the facility, currently, or previously, has been licensed as owner(s) or operator(s) of a long-term, community-based, or health care facility or agency under the laws of any state; and any facility, currently or previously owned or operated, that had its license denied or revoked or received notice of the same under the laws of any state.

(e) If the applicant fails to provide complete and accurate information on the application, and SPD concludes that the missing or corrected information is needed to determine if a license should be granted, SPD may deny, revoke or refuse to renew the license.

(f) Each application for a new license (excludes license renewal) must include a completed and signed credit and criminal history request form for the applicant(s) and for each person with ten percent incident of ownership in the applicant.

(g) SPD may require financial information as stated in OAR 411-054-0016(3) (New Applicant Qualifications), when considering an applicant's request for renewal of a license.

(h) Applicants must provide other information and documentation as SPD may reasonably require for proper administration of these rules, including, but not limited to, information about ownership interest in other business enterprises, if relevant.

(2) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and payment of the required non-refundable fee before the date of expiration extends the effective date of expiration until SPD takes action upon such application.

(a) SPD will refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(b) Applicants for license renewal must provide SPD with a completed and signed credit and criminal history request form for the applicant(s), and for each person with incident of ownership in the applicant when required by SPD.

(c) A building inspection may be requested at SPD's discretion. SPD may require physical improvements if the health or safety of residents is negatively impacted.

## (3) DEMONSTRATED CAPABILITY.

(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of SPD that the applicant is capable of providing care in a manner consistent with the requirements of these rules.

(b) SPD may consider the background and qualifications of any person owning ten percent or more interest in the facility operation when determining whether an applicant may be licensed.

(c) SPD may consider the applicant's history of compliance with SPD's rules and orders, including the history of compliance of each person with a ten percent or more incident of ownership in the applicant.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0016

### New Applicant Qualifications

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds ten percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership, and management or operator) must meet the following criteria:

(1) CRIMINAL HISTORY. Each applicant must complete a Criminal History Check conducted by DHS in accordance with OAR chapter 407, division 007.

(2) PERFORMANCE HISTORY. SPD will consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.

(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or persons with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years;

(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years;

(c) Failure to provide accurate information or demonstrate required performance history could result in SPD's denial of a license.

## (3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years;

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities or other costs necessary for facility operation during the past five years;

(c) Have a record of good credit as evidenced by a credit check done by SPD;

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to SPD.

(e) Provide a pro forma (revenues, expenditures and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the management of nursing facilities, assisted living or residential care, the applicant must employ the services of a consultant or management company with experience in the provision of assisted living or residential care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of SPD.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0019

### Change of Ownership or Management

(1) The licensee and the prospective licensee must each notify SPD in writing of a contemplated change in ownership or management entity. The written notification must be received at least 60 days prior to the proposed date of change.

(a) The prospective licensee or management entity must submit a completed application form, with the required application fee and copy of policies, procedures, rental agreements, service plans, and required disclosure information, to SPD for review at least 60 days in advance of the proposed date of change.

(b) The prospective licensee or operator must not assume possession or control of the facility until SPD has notified the prospective licensee or operator that its license application has been approved.

(c) The licensee is responsible for the operation of the facility and resident care until a new license is issued to a new owner.

(2) A building inspection may be requested at SPD's discretion. SPD may require physical improvements if the health or safety of residents is negatively impacted.

(3) Resident records maintained by the licensee must be turned over to the new owner when the license application is approved and the new licensee assumes possession or control of the facility.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0025

### Facility Administration

(1) FACILITY OPERATION. The licensee is responsible for the operation of the facility and the quality of care rendered in the facility.

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Reasonable precautions must be exercised against any condition that could threaten the health, safety or welfare of residents.

(a) The licensee is responsible for the supervision, training and overall conduct of staff when acting within the scope of their employment duties.

(b) The licensee must obtain a Criminal History Request Form from any person 16 years of age or older, who operates, receives training, or works in a facility. Such completed forms must be submitted to an Authorized Division Representative for a criminal fitness determination in accordance with OAR chapter 407, division 007 (Criminal History Check Rules).

(c) The licensee is responsible for ensuring that the facility complies with OAR 333-019-0041 (Tuberculosis).

(2) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license;

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility;

(c) The current facility-staffing plan; and

(d) Other notices relevant to residents or visitors required by state or federal law.

(3) NOTIFICATION. The facility must notify program staff in Salem Central Office immediately by telephone, fax or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services in which the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food;

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable;

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility;

(e) Unusual resident death or suicide; or

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(4) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment.

(a) The facility must develop and implement a policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in their daily living.

(b) The facility must develop and implement a written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) The facility must develop and implement effective methods of responding to and resolving resident complaints.

(d) The facility must develop all additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), 411-054-0040 (Change of Condition Monitoring), 411-054-0045 (Resident Health Services) and 411-054-0085 (Refunds and Financial Management) of these rules.

(5) RECORDS. The facility must ensure the preparation, completeness, accuracy and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility the licensee must provide SPD with written notification of the location of all records.

(6) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes and resident satisfaction.

(7) DISCLOSURE — RESIDENCY AGREEMENT. The facility must provide a SPD designated Uniform Disclosure Statement (form SDS 9098A) to each person who requests information about the facility. The residency agreement and the following disclosure information are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

mation and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by SPD prior to distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition;

(B) Payment provisions, including the basic rental rate, and what it includes, cost of additional services, billing method, payment system and due dates, deposits and non-refundable fees, if applicable;

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided;

(D) Policy for increases, additions or changes to the rate structure. Disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan;

(E) Refund and proration conditions;

(F) A description of the scope of services available according to OAR 411-054-0030 (Resident Services);

(G) A description of the service planning process;

(H) Additional available services;

(I) The philosophy of how health care and ADL services are provided to the resident;

(J) Resident rights and responsibilities;

(K) The facility system for packaging medications and that residents may choose a pharmacy that meets the requirements of ORS 443.437;

(L) Criteria, actions, circumstances or conditions that may result in a move-out notification or intra-facility move;

(M) Resident's rights pertaining to notification of involuntary move-out;

(N) Notice that DHS has the authority to examine resident's records as part of the evaluation of the facility; and

(O) Staffing plan.

(b) The facility must not include any provision in the residency agreement or disclosure information that is in conflict with these rules and must not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence;

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreement(s) and must provide copies to the resident or to their designated representative; and

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to SPD before distribution.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0027

### Resident Rights and Protections

(1) The facility must implement a residents' Bill of Rights. Each resident or the resident's designated representative must be given a copy of their rights and responsibilities prior to moving into the facility. The Bill of Rights must state that residents have the right:

(a) To be treated with dignity and respect;

(b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(c) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made;

(d) To receive information about the method for evaluating their service needs and assessing costs for the services provided;

(e) To exercise individual rights that do not infringe upon the rights or safety of others;

(f) To be free from neglect, financial exploitation, verbal, mental, physical or sexual abuse;

(g) To receive services in a manner that protects privacy and dignity;

(h) To have prompt access to review all of their records and to purchase photocopies. Photocopies must be promptly provided, but in no case require more than two business days (excluding Saturday, Sunday and Holidays);

(i) To have medical and other records kept confidential except as otherwise provided by law;

(j) To associate and communicate privately with any person of choice, to send and receive personal mail unopened and to have reasonable access to the private use of a telephone;

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- (k) To be free from physical restraints and inappropriate use of psychotropic medications;
- (l) To manage personal financial affairs unless legally restricted;
- (m) To have access to and participate in social activities;
- (n) To be encouraged and assisted to exercise rights as a citizen;
- (o) To be free of any written contract or agreement language with the facility that purports to waive their rights or the facility's liability for negligence;
- (p) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation;
- (q) To be free of retaliation after they have exercised their rights provided by law or rule;
- (r) To have a safe and homelike environment;
- (s) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation or religion; and
- (t) To have proper notification if requested to move out of the facility, and to be required to move out only for reasons stated in OAR 411-054-0080 (Involuntary Move-out Criteria) and have the opportunity for an administrative hearing, if applicable.
- (2) Facility personnel must not act as a resident's guardian, conservator, trustee, or attorney in fact unless related by birth, marriage or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt/uncle or niece/nephew. An owner, administrator or employee may act as a representative payee for the resident or serve in other roles as provided by law.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0028

### Abuse Reporting and Investigation

(1) The facility must have policies and procedures in place to assure the prevention and appropriate response to any incident. In the case of incidents of abuse, suspected abuse, or injury of unknown cause, policies and procedures must follow the requirements outlined below. In the case of incidents that are not abuse or injuries of unknown cause where abuse has been ruled out, the facility must have policies and procedures in place to respond appropriately, which may include such things as re-assessment, monitoring, or medication review.

(2) ABUSE REPORTING. Abuse is prohibited. The facility employees, agents and licensee must not permit, aid, or engage in abuse of residents who are under their care.

(a) STAFF REPORTING. All facility employees are required to immediately report abuse and suspected abuse to the local SPD office, or the local AAA, the facility administrator, or to the facility administrator's designee.

(b) FACILITY REPORTING. The facility administrator, or designee, must immediately notify the local SPD office, or the local AAA, of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances, etc.).

(d) INJURY OF UNKNOWN CAUSE. Physical injury of unknown cause must be reported to the local SPD office, or the local AAA, as suspected abuse, unless an immediate facility investigation reasonably concludes and documents that the physical injury is not the result of abuse.

(3) FACILITY INVESTIGATION. In addition to immediately reporting abuse or suspected abuse to SPD, AAA, or the law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and take measures necessary to protect residents and prevent the reoccurrence of abuse. Investigation of suspected abuse must document:

- (a) Time, date, place and individuals present;
- (b) Description of the event as reported;
- (c) Response of staff at the time of the event;
- (d) Follow-up action; and
- (e) Administrator's review.

#### (4) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The facility licensee, employees and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including but not limited to restricting otherwise lawful access to the facility or to any resident, or if an employee, dismissal or harassment.

(b) Anyone who, in good faith, reports abuse or suspected abuse shall have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991  
Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0030

### Resident Services

(1) The residential care or assisted living facility must provide a minimum scope of services as follows:

(a) Three daily nutritious, palatable meals with snacks available seven days a week, in accordance with the recommended dietary allowances found in the United States Department of Agriculture (USDA) guidelines, including seasonal fresh fruit and fresh vegetables;

(A) Modified special diets that are appropriate to residents' needs and choices. The facility must encourage residents' involvement in developing menus.

(B) Menus must be prepared at least one week in advance, and must be made available to all residents. Meal substitutions must be of similar nutritional value if a resident refuses a food that is served. Residents must be informed in advance of menu changes.

(C) Food must be prepared and served in accordance with OAR 333-150-0000 (Food Sanitation Rules).

(b) Personal and other laundry services;

(c) A daily program of social and recreational activities that are based upon individual and group interests, physical, mental, and psychosocial needs, and creates opportunities for active participation in the community at large;

(d) Equipment, supplies and space to meet individual and group activity needs;

(e) Services to assist the resident in performing all activities of daily living, on a 24-hour basis, including:

(A) Assistance with mobility, including one-person transfers;

(B) Assistance with bathing and washing hair;

(C) Assistance with personal hygiene (e.g., shaving and caring for the mouth);

(D) Assistance with dressing and undressing;

(E) Assistance with grooming (e.g., nail care and brushing/combing hair);

(F) Assistance with eating (e.g., supervision of eating, cueing, or the use of special utensils);

(G) Assistance with toileting and bowel and bladder management;

(H) Intermittent cuing, redirecting and environmental cues for cognitively impaired residents; and

(I) Intermittent intervention, supervision and staff support for residents who exhibit behavioral symptoms.

(f) Medication administration; and

(g) Household services essential for the health and comfort of the resident that are based upon the resident's needs and preferences (e.g., floor cleaning, dusting, bed making, etc.)

(2) The facility must provide or arrange for the following:

(a) Transportation for medical and social purposes; and

(b) Ancillary services for medically related care (e.g., physician, pharmacist, therapy, podiatry, barber or beauty services, social or recreational opportunities, hospice, and home health) and other services necessary to support the resident.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0034

### Resident Move-In and Evaluation

#### (1) INITIAL SCREENING AND MOVE-IN.

(a) The facility must determine whether a potential resident meets the facility's admission requirements.

(b) Prior to the resident moving in, the facility must conduct an initial screening to determine the prospective resident's service needs and preferences. The screening must determine the ability of the facility to meet the potential resident's needs and preferences while considering the needs of the other residents and the facility's overall service capability.

(c) Prior to move-in and updated as needed, each resident record must include the following information:

(A) Prior living arrangements;

(B) Emergency contacts;

(C) Service plan involvement - resident, family, and social supports;

(D) Legal or financial relationships;

(E) Primary language;

(F) Community connections; and

(G) Health and social service providers.

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(2) RESIDENT EVALUATION — GENERAL. The resident evaluation is the foundation that a facility uses to develop the service plan and reflects the resident's current health and mental status. The evaluation information may be collected using tools and protocols established by the facility, but must contain the elements stated in this rule.

(a) Resident evaluations must be performed:

(A) Before the resident moves into the facility, with updates and changes as appropriate within the first 30-days; and

(B) At least quarterly, to correspond with the quarterly service plan updates.

(b) Resident evaluations must be reviewed and updated documented each time a resident has a significant change in condition.

(c) The resident evaluation must be done in person and the facility must gather data that is relevant to the needs and current condition of the resident.

(d) Resident evaluations must be documented, dated and indicate who was involved in the evaluation process.

(e) Twenty-four months of past evaluations must be kept in the resident's files in an accessible, on-site location.

(f) The facility administrator is responsible for assuring that only trained and experienced staff perform resident evaluations.

(3) EVALUATION REQUIREMENTS AT MOVE-IN.

(a) The resident evaluation must be completed before the resident moves into the facility. This evaluation provides baseline information of the resident's physical and mental condition at move-in.

(b) If there is an urgent need and the evaluation is not completed prior to move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.

(c) The initial evaluation must contain the elements specified in section (5) of this rule, and address sufficient information to develop an initial service plan to meet the resident's needs.

(d) The initial evaluation must be updated and modified as needed during the 30-days following the resident's move into the facility.

(e) After the initial 30-day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.

(4) QUARTERLY EVALUATION REQUIREMENTS.

(a) Resident evaluations must be performed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.

(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.

(5) The resident evaluation must address the following elements:

(a) Resident routines and preferences including:

(A) Customary routines — sleep, dietary, social, and leisure; and

(B) Spiritual, cultural preferences.

(b) Physical health status including:

(A) List of current diagnoses;

(B) List of medications and PRN use;

(C) Visits to health practitioner(s), emergency room, hospital or nursing facility in the past year;

(D) Vital signs if indicated by diagnoses, health problems, or medications.

(c) Mental health issues including:

(A) Presence of depression, thought disorders or behavioral or mood problems;

(B) History of treatment; and

(C) Effective non-drug interventions.

(d) Cognition, including:

(A) Memory;

(B) Orientation;

(C) Confusion; and

(D) Decision making abilities.

(e) Communication and sensory including:

(A) Hearing;

(B) Vision;

(C) Speech;

(D) Assistive devices; and

(E) Ability to understand and be understood.

(f) Activities of daily living including:

(A) Toileting, bowel and bladder management;  
(B) Dressing, grooming, bathing and personal hygiene;  
(C) Mobility — ambulation, transfers, assistive devices; and  
(D) Eating, dental status, assistive devices.

(g) Independent activities of daily living including:

(A) Ability to manage medications;

(B) Ability to use call system;

(C) Housework and laundry; and

(D) Transportation.

(h) Pain — pharmaceutical and non-pharmaceutical interventions.

(i) Skin Condition.

(j) Nutrition habits, fluid preferences and weight if indicated.

(k) List of treatments — type, frequency and level of assistance needed.

(l) Indicators of nursing needs, including potential for delegated nursing tasks.

(m) Review of risk indicators including:

(A) Fall risk or history;

(B) Emergency evacuation ability;

(C) Complex medication regimen;

(D) History of dehydration or unexplained weight loss or gain;

(E) Recent losses;

(F) Unsuccessful prior placements;

(G) Eloperation risk or history; and

(H) Smoking, (Resident's ability to smoke safely must be evaluated and addressed in the service plan.) alcohol use or drug abuse.

(n) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0036

### Service Plan — General

(1) SERVICE PLAN. The service plan must reflect the resident's needs as identified in the evaluation and include resident preferences that support the principles of dignity, privacy, choice, individuality and independence.

(a) The service plan must be completed:

(A) Prior to resident move-in, with updates and changes as appropriate within the first 30-days; and

(B) Following quarterly evaluations.

(b) The service plan must be readily available to staff and provide clear direction regarding the delivery of services.

(c) The service plan must include a written description of who will provide the services and what, when, how and how often the services will be provided.

(d) Changes and entries made to the service plan must be dated and initialed.

(e) When the resident experiences a significant change of condition the service plan must be reviewed and updated as needed.

(f) A copy of the service plan, including each update, must be offered to the resident or to the resident's legal representative.

(g) The facility administrator is responsible for ensuring the implementation of services.

(2) SERVICE PLAN REQUIREMENTS PRIOR TO MOVE-IN.

(a) Based on the resident evaluation performed prior to move-in, an initial service plan must be developed prior to move-in that reflects the identified needs and preferences of the resident.

(b) The initial service plan must be reviewed within 30-days of move-in to ensure that any changes made to the plan during the initial 30-days, accurately reflect the resident's needs and preferences.

(c) Staff must document and date adjustments or changes as applicable.

(3) QUARTERLY SERVICE PLAN REQUIREMENTS.

(a) Service plans must be completed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) If the resident's service plan is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.

(4) SERVICE PLANNING TEAM. The service plan must be developed by a Service Planning Team that consists of the resident, the resident's

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legal representative if applicable, any person of the resident's choice, the facility administrator or designee and at least one other staff person who is familiar with, or who will provide services to the resident. Involved family members and case managers must be notified in advance of the service-planning meeting.

(a) As applicable, the Service Planning Team must also include:

(A) Local SPD or AAA case managers and family members, as available;

(B) A licensed nurse if the resident will be, or is, receiving nursing services or experiences a significant change of condition as required in 411-054-0045(1)(f)(D) (Resident Health Services); and

(C) The resident's physician or other health practitioner.

(b) Each resident must actively participate in the development of the service plan to the extent of the resident's ability and willingness to do so. If resident participation is not possible, documentation must reflect the facility's attempts to determine the resident's preferences.

(5) MANAGED RISK. When a resident's actions or choices pose a potential risk to that resident's health or well-being, the facility may utilize a managed risk agreement to explore alternatives and potential consequences with the resident.

(a) The facility must identify the need for and develop a written managed risk plan following the facility's established guidelines and procedures. A managed risk plan must include:

(A) An explanation of the cause(s) of concern;

(B) The possible negative consequences to the resident or others;

(C) A description of the resident's preference(s);

(D) Possible alternatives or interventions to minimize the potential risks associated with the resident's current preferences and actions;

(E) A description of the services the facility will provide to accommodate the resident's choice or minimize the potential risk; and

(F) The final agreement, if any, reached by all involved parties, must be included in the service plan.

(b) The facility will involve the resident, the resident's designated representative and others as indicated, to develop, implement and review the managed risk plan. The resident's preferences will take precedence over those of a family member(s).

(c) A managed risk plan will not be entered into or continued with or on behalf of a resident who is unable to recognize the consequences of their behavior or choices.

(d) The managed risk plan must be reviewed at least quarterly.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0040

### Change of Condition and Monitoring

(1) CHANGE OF CONDITION. These rules define a resident's change of condition as either short term or significant with the following meanings:

(a) Short term change of condition means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(b) Significant change of condition means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident.

(c) If a resident experiences a significant change of condition that is a major deviation in the resident's health or functional abilities, the facility must evaluate the resident, refer to the facility nurse, document the change, and update the service plan as needed.

(d) If a resident experiences a short-term change of condition that is expected to resolve or reverse with minimal intervention, the facility must determine and document what action or intervention is needed for the resident.

(A) The determined action or intervention must be communicated to staff on each shift.

(B) The documentation of staff instructions or interventions must be resident specific and made part of the resident record with weekly progress noted until the condition resolves.

(2) MONITORING. The facility must have written policies to ensure a resident monitoring and reporting system is implemented 24-hours a day. The policies must specify staff responsibilities and identify criteria for notifying the administrator, registered nurse, or healthcare provider. The facility must:

(a) Monitor each resident consistent with his or her evaluated needs and service plan;

(b) Train staff to identify changes in the resident's physical, emotional and mental functioning and document and report on the resident's changes of condition;

(c) Have a reporting protocol with access to a designated staff person, 24-hours a day, seven days a week, who can determine if a change in the resident's condition requires further action; and

(d) Provide written communication of a resident's change of condition, and any required interventions, for caregivers on each shift.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0045

### Resident Health Services

(1) RESIDENT HEALTH SERVICES. The facility must provide health services and have systems in place to respond to the 24-hour care needs of residents. The system must:

(a) Include written policies and procedures on medical emergency responses for all shifts.

(b) Include an Oregon licensed nurse(s) who is regularly scheduled for onsite duties at the facility and who is available for phone consultation.

(c) Assure an adequate number of nursing hours relevant to the census and acuity of the resident population.

(d) Ensure that the facility's licensed nurse is notified of nursing needs as identified in OAR 411-054-0034 (Resident Move-In and Evaluation) or OAR 411-054-0036 (Service Plan – General).

(e) Define the duties, responsibilities and limitations of the facility nurse in policy and procedures, admission, and disclosure material.

(f) Licensed nurses must deliver the following nursing services:

(A) Registered nurse (RN) assessment in accordance with facility policy and resident condition. At minimum the RN must assess all residents with a significant change of condition. The assessment may be a full or problem focused assessment as determined by the RN. A chart review or phone consultation may be performed as part of this assessment. The RN must document findings, resident status, and interventions made as a result of this assessment. The assessment must be timely, but is not required prior to emergency response in acute situations.

(B) Delegation and Teaching. Delegation and teaching must be provided and documented by a RN in accordance with the Oregon Administrative Rules adopted by the Oregon State Board of Nursing in chapter 851, division 047.

(C) Monitoring of Resident Condition. The facility must specify the role of the licensed nurse in the facility's monitoring and reporting system.

(D) Participation on Service Planning Team. If the resident experiences a significant change of condition and the service plan is updated, the licensed nurse must participate on the Service Planning Team, or must review the service plan with date and signature within 48 hours.

(E) Health Care Teaching and Counseling. A licensed nurse must provide individual and group education activities as required by individual service plans and facility policies.

(F) Intermittent Direct Nursing Services. If a resident requires nursing services that are not available through hospice, home health, a third party referral, or the task cannot be delegated to facility staff, the facility must arrange to have such services provided on an intermittent or temporary basis. Such services may be of a temporary nature as defined in facility policy, admission agreements and disclosure information.

(2) ON-SITE AND OFF-SITE HEALTH SERVICES. The facility must assist residents in accessing health care services and benefits to which they are entitled from outside providers. When benefits are no longer available, or if the resident is not eligible for benefits, the facility must provide or coordinate the required services, as defined in facility disclosure information, for residents whose health status is stable and predictable.

(a) On-site Health Services. The facility must coordinate on-site health services with outside service providers such as hospice, home health, or other privately paid supplemental health care providers, etc.

(A) The facility management or licensed nurse must be notified of the services provided by the outside provider to ensure that staff are informed of new interventions, and that the service plan is adjusted if necessary, and reporting protocols are in place.

(B) The facility nurse must review the resident's health related service plan changes made as a result of the provision of on-site health services noted in section (2)(a)(A) of this rule.

(C) The facility must have policies to ensure that outside service providers leave written information in the facility that addresses the on-site

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services being provided to the resident and any clinical information necessary for facility staff to provide supplemental care.

(b) Off-site Health Services. The facility must coordinate off-site health services for residents who cannot or choose not to self-manage their health services.

(A) The facility must assist the resident by coordinating appointments, with outside providers, that are necessary to support the resident's health needs.

(B) Transportation for medical purposes must be arranged or provided for by the facility.

(C) Following a resident's visit to an outside medical provider, if information is obtained from said provider, it must be included in the resident's record. Adjustments to the resident's services and service plan must be made as applicable.

(D) The facility must provide relevant information to the off-site provider and must have a protocol to facilitate the receipt of information from the provider.

(c) The facility is exempt from the coordination of outside health services for residents who are capable and choose to independently arrange and manage their health care needs.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0055

### Medications and Treatments

(1) MEDICATION AND TREATMENT ADMINISTRATION SYSTEMS. The facility must have safe medication and treatment administration systems in place that are approved by a pharmacist consultant, registered nurse, or physician.

(a) The administrator is responsible for ensuring adequate professional oversight of the medication and treatment administration system.

(b) Medications administered by the facility must be set-up or poured and documented by the same person who administers the medications.

(c) The staff person who administers the medication must visually observe the resident take (e.g., ingest, inhale, apply, etc.) the medication unless the prescriber's order for that specific medication states otherwise.

(d) Medications must be kept secure between set-up and administration of medications.

(e) The facility must have a system approved by a pharmacist consultant or registered nurse for tracking controlled substances and for disposal of all unused, outdated or discontinued medications administered by the facility.

(f) Medication and treatment orders must be carried out as prescribed.

(g) Written, signed physician or other legally recognized practitioner orders must be documented in the resident's facility record for all medications and treatments that the facility is responsible to administer.

(h) Only a physician or other legally recognized prescribing practitioner is authorized to make changes in a medication or treatment order.

(i) A registered pharmacist or registered nurse must review all medications and treatments administered by the facility to a resident at least every ninety days. The facility must provide documentation related to the recommendations made by the reviewer.

(j) The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse, medications and treatments.

(k) The physician/practitioner must be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order will be reported as requested by the prescriber.

(2) MEDICATION ADMINISTRATION. An accurate Medication Administration Record (MAR) must be kept of all medications, including over-the-counter medications that are ordered by a legally recognized prescriber and are administered by the facility.

(a) Documentation of the MAR must be completed using one of the following processes. An alternative process may be used only with a written exception from SPD.

(A) The MAR may be signed as the medications are set-up or poured. Medications must not be set-up in advance for more than one administration time. If a medicine cup or other individual container is used to set-up the medications, it must be placed in a closed compartment labeled with the resident's name. Changes to the MAR that occur after the medication is delivered, must be documented by the same staff person who administered the medication; or

(B) The facility may choose to sign the MAR after the medication is administered to a specific resident and prior to the next resident-specific medication or treatment.

(b) MEDICATION RECORD. At minimum, the medication record for each resident that the facility administers medications to, must include:

(A) Current month, day and year;

(B) Name of medication(s), reason for use, dosage, route and date/time given;

(C) Any medication specific instructions, if applicable (e.g., significant side effects, time sensitive dosage, when to call the prescriber or nurse);

(D) Resident allergies and sensitivities, if any;

(E) Resident specific parameters and instructions for p.r.n. medications; and

(F) Initials of the person administering the medication.

(3) TREATMENT ADMINISTRATION.

(a) An accurate treatment record for each resident must be kept of all treatments ordered by a legally recognized practitioner and administered by the facility to that resident.

(b) The treatment record must include:

(A) Current month, day and year;

(B) Type of treatment (e.g., dressing change, ointment application etc.), treatment instructions and if applicable, significant side effects or when to call the prescriber or nurse;

(C) Date and time administered;

(D) Resident allergies and sensitivities, applicable to treatments;

(E) Instructions for p.r.n. treatments, including resident specific parameters;

(F) Initials of person administering the treatments; and

(G) Any deviation from instructions or refusal of treatment must be documented.

(4) MEDICATION AND TREATMENT — GENERAL. The facility must maintain legible signatures of staff that administer medications and treatments, either on the MAR or on a separate signature page, filed with the MAR.

(a) If the facility administers or assists a resident with medication, all medication obtained through a pharmacy must be clearly labeled with the pharmacist's label, in the original container, in accordance with the facility's established medication delivery system.

(b) Over-the-counter medication or samples of medications must have the original manufacturer's label(s) if the facility administers or assists a resident with medication.

(c) All medications administered by the facility must be stored in a locked container(s) in a secured environment such as a medication room or medication cart.

(d) Medications that have to be refrigerated must be stored at the appropriate temperature in a locked, secure location.

(e) Order changes obtained by telephone must be documented in the resident's record and the MAR must be updated prior to administering the new medication stated on the order. Telephone orders must be followed-up with written, signed orders.

(f) The facility must not require residents to purchase prescriptions from a pharmacy that contracts with the facility.

(5) SELF ADMINISTRATION OF MEDICATION.

(a) Residents who choose to self-administer their medications must be evaluated upon move-in and at least quarterly thereafter, to assure ability to safely self-administer medications.

(b) Residents must have a physician's or other legally recognized practitioner's written order of approval for self-administration of prescription medications.

(c) Residents able to administer their own medication regimen may keep prescription medications in their unit.

(d) If more than one resident resides in the unit, an evaluation must be made of each person and the resident's ability to safely have medications in the unit. If safety is a factor, the medications must be kept in a locked container in the unit.

(e) Unless contraindicated by a physician or resident evaluation, residents may keep and use over-the-counter medications in their unit without a written order.

(6) PSYCHOACTIVE MEDICATION. Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(a) Facility administered psychoactive medication(s) will be used only when required to treat a resident's medical symptoms or to maximize a resident's functioning.

(b) The facility must not request psychoactive medication to treat a resident's behavioral symptoms without a consultation from a physician, nurse practitioner, registered nurse or mental health professional.

# ADMINISTRATIVE RULES

(c) Prior to administering any psychoactive medication(s) to treat a resident's behavior, all caregivers administering medications for the resident must know:

(A) The specific reasons for the use of the psychoactive medication for that resident;

(B) The common side effects of the medication(s); and

(C) When to contact a health professional regarding side effects.

(d) Medications that are administered p.r.n. that are given to treat a resident's behavior must have written, resident-specific parameters.

(A) These p.r.n. medication(s) may be used only after documented; non-pharmacological interventions have been tried with ineffective results.

(B) All caregivers must have knowledge of non-pharmacological interventions.

(c) Psychoactive medications must not be given to discipline a resident, or for the convenience of the facility.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0060

### Restraints and Supportive Devices

Residential care and assisted living facilities are intended to be restraint free environments.

(1) Restraints are not permitted except when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) Supportive devices with restraining qualities are permitted under the following documented circumstances:

(a) The resident specifically requests or approves of the device and the facility has informed the individual of the risks and benefits associated with the device; and

(b) The facility registered nurse, a physical therapist or occupational therapist has conducted a thorough assessment; and

(c) The facility has documented other less restrictive alternatives evaluated prior to the use of the device; and

(d) The facility has instructed caregivers on the correct use and precautions related to use of the device.

(3) Supportive devices with restraining qualities may be utilized for residents who are unable to evaluate the risks and benefits of the device when sections (2)(b), (2)(c) and (2)(d) have been met.

(4) Documentation of the use of supportive devices with restraining qualities must be included in the resident service plan and evaluated on a quarterly basis.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0065

### Administrator Qualifications and Requirements

(1) FULL-TIME ADMINISTRATOR. Each licensed residential care and assisted living facility must employ a full-time administrator. The administrator must be scheduled to be on-site in the facility at least 40 hours per week.

#### (2) ADMINISTRATOR QUALIFICATIONS:

(a) Be at least 21 years of age, and possess a high school diploma or equivalent; and have at least two years professional or management experience that has occurred within the last five years, in a health or social service related field or program, or have a combination of experience and education; or

(b) Possess an accredited Bachelors Degree in a health or social service related field.

#### (3) ADMINISTRATOR REQUIREMENTS:

(a) Facility administrators must meet the following training requirements prior to employment:

(A) Complete a SPD approved classroom administrator-training program of at least 40 hours; or

(B) Complete a SPD approved administrator-training program that includes both a classroom training of less than 40 hours and a SPD approved 40-hour internship program with a SPD approved administrator; or

(C) Complete another SPD approved administrator-training program.

(b) CONTINUING EDUCATION. Administrators must have 20 hours of documented SPD approved continuing education credits each year. The approved administrator-training program fulfills the 20-hour continuing education requirement for the first year.

(c) Individuals who have met SPD approved training program requirements but have been absent from an administrator position for five

years or less, do not have to re-take the administrator training, but must provide evidence of 20 hours of continuing education annually.

(d) Prior to employment as administrator of a facility, individuals must complete the requirements of OAR chapter 407, division 007 (Criminal History Check Rules) and comply with OAR 333-019-0041 (Tuberculosis).

(e) ADMINISTRATOR REFERENCE SUMMARY. Newly hired administrators are responsible for the completion of form SDS 0566, Administrator Reference Summary, and are required to fax the completed form to SPD upon hire. SPD may reject a form that has been falsified or is incomplete.

(f) DESIGNEE. The administrator must appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator or a designee must be in charge on site at all times and ensure there are sufficient, qualified staff and that the care, health, and safety needs of the residents are met at all times.

#### (4) ADMINISTRATOR TRAINING COURSE STANDARDS.

(a) The training curriculum for the administrator training must be approved by SPD and will be re-evaluated by SPD at periodic intervals.

(b) Individuals, companies or organizations providing the administrator training course must be approved by SPD. SPD may withdraw approval under the following conditions:

(A) Failure to follow SPD approved curriculum;

(B) The trainer demonstrates lack of competency in training;

(C) There is insufficient frequency of training to meet the need; or

(D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training must be open and available to all applicants and must not be used to orient trainees to a specific company's management or operating procedures.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0070

### Staffing Requirements and Training

(1) STAFFING REQUIREMENTS. Facilities must have qualified awake caregivers, sufficient in number, to meet the 24-hour scheduled and unscheduled needs of each resident. Caregivers provide services for residents that include assistance with activities of daily living, medication administration, resident-focused activities, supervision, and support.

(a) If a facility employs universal workers whose duties include other tasks (e.g., housekeeping, laundry, food service, etc.), in addition to direct resident care, staffing must be increased to maintain adequate resident care and services.

(b) Prior to providing care and services to residents, caregivers must be trained as required in sections (2) and (3) of this rule.

(c) The following facility employees are ancillary to the caregiver requirements in this section:

(A) Individuals whose duties are exclusively housekeeping, building maintenance, clerical/administrative or food preparation;

(B) Licensed nurses who provide services as specified in OAR 411-054-0045 (Resident Health Services); and

(C) Administrators.

(d) SPD retains the right to require minimum staffing standards based on acuity, complaint investigation or survey inspection.

(e) Based on resident acuity and facility structural design there must be adequate caregivers present at all times, to meet the fire safety evacuation standards as required by the fire authority or SPD.

(f) The licensee is responsible for assuring that staffing is increased to compensate for the evaluated care and service needs of residents at move-in and for the changing physical or mental needs of the residents.

(g) A minimum of two caregivers must be scheduled and available at all times whenever a resident requires the assistance of two caregivers for scheduled and unscheduled needs.

(h) In facilities where residents are housed in two or more detached buildings, or if a building has distinct and segregated areas, a designated caregiver must be awake and available in each building and each segregated area at all times.

(i) Facilities must have a written, defined system to determine appropriate numbers of caregivers and general staffing based on resident acuity and service needs. Such systems may be either manual or electronic.

(A) Guidelines for systems must also consider physical elements of a building, use of technology if applicable and staff experience.

(B) Facilities must be able to demonstrate how their staffing system works.

# ADMINISTRATIVE RULES

## (2) TRAINING REQUIREMENTS.

(a) EMPLOYEE PRE-SERVICE ORIENTATION. Prior to beginning their job responsibilities all employees must complete an orientation that includes:

- (A) Residents' rights and the values of community-based care;
- (B) Abuse and reporting requirements;
- (C) Standard precautions for infection control; and
- (D) Fire safety and emergency procedures.

(b) If the staff member's duties include preparing food, they must have a food handler's certificate.

(c) All staff must receive a written description of their job responsibilities.

## (3) CAREGIVER REQUIREMENTS AND TRAINING.

(a) The facility must have a training program that has a method to determine performance capability through a demonstration and evaluation process.

(b) The facility is responsible to assure that caregivers have demonstrated satisfactory performance in any duty they are assigned. Knowledge and performance must be demonstrated in all areas within the first 30 days of hire, including, but not limited to:

(A) The role of service plans in providing individualized resident care;

- (B) Providing assistance with the activities of daily living;
- (C) Changes associated with normal aging;

(D) Identification of changes in the resident's physical, emotional and mental functioning and documentation and reporting on the resident's changes of condition;

(E) Conditions that require assessment, treatment, observation and reporting;

(F) Understanding resident actions and behavior as a form of communication;

(G) Understanding and providing support for a person with dementia or related condition;

- (H) General food safety, serving and sanitation; and

(I) If the caregiver's duties include the administration of medication or treatments, appropriate facility staff, in accordance with OAR 411-054-0055 (Medications and Treatments) must document that they have observed and evaluated the individual's ability to perform safe medication and treatment administration unsupervised.

(c) Prior to providing personal care services for resident, caregivers must receive an orientation to the resident, including the resident's service plan. Staff members must be directly supervised by a qualified person until they have successfully demonstrated satisfactory performance in any task assigned and the provision of individualized resident services, as applicable.

(d) Documentation must be maintained regarding training and demonstrated ability.

(e) All direct caregivers must complete and document a minimum of 12 hours of in-service training annually on topics related to the provision of care for persons in a community-based care setting, including training on chronic diseases in the facility population.

(f) Staff under 18 years of age must not perform medication administration or delegated nursing tasks. Staff under the age of 18 must be directly supervised when providing bathing, toileting, incontinence care or transferring services.

(g) Staff must be trained in the use of the abdominal thrust and First Aid. Cardiopulmonary resuscitation (CPR) training is recommended, but not required.

(h) Staff must have sufficient communication and language skills to enable them to perform their duties and communicate with residents, other staff, family members, health care professionals, etc., as needed.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0080

### Involuntary Move-out Criteria

The Department of Human Services, Seniors and People with Disabilities Division encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the community-based care setting due to safety and medical limitations.

(1) Information must be specified in the facility's disclosure information that describes the types of health, nursing, behavior and care services the facility is unable to provide. The minimum required services identified in OAR 411-054-0030 (Resident Services) must be provided before a resi-

dent can be asked to move-out. In addition, facilities that are indorsed under OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) must provide services to support residents with the progressive symptoms of the disease.

(2) The facility must give written notification on form number SDS 0567 to the resident, the resident's legal representative and case manager, if applicable, when the facility requests a resident to move from the facility. The resident must be given 30 days advance written notice to move from the facility unless criteria in section (6) of this rule are met.

(3) The facility must demonstrate through service plan modification and documentation, attempts to resolve the reason for the move out.

(4) A resident may be asked to move from a facility if one or more of the following circumstances exists:

(a) The resident's needs exceed the level of ADL services the facility provides as specified in the facility's disclosure information;

(b) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others;

(c) The resident has a medical or nursing condition that is complex, unstable or unpredictable and exceeds the level of health services the facility provides as specified in the facility's disclosure information;

(d) The facility is unable to accomplish resident evacuation in accordance with OAR 411-054-0090 (Fire and Life Safety);

(e) The resident exhibits behavior that poses a danger to self or others;

(f) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others; or

(g) Non-payment of charges.

(5) The facility must fax a copy of the move-out notice to SPD's central office in Salem. Where a resident lacks capacity and there is no legal representative, a copy of the notice to move-out must be faxed to the State Long-Term Care Ombudsman who may request an informal conference and administrative hearing for the resident.

(6) LESS THAN 30-DAY NOTICE. The resident must be given 30 days advance written notice before being moved from the facility, except in the following unusual circumstances:

(a) A resident who leaves the facility to receive urgent medical or psychiatric care may return to the facility unless, at the time the resident is to return, facility staff have re-evaluated the resident's needs and have determined that the resident's needs cannot be met at the facility.

(A) An appropriate facility staff person must re-evaluate the resident's condition prior to determining that the facility cannot meet the resident's needs.

(B) A written notice on form number SDS 0568 must be given to the resident or the resident's legal representative on the date the facility makes its determination. The written notice will contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(C) If the resident or resident's designee requests an administrative hearing, the facility must hold the resident's room or unit and may charge room and board payment pending resolution of the administrative hearing.

(b) If the health or safety of the resident or others is in jeopardy and undue delay in moving the resident increases the risk of harm, the facility may give less than 30 days advance written notice on form number SDS 0568.

(A) SPD's central office in Salem must be consulted and alternatives reviewed prior to the resident receiving this notice.

(B) The resident is entitled to request an administrative hearing, as stated in section (7) of this rule.

(C) If the resident is moved out of the facility and requests an administrative hearing; the facility must hold the resident's room, without charge for room and board or services, pending resolution of the administrative hearing.

(c) The facility must fax a copy of the move-out notice to SPD's central office in Salem and the State Long-Term Care Ombudsman Office on the same day the notice is delivered to the resident or the resident's legal representative.

(7) ADMINISTRATIVE HEARING. Except when a facility has had its license revoked, not renewed, voluntarily surrendered, or terminates its Medicaid contract, a resident who receives an involuntary move-out notice is entitled to an administrative hearing, provided the resident or resident's designee requests a hearing in a timely manner.

(a) A resident who receives a 30-day notice to move has ten working days to request an administrative hearing after receipt of the notice. SPD's central office in Salem must be notified of all hearing requests.

# ADMINISTRATIVE RULES

(b) SPD's central office in Salem will notify the Office of Administrative Hearings of the resident's request for a formal administrative hearing.

(c) SPD may hold an informal conference to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, no formal hearing will be held.

(d) A resident who is not allowed to return to the facility after receiving medical or psychiatric care, or who is immediately moved out of the facility to protect the health or safety of the resident or others, as specified in section (6) of this rule, has five working days to request an administrative hearing after receiving the move-out notice.

(A) SPD's central office in Salem must be notified by telephone or fax of a resident's request for hearing.

(B) When the resident is not allowed to remain in the facility, SPD's central office in Salem will request an expedited administrative hearing.

(e) The facility may not rent the resident's unit pending resolution of the administrative hearing.

(8) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:

(a) The facility was not notified prior to admission that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime; and

(b) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime; and

(c) The resident presents a current risk of harm to another resident, staff or visitor in the facility, as evidenced by:

(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; or

(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

(d) Prior to the move, the facility must contact SPD's central office in Salem by telephone and review the criteria in sections (8)(c)(A) and (B) of this rule. SPD will respond within one working day of contact by the facility. The Department of Corrections parole or probation officer must be included in the review, if available. SPD will advise the facility if rule criteria for immediate move out are not met. DHS will assist in locating placement options.

(e) A written move-out notice must be completed on form number SDS 0568A. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(f) Prior to the move, the facility must orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility will immediately telephone SPD's central office in Salem when a hearing is requested. The hearing will be held within five business days of the resident's move. No informal conference will be held prior to the hearing.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0085

### Refunds and Financial Management

(1) RESIDENT DEATH. If a resident dies, the licensee must not require payment for more than 15 days, or the time specified in the admission agreement, whichever is less, after the date of the resident's death.

(2) RESIDENT UNABLE TO RETURN. If a resident must leave the facility for medical reasons and the resident or their representative indicates the intent not to return, the facility must not charge the resident for more than 15 days after the date notification is received from the resident or their representative, or the time specified in the admission agreement, whichever is less.

(a) If the resident's personal belongings are not removed from the facility within the 15-day timeframe, the facility may charge the resident as specified in the admission agreement. However, the facility must not charge for more than 30 days after receiving notification that the resident is unable to return.

(b) A reasonable storage fee may be charged for storage of the resident's belongings beyond 30 days if the admission agreement includes fees for storage.

(3) SUBSTANTIATED ABUSE. If a resident dies or leaves a facility due to substantiated neglect, substantiated abuse, or due to conditions of imminent danger of life, health or safety, as substantiated by DHS, the facility must not charge the resident beyond the resident's last day in the facility.

(4) INVOLUNTARY MOVE-OUT. If the facility gives written notice for the resident to leave, the facility waives the right to charge for services or room and board beyond the date of the resident's departure. If applicable, the facility may pursue past due charges that the resident incurred prior to move-out.

(5) REFUNDS. The provider will refund any advance payments within 30 days after the resident leaves the facility.

(6) RATE INCREASES. The facility must provide 30 days prior written notice of any facility-wide increases, additions or changes.

(7) SERVICE RATE INCREASES. The facility must provide immediate written notice at the time the facility determines a resident's service rates will increase due to increased service provision, as negotiated in a service plan.

(8) PERSONAL INCIDENTAL FUNDS. The facility must have written policies, procedures and accounting records for handling residents' personal incidental funds that are managed in the resident's own best interest.

(a) The resident may manage their personal financial resources, or may authorize another person or the facility to manage personal incidental funds.

(b) The facility must hold, manage and account for the personal funds of the resident when requested in writing by the resident.

(c) Records must include the Resident Account Record (SDS 713) or other comparable expenditure form if the facility manages or handles a resident's money.

(A) The resident account record will show in detail, with supporting documentation, all monies received on behalf of the resident and the disposition of all funds received.

(B) Persons shopping for residents will provide a list showing description and price of items purchased, along with payment receipts for these items.

(C) The facility must provide a copy of the individual financial record to the resident on a quarterly basis.

(d) Resident funds must not be co-mingled with facility funds. Funds containing more than \$150.00 must be maintained in the resident's own interest-bearing account or in an interest bearing account with a system that credits the appropriate interest specifically to each resident.

(e) Residents must have reasonable access to their funds. At minimum, requests to access personal incidental funds must be acted upon by the facility within one day of the request, excluding weekends and holidays.

(f) Upon the death of a Medicaid resident with no known surviving spouse, personal incidental funds held by the facility for the resident must be forwarded within ten business days of the death of the resident to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem OR 97309.

(g) The facility must maintain documentation of the action taken and the amount of funds conveyed.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. eff. 11-1-07

## 411-054-0090

### Fire and Life Safety

(1) FIRE DRILLS. Unannounced fire drills must be conducted and recorded every other month at different times of the day, evening, and night shifts. Fire and life safety instruction to staff must be provided on alternate months. The Fire Authority may develop an alternative fire drill plan for the facility. Any such plan must be submitted to SPD.

(a) A written fire drill record must be kept to document fire drills that include:

(A) Date and time of day;

(B) Location of simulated fire origin;

(C) The escape route used;

(D) Comments relating to residents who resisted or failed to participate in the drills;

(E) Evacuation time period needed; and

(F) Whether the alarm system was operative at the time of the drill.

(b) Alternate exit routes must be used during fire drills to react to varying potential fire origin points.

(c) The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff.

# ADMINISTRATIVE RULES

(d) Staff must provide fire evacuation assistance to residents from the building to a designated point of safety as determined by the Fire Authority having jurisdiction. Points of safety may include, outside the building, through a horizontal exit, or other areas as determined by the Fire Authority having jurisdiction.

(e) Fire alarms, smoke detectors, or other approved signal devices must be set off during each fire drill, unless otherwise directed by the Fire Authority having jurisdiction.

(2) If the facility is unable to meet the applicable evacuation level, the facility must make an immediate effort to make changes to ensure the evacuation standard is met. Changes must include, but not be limited to, increasing staff levels, changing staff assignments, requesting change in resident rooms and arranging for special equipment. If the facility fails to meet the applicable evacuation level, the facility must issue an involuntary move-out notice to the resident(s) in accordance with OAR 411-054-0080 (Involuntary Move-Out Criteria).

(3) Fire detection and protection equipment, including visual signals with alarms for hearing-impaired residents, must be maintained in accordance with the Oregon Fire Code and the manufacturer's instructions.

(a) The facility must provide and maintain one or more 2A:10B:C fire extinguishers on each floor in accordance with the Oregon Fire Code.

(b) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original containers in accordance with the fire authority having jurisdiction.

(4) SAFETY PROGRAM. A safety program must be developed and implemented to avoid hazards to residents, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, broken glass, water temperatures and fire prevention.

(5) TRAINING FOR RESIDENTS. Residents must be instructed about the facility's fire and life safety procedures.

(a) Each resident must be instructed within 24 hours of admission and re-instructed at least annually in general safety procedures, evacuation methods, responsibilities during fire drills, designated meeting places outside the building or within the fire safe area in the event of an actual fire. This requirement does not apply to residents whose mental capability does not allow for following such instruction; and

(b) A written record of fire safety training, including content of the training sessions and the residents attending, must be kept.

(6) UNOBSTRUCTED EGRESS. Stairways, halls, doorways, passageways, and exits from rooms and from the building must be unobstructed.

(7) SMOKING. A facility can designate itself as non-smoking.

(a) Outdoor designated smoking areas must be located in a safe, covered area.

(b) If there is a designated area within the building common areas or shared space it must be designed to keep other areas smoke free.

(8) FIRST-AID SUPPLIES. First-aid supplies must be provided, properly labeled, and readily accessible.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0093

### Emergency and Disaster Planning

(1) Evacuation of a facility may become necessary in the event of a disaster (e.g., fire, smoke, bomb threat or explosion, prolonged power failure, structural damage, water or sewer loss, hurricane, tornado, tsunami, volcanic eruption, flood, earthquake or chemical spill or leak). If an evacuation must occur, an evacuation site or housing site will be needed until such time residents may be returned to the facility or are placed in an alternate facility.

(2) In the event of an emergency that requires evacuation, facilities must have a written plan for transporting, housing residents and notifying SPD and the local AAA office, or designee. The local emergency authority, fire marshal designee, or agency with local emergency jurisdiction, must review the plan.

(3) Facilities must have a plan and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0100

### Exceptions and Waivers

(1) SPD may grant exceptions to these rules as provided herein. Exceptions will not be granted that are determined, in the discretion of SPD, to be detrimental to the residents. The facility seeking an exception must submit to SPD, in writing, reasons for the exception request.

(2) No exception will be granted from a regulation or provision of these rules pertaining to the monitoring of the facility, resident rights, and inspection of the public files.

(3) Exceptions granted by SPD must be in writing and be reviewed periodically. Exceptions and waivers may be rescinded at any time if SPD determines that continuance of the waiver has a potential adverse impact on resident well-being, privacy, or dignity. SPD will send written notice to the provider with reason(s) why a waiver is denied or rescinded.

(4) If applicable, exceptions will not be granted by SPD without prior consultation with other agencies involved.

(5) For assisted living facilities: an individual exception is required for each resident who chooses to share a unit with someone other than his/her spouse or partner.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0105

### Inspections and Investigations

(1) The facility must cooperate with SPD personnel in inspections, complaint investigations, planning for resident care, application procedures and other necessary activities.

(a) Records must be made available to SPD upon request. SPD personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement will result in regulatory action.

(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.

(c) The State Fire Marshal or authorized representative(s) must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of SPD will visit and inspect every facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules.

(a) Facilities not in compliance with these rules must submit a plan of correction that satisfies SPD, within ten days of receipt of the inspection report.

(b) In addition, SPD may impose sanctions for failure to comply with these rules.

(3) SPD staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment and other areas of operation.

(4) A copy of the most current inspection 88 and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0110

### Conditions

(1) Conditions may be attached to a license upon a finding that:

(a) Information on the application or inspection requires a condition to protect the health and safety of residents;

(b) There exists a threat to the health, safety, and welfare of a resident;

(c) There is reliable evidence of abuse, neglect, or exploitation; or

(d) The facility is not being operated in compliance with these rules.

(2) Conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of residents;

(b) Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;

(c) Requiring additional staff or staff qualifications;

(d) Requiring additional training for staff;

(e) Requiring additional documentation; or

(f) Restriction of admissions.

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(3) IMPENDING IMPOSITION OF LICENSE CONDITION. Except where the threat to residents is so imminent that SPD determines that it is not safe or practical to give the facility advance notice, SPD will provide the licensee with a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition (Order). The Notice may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person represented by facility staff to be in charge at the facility. When the Notice is delivered orally, SPD must subsequently provide written notice to the licensee by registered or certified mail. The Notice must:

(a) Generally describe the acts or omissions of the licensee and the circumstances that led to the finding that the imposition of a license condition is warranted;

(b) Generally describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted;

(c) Provide a brief statement identifying the nature of the impending condition;

(d) Identify a person at SPD whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order;

(e) Specify the date and time an informal conference will be held, if requested by the licensee; and

(f) Specify the date and time the Order will take effect.

(4) INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by SPD. If determined to be appropriate by SPD, the conference may be held by telephone.

(a) With Notice. If a Notice is issued, the licensee must be provided with an opportunity for an informal conference to object to SPD's proposed action before the condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference.

(b) Without Notice. If an Order is issued without a prior Notice, the licensee may request an immediate informal conference to object to SPD's action.

(c) Licensees may also request a contested case hearing as set forth in section (5) of this rule.

(5) ORDER IMPOSING LICENSE CONDITION. When an Order is issued, SPD must serve the Order to the licensee either personally or by registered or certified mail. The Order must include the following statements:

(a) The authority and jurisdiction under which the condition is being issued;

(b) A reference to the particular sections of the statute and administrative rules involved;

(c) The effective date of the condition;

(d) A short and plain statement of the nature of the matters asserted or charged;

(e) The specific terms of the license condition;

(f) Statement of the licensee's right to request a hearing;

(g) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify SPD;

(h) That, if a request for hearing is not received by SPD within 21 days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183;

(i) Findings of specific acts or omissions of the licensee that are grounds for the condition, and the reasons these acts or omissions create a situation for which the imposition of a license condition is warranted; and

(j) That SPD may combine the hearing on the Order with any other SPD proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

(6) A licensee who has been ordered to restrict admissions to a facility must immediately post a "Restriction of Admissions Notice" that is provided by SPD, on both the inside and outside faces of each door of the facility through which any person enters or exits a facility. The notices must not be removed, altered or obscured until SPD has lifted the restriction.

(7) HEARING.

(a) Right to Hearing. If SPD imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.

(b) Hearing Request. SPD must receive the licensee's request for a hearing within 21 days of the date of Order. If a request for hearing is not

received by SPD within 21 days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.

(c) Date of Hearing. When a timely request for hearing is received, the hearing will be held as soon as practical.

(8) REQUEST FOR REINSPECTION. When the licensee determines the circumstances leading to imposition of the condition no longer exist, and that effective systems are in place to help ensure similar deficiencies do not recur, the licensee may make written request to SPD for a reinspection. SPD must conduct the reinspection within fifteen working days following receipt of the written request.

(9) REINSPECTION.

(a) If SPD finds that the situation for which the condition was imposed has been corrected, and finds that systems are in place to ensure similar deficiencies do not recur, the condition will be withdrawn. SPD will notify the facility by telephone, within five working days from the completion of the reinspection, of the decision to withdraw the condition. Telephone notification will be followed by written notification.

(b) If SPD determines, after a reinspection, that the situation for which the condition was imposed continues to exist, the license condition will not be withdrawn and SPD is not obligated to reinspect again for at least 45 days. A decision not to withdraw the Order must be given to the licensee in writing and the licensee must be informed of the right to a contested case hearing pursuant to ORS chapter 183. Nothing in this rule is intended to limit SPD's authority to visit or inspect the facility at any time.

(10) EXCEPTIONS TO ORDER IMPOSING LICENSE CONDITION. When a restriction of admissions is in effect pursuant to an Order, SPD, in its sole discretion, may authorize the facility to admit new residents for whom SPD determines that alternate placement is not feasible.

(11) Conditions may be imposed for the duration of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on the attachment to the license.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0120

### Civil Penalties

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) For purposes of this rule, "person" means a licensee under ORS 443.420 or a person who the Assistant Director of the Seniors and People with Disabilities Division finds should be so licensed but is not; but does not include any employee of such licensee or person.

(3) For purposes of this rule, "resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411-054-0027 (Resident Rights and Protections).

(4) SPD will exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to residential care and assisted living facilities:

(a) A Class I violation exists when there is non-compliance involving direct resident care or feeding, adequate staff, sanitation involving direct resident care or resident rights. A Class I violation may result in imposition of a fine for first and subsequent violations of no less than \$5 and no more than \$500 per occurrence, per day, not to exceed \$6,000 in any calendar quarter;

(b) A Class II violation exists when there is non-compliance with the license requirements relating to a license required, the license requirements relating to administrative management, personal services (care) and activities. Class II violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility. The fine may be no less than \$5 and no more than \$300 per occurrence, per day, not to exceed \$6,000 in any calendar quarter; and

(c) A Class III violation exists when there is non-compliance with the license requirements relating to building requirements and resident furnishings. Class III violations may result in imposition of a fine for violations found on two consecutive monitorings of the residential care facility. The fine may be no less than \$5 and no more than \$150 per occurrence, per day, not to exceed \$6,000 in any calendar quarter.

(5) For purposes of this rule, a monitoring occurs when a residential care or assisted living facility is surveyed, inspected or investigated by an

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employee or designee of SPD or an employee or designee of the State Fire Marshal.

(6) In imposing a penalty pursuant to the schedule published in section (4) of this rule, the Department's Assistant Director of the Seniors and People with Disabilities Division, or a designee, must consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to residential care or assisted living facilities;

(c) The economic and financial conditions of the person incurring the penalty; and

(d) The immediacy and extent that the violation threatens the health, safety, and well-being of residents.

(7) Any civil penalty imposed under ORS 443.455 and 441.710 will become due and payable when the person incurring the penalty receives a notice in writing from the Department's Assistant Director of Seniors and People with Disabilities Division or a designee. The notice referred to in this rule will be sent by registered or certified mail and will include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(8) The person to whom the notice is addressed will have ten days from the date of mailing the notice to make written application for a hearing before SPD.

(9) All hearings will be conducted pursuant to the applicable provisions of ORS chapter 183.

(10) If the person notified fails to request a hearing within ten days, an order may be entered by SPD assessing a civil penalty.

(11) If, after a hearing, the person is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the SPD assessing a civil penalty.

(12) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Department's Assistant Director of Seniors and People with Disabilities Division considers proper and consistent with the public health and safety.

(13) If the order is not appealed, the amount of the penalty is payable within ten days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within ten days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Department's Assistant Director of Seniors and People with Disabilities Division is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(15) Judicial review of civil penalties imposed under ORS 441.710 will be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0130

### Non-Renewal, Denial, Suspension or Revocation of License

(1) SPD will deny, suspend, revoke or refuse to renew a license where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or authorized representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) SPD will deny, suspend, revoke or refuse to renew a license if the licensee fails to implement a plan of correction or comply with a final order of SPD imposing an administrative sanction, including the imposition of a Civil Penalty.

(3) SPD will immediately suspend a license in cases where imminent danger to the health or safety of residents exists.

(4) Such revocation, suspension or denial will be done in accordance with the rules of SPD and ORS chapter 183.

(5) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the license.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0135

### Criminal Penalties

(1) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of any provision of ORS 443.881 is a Class C misdemeanor.

Stat. Auth.: ORS 443.455

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0140

### Additional Authority

SPD may commence a suit in equity to enjoin operation of a facility when:

(1) A facility is operated without a valid license; or

(2) Notice of revocation has been given and a reasonable time has been allowed for placement of individuals in other facilities.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0200

### Residential Care Facility Building Requirements

A residential care facility may have individual or shared living units, where six or more people reside and must be built to the following specifications.

(1) BUILDING CODES. Each residential care facility must meet the requirements of the facility standards set forth in these rules, the Oregon Structural Specialty Code (OSSC), and the Oregon Fire Code (OFC) in effect at the time of original licensure.

(a) Facilities must comply with Title III of the Americans with Disabilities Act (ADA), Fair Housing Act, and Fair Housing Design Guidelines (FHA) where applicable.

(b) Subsequent modifications made to a facility including, but not limited to, demolition, remodeling, construction, maintenance, repair or replacement must comply with all applicable state and local building, electrical, plumbing and zoning codes in place at the time of the modification.

(c) If a change in use and building code occupancy classification occurs, license approval will be contingent on meeting the OSSC and minimum standards of ADA in effect at the time of such change.

(d) All two or more story residential care facilities with a capacity of more than 16, must be constructed to include a minimum of one 2-hour area separation wall constructed to standards as defined in the OSSC (SR 104.3.1 Fire Barrier).

(e) Facilities must comply with the Public Health Division's, Facilities Planning and Safety Program requirements for submission of building plans and specifications, per OAR 333-675-0000 (Submission of Project Plans and Specifications for Review).

(f) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety and comfort of the resident will be kept clean and in good repair.

#### (2) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the facility's common use areas, entrance and exit ways must be of hard, smooth material, accessible and maintained in good repair.

(b) Measures must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) The facility grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) At least one primary grade level entrance to the building must be arranged to be fully accessible to disabled persons. Alzheimer's Indorsed Facilities must be located on the ground floor.

(e) Storage must be provided for all maintenance equipment, including yard maintenance tools.

(f) OUTDOOR RECREATION AREA. An accessible outdoor recreation area is required and must be made available to all residents. Lighting must be equal to a minimum of five foot-candles. Alzheimer's Indorsed

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Facilities must provide residents with direct access to a secure outdoor recreation area.

(g) Outdoor perimeter fencing must not be secured to prevent exit unless the facility has written approval of SPD or is in compliance with OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) or OAR 309-032-0720 through OAR 309-032-0830 (Standards for Enhanced Care Services).

(h) Facilities must have an entry and exit drive to and from the main building entrance that will allow for picking up and dropping off residents and for mail deliveries without the need for vehicles to back up.

(3) GENERAL BUILDING INTERIOR. Designers must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) RECEPTION AREA. A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the facility.

(b) CORRIDORS. Resident-use areas and units must be accessible through temperature controlled common corridors with a minimum width of 48 inches.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common area, must have a minimum width of 72 inches.

(B) Corridors must not exceed 150 feet in length from any resident unit to seating or other common area.

(C) Handrails must be installed at one or both sides of resident use corridors.

(c) FLOORS. Hard surface floors and base must be free from cracks and breaks.

(A) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(B) Thresholds and floor junctures must be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(d) INTERIOR DOORS. Bathrooms and other common use areas must provide a minimum clear opening of 32 inches (36-inch doors recommended). Lever-type or other OSSC/ADA approved hardware must be provided on all doors used by residents.

(e) EXIT DOORS. Exit doors must not include locks that delay evacuation except as approved by the Fire Authority and Oregon Building Codes Agencies having jurisdiction. Such locks will not be installed except with written approval of SPD.

(A) Exit doors must not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door, that code must be clearly posted for residents, visitors and staff use.

(f) WALLS AND CEILINGS. Walls and ceilings must be washable in kitchen, laundry and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) ELEVATORS. Facilities with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(4) RESIDENT UNITS. Resident units may be limited to a bedroom only, with bathroom facilities centrally located off common corridors. Each resident unit will be limited to not more than two residents.

(a) For bedroom units, the door must open to an indoor, temperature controlled common area or common corridor and residents must not enter a room through another resident's bedroom.

(b) Resident units must include a minimum of 80 square feet per resident exclusive of closets, vestibules, and bathroom facilities and allow for a minimum of three feet between beds;

(c) All resident bedrooms must be accessible for persons with disabilities, meeting requirements of the OSSC, FHA, and the ADA.

(d) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(e) WARDROBE CLOSET. A separate wardrobe closet must be provided for each resident's clothing and personal belongings. Resident wardrobe and storage space must total a minimum volume of 64 cubic feet for each resident. The rod must be adjustable for height or fixed at no higher than 48 inches and no lower than 36 inches for accessibility. Closet height must not exceed eight feet and a depth of two feet.

(f) WINDOWS. All units must have an escape window that opens directly onto a public street, public alley, yard, or exit court, except for Alzheimer's Care Units constructed to an SR-2 or I-2 occupancy classification. This window section must be operable from the inside to provide a full clear opening without the use of separate tools and must comply with

the specifications of an escape window when required by the OSSC. Windows must not be below grade.

(A) Each resident's unit must have an exterior window that has an area at least one-tenth of the floor area of the room. Windows must also have a nominal maximum windowsill height of 38 inches. Operable units must be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(g) RESIDENT UNIT BATHROOMS. If resident bathrooms are provided within a resident unit, they must include a toilet, hand wash sink, mirror, and towel bar (36" in height). The bathrooms must be accessible for persons who use wheelchairs.

(h) UNIT KITCHENS. If cooking facilities are provided in resident units, cooking appliances must be readily removable or disconnect-able and the facility must have and carry out a written safety policy regarding resident use and nonuse.

(5) COMMON USE AREAS.

(a) BATHING FACILITIES. Centralized bathing fixtures must be provided at a minimum ratio of one tub or shower for each ten residents not served by fixtures within their own unit. At least one centralized shower or tub must be designed for disabled access without substantial lifting by staff. Curbless showers or tubs equipped for horizontal transfer or hydraulic lift are acceptable. All bathing facilities must meet ADA and OSSC requirements.

(A) Grab bars must be provided in all resident showers.

(B) Showers must be equipped with a hand-held showerhead and a cleanable shower curtain.

(C) Bathing facilities must be located or screened to allow for resident privacy while bathing and provide adequate space for an attendant.

(D) A non-slip floor surface in bathing areas is required.

(b) TOILET FACILITIES. Toilets and hand wash sinks with an accessible mirror must be located for resident use at a minimum ratio of one to six residents for all residents not served by these fixtures in their own unit.

(A) Toilet facilities for all of the licensed resident capacity must be accessible to persons with disabilities in accordance with the ADA and the OSSC as enforced by the Oregon Building Codes Division or local jurisdictions having authority.

(B) At least one separate toilet and hand wash lavatory must be provided for staff and visitor use in facilities licensed for more than 16.

(c) DINING AREA. Dining space must be provided to seat all residents with a minimum area of 22 square feet per resident, exclusive of serving carts and other equipment or items that take up space in the dining room. The facility must have policies and equipment to assure that food is served fresh and at proper temperature.

(d) LOUNGE AND ACTIVITY AREAS. The facility must include lounge and activity area(s) for social and recreational use totaling a minimum of 15 square feet per resident.

(e) SMOKING AREA. If there is an indoor designated smoking area, it must be separate from other common areas and provided with a mechanical exhaust.

(6) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. Facilities must have a locked and separate closed storage for medications, supportive of the distribution system utilized including:

(A) A method for refrigeration of perishable medications that provides for locked separation from stored food items;

(B) In residential care facilities of 17 or greater capacity, a medication sink must be provided; and

(C) Medications must be stored in an area that is separate from any poisons, hazardous material or toxic substance.

(b) HOUSEKEEPING AND SANITATION. The facility must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident use is provided and equipment is of residential type. When the primary laundry is not in the building or suitable for resident use, separate resident-use laundry facilities must be provided.

(A) Laundry facilities must be operable at no additional cost to the resident.

(B) There must be adequate space and equipment to handle laundry-processing needs. Laundry facilities must be separate from food preparation and other resident use areas.

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(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(d) SOILED LINEN PROCESSING. For the purpose of this rule "soiled linens or soiled clothing," means linens or clothing contaminated by a person's bodily fluids (e.g., urine, feces, blood, etc.)

(A) There must be a separate area or room and closed containers that ensure the separate storage and handling of soiled linens.

(B) Arrangement must provide a one-way flow of linens from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(C) Soiled linen and clothing must be stored and processed separately from other linen and clothing.

(D) The soiled linen room, or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(E) When washing soiled linens, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(e) KITCHEN AND FOOD STORAGE. Kitchen facilities and equipment in residential care facilities of 16 or less capacity may be of residential type except as required by the OSSC and OFC. Residential care facilities licensed for a capacity of more than 16 must comply with OAR 333-150-0000 (Food Sanitation Rules).

(A) Dry storage space, not subject to freezing, must store a minimum one-week supply of staple foods.

(B) There must be refrigeration and freezer space at proper temperature to store a minimum two days' supply of perishable foods.

(C) Storage for all dishware, utensils and cooking utensils must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) In facilities licensed to serve 16 or fewer residents, a dishwasher must be provided (may be residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit (160 degrees recommended), unless a chemical disinfectant is used in lieu of the otherwise required water temperature. In facilities of 17 or more capacity, a commercial dishwasher is required meeting OAR 333-150-0000 (Food Sanitation Rules).

(E) In residential care facilities of 16 or less capacity, a two compartment sink or separate food preparation sink and hand wash lavatory must be provided. In residential care facilities of 17 or more capacity, a triple pot wash sink (unless all pots are sanitized in the dishwasher), a food prep sink and separate hand wash lavatory must be provided.

(F) Food preparation and serving areas must have smooth and cleanable counters.

(G) Stove and oven equipment for cooking and baking needs.

(H) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(I) Storage for a mop and other cleaning tools and supplies used for dietary areas. Such tools must be separate from those used in toilet rooms, resident and other support areas. In residential care facilities of 17 or more capacity, a separate janitor closet or alcove must be provided with a floor or service sink and storage for cleaning tools and supplies.

(J) Storage must be available for cookbooks, diet planning information and records.

(7) HEATING AND VENTILATION SYSTEMS. Systems must comply with the Oregon Mechanical Specialty Code in effect at the time of construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(A) Facilities must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(B) During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(b) EXHAUST SYSTEMS. All toilet, shower and smoking rooms (when provided) must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(c) FIREPLACES, FURNACES, WOODSTOVES AND BOILERS. Where used, installation must meet standards of the Oregon Mechanical Specialty Code.

(d) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements must not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material.

(8) PLUMBING SYSTEMS. Plumbing systems must conform to the Oregon Plumbing Specialty Code in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) SPRINKLER SYSTEM. Facilities must have a sprinkler system installed in accordance with the OSSC.

(d) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts and garbage cans.

## (9) ELECTRICAL REQUIREMENTS.

(a) WIRING SYSTEMS. All wiring systems must meet the Oregon Electrical Specialty Code (OESPC) in effect at the date of installation and devices must be properly wired and in good repair.

(b) All electrical circuits must be protected by circuit breakers or limitrons in fuse boxes of proper capacity. Electrical loads on circuits must be limited in accordance with proper circuit capacity.

(c) Sufficient electrical outlets must be provided to meet resident and staff needs without the use of extension cords or other special taps.

(d) LIGHTING. Lighting fixtures must be provided in each resident bedroom and bathroom, switchable near the entry door.

(A) Lighting for evacuation must be operable during a failure of the normal power supply.

(B) Each resident bedroom must have illumination for way finding from the room entrance, to each bed, and to the adjoining toilet room, if one exists, with at least 20-foot candles of illumination measured at the floor.

(C) Lighting in resident toilet rooms and bathing areas must be at least 50-foot candles, measured at the hand wash basin and three feet above the shower floor with the curtain open.

(D) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(E) Task lighting in dining rooms must equal a minimum of 25-foot candles, without light from windows, measured from table height.

(10) CALL SYSTEM. A call system must be provided connecting resident units to the care staff center or staff pagers.

(a) A manually operated emergency call system must be provided in each toilet and bathing room.

(b) EXIT DOOR ALARMS. An exit door alarm or other acceptable system must be provided for security purposes and to alert staff when residents exit the facility. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include electronic pendants, bracelets, pins, etc.

(11) TELEPHONES. Adequate telephones must be available for resident, staff and visitor use, including those who have physical disabilities. If the only telephone is located in a staff area, it must be posted that the phone is available for normal resident use at any time and that staff will ensure the resident's uninterrupted privacy. Staff may provide assistance when necessary or requested.

(12) TELEVISION ANTENNA OR CABLE SYSTEM. A television antenna or cable system with an outlet in each resident unit must be provided.

(13) FIRE ALARM SYSTEM. An approved fire alarm system that includes interconnected smoke detectors, annunciator and control panels, and manual pull stations is required in residential care facilities. The fire alarm system must meet the requirements of the OSSC, the OFC, the OESPC and the applicable standards of the National Fire Protection Association.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07

## 411-054-0300

### Assisted Living Facility Building Requirements

An assisted living facility must have individual living units that have a lockable door, private bathroom, and kitchenette, and must be built to the following requirements.

(1) BUILDING CODES. Each assisted living facility must meet the requirements of the facility standards set forth in these rules, the Oregon Structural Specialty Code (OSSC), and the Oregon Fire Code (OFC) in effect at the time of original licensure.

(a) Facilities must comply with Title III of the Americans with Disabilities Act (ADA), Fair Housing Act, and Fair Housing Design Guidelines (FHA) where applicable.

(b) Subsequent modifications made to a facility including, but not limited to, demolition, remodeling, construction, maintenance, repair or replacement must comply with all applicable state and local building, electrical, plumbing and zoning codes in place at the time of the modification.

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(c) If a change in use and building code occupancy classification occurs, license approval will be contingent on meeting the OSSC and minimum standards of ADA in effect at the time of such change.

(d) All two or more story facilities must be constructed to include a minimum of one 2-hour area separation wall constructed to standards as defined in the OSSC (SR 104.3.1 Fire Barrier).

(e) Facilities must comply with the Public Health Division, Facilities Planning and Safety Program requirements for submission of building plans and specifications, per OAR 333-675-0000 (Project Plans and Construction Review).

## (2) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the facility's common use areas and entrance and exit ways must be of hard, smooth material, accessible and maintained in good repair.

(b) Measures must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) The facility grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) At least one primary grade level entrance to the building must be arranged to be fully accessible to disabled persons. Alzheimer's Indorsed Facilities must be located on the ground floor.

(e) Storage must be provided for all maintenance equipment, including yard maintenance tools.

(f) OUTDOOR RECREATION AREA. An accessible outdoor recreation area is required that must be available to all residents and have lighting equal to a minimum of five foot candles. Alzheimer's Indorsed Facilities must provide residents with direct access to a secure outdoor recreation area.

(g) Outdoor perimeter fencing must not be secured to prevent exit unless the facility has received written approval of SPD or is in compliance with OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) or OAR 309-032-0720 through 309-032-0830 (Standards for Enhanced Care Services).

(h) Facilities must have an entry and exit drive to and from the main building entrance which will allow for picking up and dropping off residents and for mail deliveries without the need for vehicles to back up.

(3) GENERAL BUILDING INTERIOR. Designers must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) RECEPTION AREA. A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the facility.

(b) CORRIDORS. Resident-use areas and units must be accessible through temperature controlled common corridors with a minimum width of 48 inches.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common area, must have a minimum width of 72 inches.

(B) Corridors must not exceed 150 feet in length from any resident unit to seating or other common area.

(C) Handrails must be installed at one or both sides of resident use corridors.

(c) FLOORS. Hard surface floors and base must be free from cracks and breaks.

(A) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(B) Thresholds and floor junctures must be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(d) INTERIOR DOORS. Bathrooms and other common use areas must provide a minimum clear opening of 32 inches (36-inch doors recommended). Lever-type or other OSSC/ADA approved hardware must be provided on all doors used by residents.

(e) EXIT DOORS. Exit doors must not include locks that delay evacuation except as approved by the Fire Authority and Oregon Building Codes Agencies having jurisdiction. Such locks will not be installed except with written approval of SPD.

(A) Exit doors must not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door, that code must be clearly posted for residents, visitors and staff use.

(f) WALLS AND CEILINGS. Walls and ceilings must be washable in kitchen, laundry and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) ELEVATORS. Facilities with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(4) RESIDENT UNITS. All resident units must be comprised of individual adaptable and accessible apartments with a lockable door, private bathroom and kitchenette facilities conforming to the requirement of the OSSC, FHA and the facility standards set forth in these rules.

(a) UNIT DIMENSIONS. New construction units must have a minimum of 220 net square feet not including the bathroom. Units in pre-existing structures being remodeled must have a minimum of 160 square feet not including the bathroom.

(b) WINDOWS. All units must have an escape window that opens directly onto a public street, public alley, yard or exit court. This window section must be operable from the inside to provide a full clear opening without the use of separate tools and must have a minimum net clear open area of 5.7 square feet, a minimum net clear opening height of 24 inches, a minimum net clear open width dimension of 20 inches and must not be below grade.

(A) Each resident's living room and bedroom must have exterior windows that have an area at least one-tenth of the floor area of the room. One window must be at least 3'-6" x 5'-0" in size and have a maximum sill height of 36 inches. Operable units must be designed to prevent accidental fall when sill heights are lower than 36 inches.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(c) DOORS. Each unit must have an entry door that is self-closing, does not swing into the exit corridor and is equipped with lever handles.

(A) A locking device must be included that is released with action of the inside lever. Locks for the entry door must be individually keyed, master keyed, and a key supplied to the resident.

(B) The unit exit door must open to an indoor, temperature controlled, common area or common corridor.

(d) BATHROOM. The unit bathroom must be a separate room with a toilet, sink, a roll-in, curbless shower, have at least one towel bar (36 inch height), one toilet paper holder, one accessible mirror and storage for toiletry items. The door to the bathroom must open outward or slide into the wall.

(A) The unit bathroom must have unobstructed floor space of sufficient size to inscribe a circle with a diameter of not less than 60 inches or a "T" turn conforming to the requirements of the OSSC and ADA, for maneuverability by residents using wheelchairs or other mobility aids. The "circle" or "T" may infringe in the space of the roll-in shower stall by a maximum of 12 inches.

(B) Wall construction must have proper and appropriately placed blocking near toilets and in showers to allow installation of grab bars.

(C) Roll-in shower stalls must meet OSSC and ADA requirements except as noted in this subsection. The minimum number of resident unit bathroom showers required by OSSC must have a clear inside dimension of 36 inches deep by 60 inches long. All other resident unit showers must have a minimum nominal dimension of 36 inches deep by 48 inches long. A folding seat is not required.

(D) Showers must have non-slip floor surfaces in front of roll-in showers, a hand-held showerhead, cleanable shower curtains, and appropriate grab bar.

(E) Shower curb must not exceed one-quarter inch in height at front of shower. Ramps are not allowed in front of roll-in showers.

(F) Water closets and lavatories must meet OSSC and ADA requirements to be fully accessible unless otherwise noted in this subsection. The lavatory must have readily removable cabinets underneath or be readily adaptable to meet the OSSC and ADA requirements for a forward approach by a wheelchair.

(e) KITCHENS. Each unit must have a kitchen area equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils and supplies.

(A) Counter heights must be 34 inches. The sink, refrigerator and cooking appliance must meet OSSC and the ADA reach and clear floor space requirements for wheelchairs.

(B) The sink must have readily removable cabinets underneath or be readily adaptable to meet the OSSC and ADA requirements for a forward approach by a wheelchair.

(C) Fifty percent of the shelving must be within the reach ranges per the OSSC and ADA.

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(f) RESIDENT STORAGE SPACE. Each unit must provide usable space totaling at least 100 cubic feet for resident clothing and belongings and include one clothes closet with a minimum of four linear feet of hanging space. The rod must be adjustable for height or fixed at no higher than 48 inches and no lower than 36 inches for accessibility. In calculating usable space, closet height must not exceed eight feet and a depth of two feet. Kitchen cabinets must not be included when measuring storage space.

(g) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(5) COMMON USE AREAS.

(a) BATHING ROOM. There must be a special bathing room with a tub with whirlpool action, accessible by side transfer, without the use of mechanical aids and designed for staff assistance.

(A) The room must have individual heat control and be equipped with an exhaust to the outside.

(B) There must be direct access to a toilet and sink in the same room or in an adjacent room.

(C) There must be a non-slip floor surface and a manually operated emergency call system.

(b) PUBLIC RESTROOMS. There must be accessible public restrooms for visitor, staff and resident use, convenient to dining and recreation areas.

(A) The room must contain a toilet, sink, waste container and a hand drying means that cannot be reused.

(B) There must be a manually operated emergency call system in the public restrooms.

(c) DINING ROOM. The building must have a dining area with the capacity to seat 100% of the residents. The dining room must provide 22 sq. ft. per resident for seating, exclusive of service carts and other equipment or items that take up space in the dining room. This rule is exclusive of any separate private dining room(s).

(d) SOCIAL AND RECREATION AREAS. The building must have common areas for social-recreational use totaling at least 15 sq. ft. per resident.

(e) STOVE. If a stove is provided in the activities/common area available for resident use, a keyed or remote switch or other safety device must be provided to insure staff supervision.

(f) RESIDENT LAUNDRY FACILITIES. Laundry facilities must be operable at no additional cost with at least one washer and dryer accessible by residents using wheelchairs.

(g) SMOKING AREA. If there is an indoor designated smoking area, it must be separate from other common areas and provided with mechanical exhaust.

(h) MAILBOX. Each resident/unit must be provided a mailbox that meets OSSC and ADA reach and clear floor space requirements for wheelchairs. It must also meet US Postal Service requirements.

(6) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. The facility must provide a secured space for medication storage with access to a sink and cold storage in the same area. Space for necessary medical supplies and equipment must be provided.

(b) HOUSEKEEPING AND SANITATION. The facility must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident use is provided and equipment is of residential type.

(A) If the primary laundry is not suitable for resident use, separate resident laundry facilities must be provided.

(B) Laundry facilities must be separate from food preparation and other resident use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(d) SOILED LINEN PROCESSING. For the purpose of this rule "soiled linens or soiled clothing," means linens or clothing contaminated with a person's bodily fluids (e.g., urine, feces, blood etc.)

(A) Soiled linen and clothing must be stored and processed separately from other linen and clothing.

(B) There must be a separate area or room with closed containers that ensure the separate storage and handling of soiled linens.

(C) Arrangement must provide a one-way flow of linens from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(D) The soiled linen room, or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(E) There must be adequate space and equipment to handle laundry-processing needs. Personnel handling soiled laundry must be provided with waterproof gloves.

(F) When washing soiled linens, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(G) Covered or enclosed clean linen storage must be provided that may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(e) KITCHEN AND FOOD STORAGE. Assisted living facilities must comply with OAR 333-150-0000 (Food Sanitation Rules), for food handling and primary meal preparation areas.

(A) Dry storage space, not subject to freezing, must store a minimum one-week supply of staple foods.

(B) There must be refrigeration and freezer space at proper temperature to store a minimum two days supply of perishable foods.

(C) Storage for all dishware and utensils used by residents must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) Storage for a mop and other cleaning tools and supplies used for dietary areas. Such tools must be separate from those used in toilet rooms, resident and other support areas. There must be a separate janitor closet or alcove with a floor or service sink and storage for cleaning tools and supplies.

(E) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(F) Storage must be available for cookbooks, diet planning information and records.

(7) HEATING AND VENTILATION SYSTEMS. Heating and ventilation systems must conform to the Oregon Mechanical Specialty Code in effect at the time of facility construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(b) Facilities must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(c) TEMPERATURE CONTROLS. Each unit must have individual thermostatic heating controls.

(d) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements must not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material.

(e) FANS. During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(f) EXHAUST SYSTEMS. All toilet, shower and smoking rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(g) VENTILATION. Ventilation in each unit must occur via an open window to the outside, or with a mechanical venting system capable of providing two air changes per hour with one-fifth of the air supply taken from the outside.

(8) PLUMBING SYSTEMS. Plumbing systems must conform to the Oregon Plumbing Specialty Code in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 — 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) SPRINKLER SYSTEM. Facilities must have a sprinkler system installed in accordance with the OSSC.

(d) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts and garbage cans.

(9) ELECTRICAL SYSTEMS.

(a) WIRING SYSTEMS. All wiring systems must meet the Oregon Electrical Specialty Code (OESPC) in effect at the date of installation and devices must be properly wired and in good repair.

(b) All electrical circuits must be protected by circuit breakers or type 'S' fuses and fuse holders of proper capacity. Electrical loads on circuits must be limited in accordance with proper circuit capacity.

(c) Sufficient electrical outlets must be provided to meet resident and staff needs without the use of extension cords or other special taps.

(d) LIGHTING. Each unit must have general illumination in the bath, kitchen, living space and sleeping area. The general lighting intensity in the

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unit for way finding must be at least 20-foot candles measured from the floor.

(A) Lighting in the unit bathroom must be at least 50-foot candles measured from the height of the basin.

(B) Task lighting at the unit food preparation or cooking area must be at least 50 foot candles measured from counter height.

(C) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(D) Task lighting in the dining room must equal a minimum of 25-foot candles without light from windows measured from table height.

(10) CALL SYSTEM. A call system must be provided, connecting resident units to the care staff center or staff pagers.

(a) A manually operated emergency call system must be provided at each resident bathroom, central bathing rooms and public-use restrooms.

(b) EXIT DOOR ALARMS. Exit door alarms must be provided for security purposes and to alert staff when resident(s) exit the facility. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include electronic pendants, bracelets, pins, etc.

## (11) TELEPHONES.

(a) RESIDENT PHONES. Each unit must have at least one telephone jack to allow for individual phone service.

(b) PUBLIC TELEPHONE. There must be an accessible local access public telephone in a private area that allows a resident or another individual to conduct a private conversation.

(12) TELEVISION ANTENNA OR CABLE SYSTEM. A television antenna or cable system with an outlet in each resident unit must be provided.

(13) FIRE ALARM SYSTEM. An approved fire alarm system that includes interconnected smoke detectors, annunciator and control panels, and manual pull stations is required in assisted living facilities. The fire alarm system must meet the requirements of the OSSC, the OFC, the OESPC and the applicable standards of the National Fire Protection Association.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

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**Rule Caption:** Medicaid Nursing Facilities.

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**Rules Amended:** 411-070-0005, 411-070-0027, 411-070-0035, 411-070-0085, 411-070-0091, 411-070-0095, 411-070-0359, 411-070-0442, 411-070-0452, 411-070-0465

**Rules Suspended:** 411-070-0428, 411-070-0462

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is temporarily amending and suspending Oregon Administrative Rules (OAR) in chapter 411, division 070, relating to Medicaid Nursing Facilities.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-070-0005

### Definitions

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized service plan developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior.

(4) "Alternative Services" means individuals or organizations offering services to persons living in a community other than a nursing facility or hospital.

(5) "AMHD" means the Department of Human Services, Addictions and Mental Health Division

(6) "Area Agency on Aging (AAA)" means an established public agency designated under the Older Americans Act, 42 USC 3025, and which has a responsibility for local administration of senior and disability programs as described in ORS chapter 410.

(7) "Basic Flat Rate Payment" and "Basic Rate" mean the statewide standard payment rate for all long term care services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the bundled payment rate unless the resident qualifies for the complex medical add-on rate (in addition to the basic rate) or the bundled pediatric rate (instead of the basic rate).

(8) "Case Manager" means a SPD/AAA employee who assesses the service needs of an applicant or eligible individual, determine eligibility and offers service choices to eligible individuals. The Case Manager authorizes and implements the service plan and monitors the services delivered.

(9) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(10) "Categorical Determinations" means the provision in the Code of Federal Regulations {42 CFR 483.130} for creating categories that describe certain diagnoses, severity of illness or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

(a) Membership in a category may be made by the evaluator only if existing data on the individual is current, accurate and of sufficient scope.

(b) An individual with Mental Illness or Developmental Disabilities may enter a nursing facility without PASRR Level II evaluation if criteria of a categorical determination are met as described in OAR 411-070-0043(2)(a)-(2)(c).

(11) "Certification" and "Certification for the Categorical Determination of Exempted Hospital Discharge" means that the attending physician has written orders for the individual to receive skilled care services at the nursing facility.

(12) "Certified Program" means a hospital, private agency or an Area Agency on Aging certified by the Department to conduct Private Admission Assessments in accordance with ORS 410.505 through 410.530.

(13) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract. This subsection is not intended to include changes that are merely changes in personnel, e.g., a change of administrators.

(14) "Client" means a resident for whom payment is made under the Medicaid Program.

(15) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator or other employee. They include but are not necessarily limited to the following:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

## ADMINISTRATIVE RULES

(16) "Complex Medical Add-On Payment" and "Medical Add-On" means the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose service is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures or rehabilitation services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(17) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(18) "Costs Not Related to Resident Services" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. They include, for example, costs of meals sold to visitors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop, and similar items.

(19) "Costs Related to Resident Services" means all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident services include nursing costs, administrative costs, costs of employee pension plans, and interest expenses.

(20) "CPI" means the Consumer Price Index for all items and all urban consumers.

(21) "Department" or "DHS" means the Department of Human Services.

(22) "Developmental Disabilities" as defined in OAR 411-320-0020, means a disability that originates in childhood that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation; and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder or sensory impairment.

(23) "Direct Costs" means costs incurred to provide services required to directly meet all the resident nursing and activity of daily living service needs. These costs are further defined in these rules. Examples: The person who feeds food to the resident is directly meeting the resident's needs, but the person who cooks the food is not. The person who is trained to meet the resident's needs incurs direct costs whereas the person providing the training is not. Costs for items that are capitalized or depreciated are excluded from this definition.

(24) "DRI Index" means the "HCFA or CMS Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw - Hill in the publication Health Care Costs.

(25) "Exempted Hospital Discharge" for PASRR means an individual seeking temporary admission to a nursing facility from a hospital as described in OAR 411-070-0043(2)(a).

(26) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department as a Nursing Facility. A Nursing Facility also means a Medicaid Certified Nursing Facility only if identified as such.

(27) "Facility Financial Statement" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department for reimbursement.

(28) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(29) "Generally Accepted Accounting Principles" means accounting principles currently approved by the American Institute of Certified Public Accountants.

(30) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired or the excess of the price paid for an asset over its fair market value.

(31) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees, and engineering studies. It does not include "start-up costs" as defined in this rule.

(32) "Hospital-Based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(33) "Indirect Costs" means the costs associated with property, administration, and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry, and housekeeping). These costs are further described in OARs 411-070-0359, 411-070-0428, and 411-070-0465.

(34) "Interrupted-Service Facility" means an established facility recertified by the Department following decertification.

(35) "Level I" means a component of the Federal PASRR requirement. It refers to the identification of individuals who are potential nursing facility admissions who have indicators of Mental Illness or Developmental Disabilities [42 CFR 483.128(a)].

(36) "Level II" means a component of the Federal PASRR requirement. It refers to the evaluation and determination of whether nursing facility services and specialized services are needed for individuals with Mental Illness or Developmental Disability who are potential nursing facility admissions, regardless of the source of payment for the nursing facility service [42 CFR 483.128(a)]. Level II evaluations include assessment of the individual's physical, mental and functional status [42 CFR 483.132].

(37) "Level of Care Determination" means an evaluation of the intensity of an individual's health service needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(38) "Medical Add-On" or "Complex Medical Needs Additional Payment" has the meaning provided in OAR 411-070-0027.

(39) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders; bipolar (manic-depressive) and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizoaffective disorders or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(40) "Mental Retardation" as defined in OAR 411-320-0020, means significantly sub-average general intellectual function defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have Mental Retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of Mental Retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of Mental Retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50-69. Individuals with IQ's in the 70-75 range can be considered as having Mental Retardation if there is significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20-34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(41) "Necessary Costs" means costs that are appropriate and helpful in developing and maintaining the operation of resident care facilities and activities. These costs are usually costs that are common and accepted occurrences in the field of long term care nursing services.

(42) "New Admission" for PASRR purposes means an individual admitted to any nursing facility for the first time. It does not include individuals moving within a nursing facility, transferring to a different nursing facility or individuals who have returned to a hospital for treatment and are being admitted back to the nursing facility. New admissions are subject to the PASRR process [42 CFR 483.106(b)(1), (3), (4)].

(43) "New Facility" means a nursing facility commencing to provide services to SPD recipients.

(44) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS chapter 678 and the rules adopted pursuant thereto.

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(45) "Ordinary Costs" means costs incurred that are customary for the normal operation.

(46) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of services, need for services, and quality of services.

(47) "Pediatric Rate" means the statewide standard payment rate for all long term care services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(48) "Perquisites" means privileges incidental to regular wages.

(49) "Personal Incidental Funds" means resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(50) "Placement" means the location of a specific place where health care services can be adequately provided to meet the service needs.

(51) "Pre-Admission Screening (PAS)" means the assessment and determination of a potential Medicaid-eligible individual's need for nursing facility services, including the identification of individuals who can transition to community based service settings and the provision of information about community based alternatives. This assessment and determination is required when potentially Medicaid-eligible individuals are at risk for admission to nursing facility services. PAS may include the completion of the Federal PASRR Level I requirement {42 CFR, Part 483, (C)-(E)}, to identify individuals with Mental Illness or Mental Retardation or Developmental Disabilities.

(52) "Pre-Admission Screening and Resident Review (PASRR)" means the Federal requirement, {42 CFR, Part 483, (C)-(E)}, to identify individuals who have Mental Illness or Developmental Disabilities and determine if nursing facility service is required and if specialized services are required. PASRR includes Level I and Level II functions.

(53) "Private Admission Assessment (PAA)" means the assessment that is conducted for non-Medicaid individuals as established by ORS 410.505-410.545 and OAR chapter 411, division 071, who are potential admissions to a Medicaid-certified nursing facility. Service needs are evaluated and information is provided about long-term care choices. A component of PAA is the Federal PASRR Level I requirement, {42 CFR, Part 483.128(a)}, to identify individuals with Mental Illness or Developmental Disabilities.

(54) "Provider" means an organization that has entered into an agreement with the Department to provide services for individuals served by the Department.

(55) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(56) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has five percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(57) "Resident" or "Individual" means those for whom payment is made under the Medicaid Program.

(58) "Resident Review" means a review conducted by the Addictions and Mental Health Division (AMHD) for individuals with Mental Illness or by Seniors and People with Disabilities Division (SPD) for individuals with Developmental Disabilities who are residents of nursing facilities. The findings of the Resident Review may result in referral to PASRR Level II {42 CFR 483.114}.

(59) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted Fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(60) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(61) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(62) "Specialized Services for Mental Retardation/Developmental Disabilities" means:

(a) For individuals with Mental Retardation/Developmental Disabilities under age 21, specialized services are equal to school services; and

(b) For individuals with Mental Retardation/Developmental Disabilities over age 21, specialized services means:

(A) A consistent and ongoing program that includes participation by the individual in continuous, aggressive training and support to prevent loss of current optimal function; and

(B) Promotes the acquisition of function, skills and behaviors necessary to increase independence and productivity; and

(C) Is delivered in community-based care or vocational settings at a minimum of 25 hours a week.

(63) "Start-Up Costs" means one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. They do not include such costs as feasibility studies, engineering studies, architect's fees or other fees that are part of the historical cost of the facility.

(64) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(65) "Title XVIII" and "Medicare" mean Title XVIII of the Social Security Act.

(66) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(67) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department for providers to use in reporting their costs.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; 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 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0027

### Complex Medical Add-On Payment Authorization

(1) PAYMENT. SPD may authorize payment for a medical add-on (in addition to the basic rate) when the resident requires one or more of the treatments, procedures and services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(2) AUTHORIZATION. For a Medicaid resident whose condition or service needs meet the medical add-on criteria, listed in OAR 411-070-0091, the medical add-on may be effective from the date the resident's condition or service needs meets the medical add-on criteria to the last date the resident's condition or service needs continues to meet the medical add-on criteria.

(a) Initial Authorization — The facility must submit documentation to SPD's Complex Medical Add-On Coordinator for initial authorization of the add-on, using SPD's complex medical add-on procedure code(s), to provide justification that the residents' service needs meet add-on criteria.

(b) Continued Payment — SPD may continue to pay the medical add-on only as long as the resident's needs meet one or more of the treatments, procedures and services listed in OAR 411-070-0091 and the facility maintains the required documentation.

(3) DOCUMENTATION. The licensed nursing staff of the nursing facility must keep sufficient documentation pertinent to the qualified complex medical procedure code(s) in the resident's clinical record to justify the medical add-on payment determination in accordance with these rules (refer to OAR 411-070-0091) and must make it available to SPD upon request.

(4) MEDICAL ADD-ONS PROHIBITED. SPD will not provide medical add-on payments for a facility with a waiver that allows a reduction of eight or more hours per week from required licensed nurse staffing hours.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SSD 20-1990, f. & cert. ef. 10-4-90; SSD 21-1990(Temp), f. & cert. ef. 10-5-90; SSD 6-1991, f. & cert. ef. 3-25-91; 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 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

# ADMINISTRATIVE RULES

## 411-070-0035

### Complex Medical Add-On Notification, Effective Dates and Administrative Review

(1) NOTIFICATION. The nursing facility must notify SPD's Complex Medical Add-On Coordinator by completing SPD's Weekly Add-On Report to request authorization for complex medical add-on procedure code(s) (Refer to OAR 411-070-0091). SPD will assign the facility a weekly report due date. The facility must accurately report, on a weekly basis, all of the following complex medical activity for the seven days prior to the report's due date (excluding weekends, state holidays and any business day on that the offices of the State of Oregon are closed by the Governor or his/her designee):

(a) Admission of any Medicaid resident whose condition or service needs meet the criteria for a complex medical add-on procedure code(s). This includes a readmission or return of a Medicaid resident following a leave of absence from the nursing facility whose needs meet add-on criteria.

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the medical add-on criteria.

(B) Following a resident's return from a leave of absence, the nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's return, if their condition or service needs meet a medical add-on procedure code(s).

(C) If the nursing facility fails to add the resident to the next weekly report filed or files the report more than two working days after it is due, SPD will adjust the requested effective add-on date and pay the medical add-on from the date of notification only.

(D) For a resident whose condition or service needs meet a medical add-on procedure code(s), the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(b) A Medicaid resident whose condition or service needs change and now meets the criteria for a complex medical add-on procedure code(s).

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the medical add-on criteria.

(B) If the nursing facility fails to add the resident to the next weekly report filed or files the report more than two working days after it is due, SPD will adjust the requested effective add-on date and pay the medical add-on from the date of notification only.

(C) For a resident whose condition or service needs meet a medical add-on procedure code(s), the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(c) A Medicaid resident whose condition or service needs continue to meet the criteria for a complex medical add-on procedure code(s), only if that same procedure code(s) has been approved or is pending approval by SPD's Complex Medical Add-On Coordinator. The facility must add these residents to the "existing" section of the next weekly report filed after the resident's condition or service needs has been approved or is pending approval.

(d) Discontinuation of a complex medical add-on procedure code(s) for a resident whose condition or service needs no longer meet the criteria for the complex medical add-on procedure code(s). This includes residents on a leave of absence from the nursing facility. The nursing facility must add these residents to the "discontinued" section of the next weekly report filed after the last date the resident's condition or service needs continues to meet the medical add-on procedure code(s) criteria.

#### (2) NOTIFICATION FOR EMERGENCY MEDICAL OR SURGICAL PROBLEMS AND EMERGENCY BEHAVIOR PROBLEMS.

(a) For a resident with an emergency medical or surgical problem or an emergency behavior problem, the nursing facility must contact SPD's Complex Medical Add-On Coordinator the next working day following the emergent medical, surgical or behavior problem for pre-authorization of complex medical add-on.

(b) If the nursing facility fails to contact SPD in a timely manner, SPD will pay the medical add-on from the date of notification only.

(c) For a resident whose condition or service needs change by an emergent medical, surgical or behavior problem, the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(3) ADMINISTRATIVE REVIEW. If a provider disagrees with the decision of SPD's Complex Medical Add-On Coordinator to make or deny an adjustment in the medical add-on payment for a Medicaid resident, the

provider may request from SPD an administrative review of the decision. The provider must submit its request for review in writing within 30 days of receipt of the notice to make or deny the adjustment. The provider must submit documentation, as requested by SPD, to substantiate its position. SPD will notify the provider in writing of its informal decision within 45 days of SPD's receipt of the provider's request for review. SPD's informal decision will be an order in other than a contested case and subject to review pursuant to ORS 183.484.

(4) OVERPAYMENT FOR MEDICAL ADD-ONS. SPD will collect monies that were overpaid to a facility for any period SPD determines the resident's condition or service needs did not meet the criteria for the medical add-on, or determines the facility did not maintain the required documentation.

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0050 AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1983, f. 10-19-83, ef. 11-1-83; SSD 8-1985, f. 6-13-85, ef. 6-15-85; SSD 20-1990, f. & cert. ef. 10-4-90; 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 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0085

### Bundled Rate

(1) PURPOSE. The nursing facility rate established for a facility is a bundled rate and includes all services, supplies and facility equipment required for services.

#### (2) SERVICES AND SUPPLIES:

(a) The following services and supplies required to provide services in accordance with each resident's service plan are included in the bundled rate:

(A) All nursing services defined in OAR 411-086-0110 through 411-086-0160;

(B) All support services and supplies associated with the required nursing services;

(C) All activity services, supplies and staffing as defined in OAR 411-086-0230;

(D) All social services, supplies and staffing as defined in OAR 411-086-0240;

(E) All dietary services, supplies and staffing as defined in OAR 411-086-0250;

(F) All professional consultant services;

(G) All services of the facility medical director;

(H) Management of personal incidental funds, including purchase of items:

(I) Room and board, including:

(i) Special diets and non-pumped food supplements; and

(ii) Laundry, whether performed by the facility staff or an outside provider, including laundering and marking of resident's personal clothing and bedding;

(J) Miscellaneous services and supplies, including:

(i) Items stocked by the facility in gross supply and administered individually on physician's order;

(ii) Items owned or rented by the facility that are utilized by individual residents but are reusable and are routinely expected to be available in a nursing facility;

(iii) Shaves, haircuts, supplies and shampoos as required for grooming and cleanliness, whether performed by facility staff or by an outside provider; and

(iv) Transportation provided in vehicles that are owned or leased by the facility or by any person who holds an ownership interest in the facility;

(b) Items included within the bundled rate must meet all of the following criteria:

(A) Item(s) are medically appropriate;

(B) Item(s) are most effective and least costly means to meet the individuals' needs; and

(C) Item(s) are allowed in the state plan.

(c) The Oregon Health Plan will continue to provide coverage for specified items and equipment in accordance with Oregon Administrative Rules in chapter 410, division 122. No entitlement to any item is created for any resident in a nursing facility based solely on the listing of an item in the chapter 410, division 122 rules, as potentially included in the nursing facility bundled rate. Oregon Health Plan limits on duration, scope and/or frequency of provision of the item(s) may not apply to the bundled rate if the facility needs to provide the item(s) in excess of the limits in order to meet resident needs. Nursing facilities are not required to purchase all specified

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codes, forms, sizes or varieties of the items listed in chapter 410, division 122 rules, so long as the residents' service needs are met. Nursing facilities are not required to honor individual preferences for specific types of equipment and supplies.

(d) The bundled rate pays for all equipment and supplies, unless the item(s) is specified as not paid for by the bundled rate. Equipment and supplies paid for in the bundled rate include:

- (A) Oxygen and oxygen equipment, including concentrators, unless the oxygen provided exceeds 1,000 liters in a 24-hour period;
- (B) Glucose monitors and diabetic equipment;
- (C) Nebulizers and nebulizer supplies;
- (D) Ostomy supplies;
- (E) Urological supplies;
- (F) Resident lifts except as specified in Appendix A to this rule;
- (G) Toilet supplies, except as specified in Appendix A to this rule;
- (H) Miscellaneous supplies;
- (I) Surgical dressings;
- (J) Incontinence supplies;
- (K) All medically necessary wheelchairs and wheelchair accessories except:

- (i) As specified in Appendix A to this rule; or
- (ii) If at the time of admission, the individual's expected length of stay in the nursing facility is 30 days or less as confirmed on a written statement from the individual's attending physician, and the individual has a physician's order for the same wheelchair for on-going use in the individual's home and meets Department of Medical Assistance Programs (DMAP) criteria for a tilt-in-space wheelchair;

- (L) Suction pumps and supplies;
- (M) Tracheostomy supplies;
- (N) Canes and crutches;
- (O) Standing and positioning aides;
- (P) Walkers;

(Q) Hospital beds, except as specified in Appendix A to this rule or if an exception need exists as determined by the DMAP prior authorization process;

(R) Pressure reducing support services, except as specified in Appendix A to this rule;

(S) Hospital bed accessories, except as specified in Appendix A to this rule;

- (T) Bath supplies; and
- (U) Over the counter medications as defined in Appendix B to this rule.

(e) The following services and supplies are NOT included in the bundled rate:

- (A) Therapy services provided to residents by outside providers;
- (B) Medical services by physicians or other practitioners other than the services required by OAR 411-086-0200;
- (C) Radiology services, laboratory services and podiatry services;
- (D) Transportation for residents to and from medical services in vehicles that are not owned or leased by the facility or by any person who holds an ownership interest in the facility;
- (E) Biologicals (eg., immunization vaccines);
- (F) Hyperalimentation ;
- (G) Prescription pharmaceuticals; or
- (H) Ventilators.

Stat. Auth.: ORS 414.065 & 410

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0140 AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0091

### Complex Medical Add-On Services

(1) LICENSED NURSING SERVICES. If a Medicaid resident qualifies for payment at the basic rate and if the resident's condition or service needs are determined to meet one or more of the procedures, routines or services listed in sections (1)(a) to (1)(e) of this rule, and the nursing facility maintains documentation per OAR 411-070-0027, SPD may pay a complex medical add-on payment (in addition to the basic rate) for the additional licensed nursing services needed to meet the resident's increased needs.

#### (a) Medication Procedures.

(A) M-1 — Administration of medication(s) at least daily requiring skilled observation and judgment for necessity, dosage and effect, for

example new anticoagulants, etc. (This category does not include routine medications, any oral medications or the infrequent adjustments of current medications). The facility must maintain a daily nursing note.

(B) M-2 — Intravenous injections or infusions, heparin locks used daily or continuously for hydration or medication. The facility must maintain a daily nursing note. For total parenteral nutrition (TPN) the facility must maintain daily documentation on a flow sheet and must maintain a weekly nursing note.

(C) M-4 — Intramuscular medications for unstable condition used at least daily. The facility must maintain a daily nursing note.

(D) M-5 — External infusion pumps used at least daily. This does not include external infusion pumps when the resident is able to self bolus. The facility must maintain a daily nursing note.

(E) M-6 — Hypodermoclysis - daily or continuous use. The facility must maintain a daily nursing note.

(F) M-7 — Peritoneal dialysis, daily. This does not include residents who can do their own exchanges. The facility must maintain a daily nursing note.

#### (b) Treatment Procedures.

(A) T-1 — Nasogastric, Gastrostomy or Jejunostomy tubes used daily for feedings. The facility must maintain daily information on a flow sheet and must maintain a weekly nursing note.

(B) T-2 — Nasopharyngeal suctioning, twice a day or more. Tracheal suctioning, as required, for a resident who is dependent on nursing staff to maintain airway. The facility must maintain a daily nursing note.

(C) T-3 — Percussion, postural drainage, and aerosol treatment when all three are performed twice per day or more. The facility must maintain a daily nursing note.

(D) T-4 — Ventilator dependence. Services for a resident who is dependent on nursing staff for initiation, monitoring, and maintenance. The facility must maintain a daily nursing note.

#### (c) Skin/Wound.

(A) Facilities must adhere to the federal Resident Assessment Instrument/Minimum Data Set (RAI/MDS) standards for ulcer staging, in determining if a resident's needs meet complex medical add-on criteria. For the purpose of this section, the following definitions apply:

(i) Pressure ulcer means any skin ulcer caused by pressure resulting in damage of underlying tissues. Other terms used to indicate this condition include decubitus ulcers.

(ii) Stasis ulcer means a skin ulcer, usually in the lower extremities, caused by altered blood flow from chronic vascular insufficiency, also referred to as a venous insufficiency, lymphedema, arterial insufficiency, or peripheral vascular disease (PVD).

(iii) Stage III means a full thickness of skin is lost, exposing the subcutaneous tissues. Presents as a deep crater with or without undermining adjacent tissue.

(iv) Stage IV means a full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone.

(B) S-1 — Is limited to Stage III or IV pressure ulcers that require aggressive treatment and are expected to resolve. The facility must maintain a weekly wound assessment and a weekly nursing note.

(i) The pressure ulcer is eligible for add-on until the last day the ulcer is equivalent to a Stage III pressure ulcer per federal RAI/MDS standards staging guidelines.

(ii) A healing Stage III pressure ulcer that has the appearance of a Stage II pressure ulcer cannot be considered eligible for purposes of complex medical criteria.

(C) S-2 — Open wound(s) as defined by dehisced surgical wounds or surgical wounds not closed primarily that require aggressive treatment and are expected to resolve. The facility must maintain a weekly wound assessment and a weekly nursing note.

(D) S-3 — Deep or infected stasis ulcers with tissue destruction equivalent to at least a Stage III. The facility must maintain a weekly wound assessment and a weekly nursing note.

(i) The stasis ulcer is eligible for add-on until the last day the ulcer is equivalent to a Stage III stasis ulcer per federal RAI/MDS standards staging guidelines. If the stasis ulcer is chronic, it is eligible for add-on only until it returns to previous chronic status.

(ii) A healing Stage III stasis ulcer that has the appearance of a Stage II stasis ulcer cannot be considered eligible for purposes of complex medical criteria.

(iii) A chronic Stage III stasis ulcer that is no longer infected and has returned to previous chronic Stage III status cannot be considered eligible for purposes of complex medical criteria.

(d) O-4 — Insulin Dependent Diabetes Mellitus (IDDM).

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(A) Unstable Insulin Dependent Diabetes Mellitus (IDDM) in a resident who requires sliding scale insulin; and

(i) Exhibits signs or symptoms of hypoglycemia and/or hyperglycemia; and

(ii) Requires nursing or medical interventions such as extra feeding, glucagon or additional insulin, transfer to emergency room; and

(iii) Is having insulin dosage adjustments.

(B) The facility must maintain a daily nursing note. A Medication Administration Record is required when sliding scale insulin or other medication related to the IDDM has been administered. While all three criteria do not need to be present on a daily basis, the resident must be considered unstable. A resident with erratic blood sugars, without a need for further interventions, does not meet this criteria.

(e) Other.

(A) O-1 — Professional Teaching. Short term, daily teaching pursuant to discharge or self-care plan. The facility must maintain a teaching plan and weekly nursing notes.

(B) O-2 — Emergent medical or surgical problems, requiring short term licensed nursing observation and assessment. This criteria requires pre-authorization from SPD's Complex Medical Add-On Coordinator (Refer to OAR 411-070-0035). Eligibility for the add-on will be until the resident no longer requires additional licensed nursing observation and assessment for this medical or surgical problem. The facility must maintain a nursing note every shift.

(C) O-3 — Emergent Behavior Problems — Emergent behavior is a sudden, generally unexpected change or escalation in behavior of a resident that poses a serious threat to the safety of self or others and requires immediate intervention, consultation and a service plan. This criteria requires pre-authorization from SPD's Complex Medical Add-On Coordinator (Refer to OAR 411-070-0035). Eligibility for the add-on will be until the resident no longer requires additional licensed nursing observation and assessment for this medical problem. The facility must maintain a nursing note every shift.

## (2) R-1 — REHABILITATION SERVICES:

(a) Physical Therapy — at least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note.

(b) Speech Therapy — at least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note.

(c) Occupational Therapy — at least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note.

(d) Any combination of physical therapy, occupational therapy, and speech therapy at least five days every week qualifies. The facility must maintain the therapist's notes and a weekly nursing progress note.

(e) Respiratory Therapy — at least five days every week by respiratory therapist. These services must be authorized by Medicare, Medicaid Oregon Health Plan, or a third party payor. The facility must maintain the therapist's notes and a weekly nursing progress note.

Stat. Auth.: ORS 410.070

State Implemented: ORS 410.070 & 414.065

Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SDSD 5-1998, f. 6-25-98, cert. ef. 7-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0095

### Resident Funds

(1) Each Medicaid resident is allowed a monthly amount for personal incidental needs. For purposes of this rule, personal incidental funds (PIFs) include monthly payments as allowed and previously accumulated resident savings.

#### (2) FACILITY RESPONSIBILITY.

(a) The facility must not charge for items included in the bundled rate or for other items or services for which funding can be provided through the Medicaid agency or another non-resident source.

(b) The facility must hold, safeguard and account for a resident's funds if he or she requests such management; or if the case manager requests on Form SDS 0542 that the facility perform such management.

(c) The facility must maintain a record of the request by the resident, case manager or resident representative on Form SDS 0542, covering all funds it holds or manages for residents.

(d) The facility must manage resident funds in a manner in the resident's best interest.

(A) The facility must not charge the resident for holding, disbursing, safeguarding, accounting for, or purchasing from resident funds. Charges for these services are included in the Nursing Facility Financial Statement, Form SPD 35 or 35A and are considered allowable costs reimbursable through the bundled rate.

(B) The cost for items charged to resident funds must not be more than the actual purchase price charged by an unrelated supplier.

(C) The facility may not charge SPD residents or other sources for items or services furnished if all residents receiving such items or services are not charged. Charges must be for direct, identifiable services or supplies furnished to individual residents. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., is not allowed. Charges must be made only after services are performed or items are delivered.

(D) The facility must keep any funds received from a resident for holding, safeguarding and accounting separate from the facility's funds.

(E) The nursing facility may request technical assistance from SPD/Type B AAA staff, however, responsibility for managing resident funds in the resident's best interest remains with the facility.

(F) When a facility is a resident's representative payee, it must fulfill its duties as representative payee in accordance with applicable federal regulations and state regulations that define those duties.

(G) Facilities holding resident funds must be insured to cover all amounts held in trust.

#### (3) DELEGATION OF AUTHORITY.

(a) The resident may manage his or her personal financial resources, including PIFs, and may authorize another person or the facility to manage them. If appropriate, the facility must, upon written authorization by the resident, resident representative, or case manager on the resident's behalf, accept responsibility for holding, safeguarding, spending and accounting of the resident's funds.

(b) At the time of admission, the facility must assure that the resident, or representative delegating such responsibility to the facility, completes Form SDS 0542, Designation of Management of Personal Incidental Funds. The facility must sign the form acknowledging responsibility. The facility must retain the original in the resident's account records, with copies to the resident and SPD.

(c) The resident wishing to change delegation must do so by completing a new Form SDS 0542 that must be available at the facility.

(d) SPD cannot be delegated to account for the resident's funds.

#### (4) RESIDENT ADMISSION

(a) The facility must provide each resident or resident representative with a written statement at the time of admission that:

(A) States the facility's responsibility to pay for all services, supplies, and facility equipment required for services (basic rate);

(B) Lists all services provided by the facility that are not included in the facility's basic rate;

(C) States that there is no obligation for the resident to deposit funds with the facility;

(D) Describes the resident's right to select how personal funds will be handled. The following alternatives must be included:

(i) The resident's right to receive, retain, and manage his or her personal funds or have this done by a legal guardian, or conservator;

(ii) The resident's right to delegate on the SDS 0542 another person to act for the purpose of managing his or her personal funds; and

(iii) The facility's obligation, upon written authorization by the resident or representative, to hold, safeguard and account for the resident's personal funds in accordance with these rules;

(E) States that any facility charge for this service is included in the facility's basic rate, and that the facility cannot charge for resident fund management or charge residents more than the actual purchase price of items at an unrelated supplier;

(F) States that the facility is permitted to accept a resident's funds to hold, safeguard and account for, only upon the written authorization of the resident or representative, or if the facility is appointed as the resident's representative payee; and

(G) States that if the resident becomes incapable of managing his or her personal funds and does not have a representative, the facility is required to manage his or her personal funds if requested on the Form SDS 0542 by the case manager.

(b) The facility must obtain documentation on the Form SDS 0542 of:

(A) Resident intention to manage own funds; or

(B) Resident, resident representative, or case manager delegation to another individual or the facility to manage the resident's funds.

#### (5) RESIDENT ACCOUNT RECORDS.

(a) The facility must maintain a Resident Account Record (Form SDS 713), on an ongoing, day-to-day basis, for each resident for whom the facility is holding funds. Each receipt or disbursement of funds must be posted to the resident's account. Posting from supporting documentation must be done within seven days after the transaction date.

# ADMINISTRATIVE RULES

(b) The resident account record must show, in detail with supporting documentation, all monies received on behalf of the resident and the disposition of all funds so received. Persons shopping for residents must provide a list showing description and price of items purchased, along with payment receipts for these items.

(c) Individual resident accounts must be reconciled and listed by the facility at the end of each calendar month.

(d) Petty cash accounts must be reconciled within ten days of receipt of the bank statement.

(e) The facility must maintain a monthly list that separately lists the petty cash and savings account balances for each resident for whom the facility is managing funds.

(f) Records and supporting documentation must be retained for at least three years following the death or discharge of the resident.

(g) Accumulations of \$50 or more.

(A) The facility must, within 15 days of receipt of the money, deposit in an individual interest-bearing account any funds held in excess of \$50 for an individual resident, unless this money is being managed in a Trust and Agency Account by SPD.

(B) The account must be individual to the resident, must be in a form that clearly indicates that the facility does not have an ownership interest in the funds, and must be insured under federal or state law.

(h) Accumulations of Under \$50.

(A) The facility may accumulate no more than \$50 of a resident's funds in a pooled bank account or petty cash fund that must be separate from facility funds.

(B) The interest earned on any pooled interest-bearing account containing residents' petty cash must be either prorated to each resident on an actual interest-earned basis, or prorated to each resident on the basis of his or her end-of-quarter balance.

## (6) RESIDENT RIGHTS.

(a) The resident must be allowed to manage his or her own funds, or to delegate their management to another, unless the resident has been determined to be incompetent by a court of law. A resident who was not adjudicated incompetent may always decide how to spend his or her own funds.

(b) Facility staff delegated to manage resident funds must follow guidelines outlined in this rule and other state and federal laws and regulations that may apply in order to assure that decisions not made by the resident are made in his or her best interest.

(c) The resident, family or friends has the right to be free from solicitation from the facility to purchase items that are included in the facilities daily rate.

(d) The resident must not be charged for any item included in the facility's daily rate unless the facility can show at least one of the following:

(A) The resident made an informed decision to purchase the item, understanding that a similar and appropriate item is included in the daily rate;

(B) The family requested that the facility purchase the item, understanding that a similar and appropriate item is included in the daily rate; or

(C) The resident is not currently able to make an informed decision to purchase the item, but did so prior to current incapacity.

(e) The resident, family or friends must not be charged for any drug designated by the Food and Drug Administration as less-than-effective unless it can show that both the physician and the resident made an informed decision to continue use of the drug.

(f) Prior to purchasing an item that is included in the facility's daily rate or is over \$50, the facility must consult with the SPD/Type B AAA case manager.

(g) The facility must not charge resident funds for any item or service that benefits the facility, facility staff or relatives or friends of facility staff, unless it can show that the resident made an informed decision to purchase the item or service.

(h) When the facility or SPD is of the opinion that a resident is incapable of managing personal funds and the resident has no representative, the facility must refer the resident to the case manager in the local SPD/Type B AAA, who will consult with the resident regarding resident preference. If the attending physician agrees, as documented on the Form SDS 544, Physician's Statement of Resident's Capacity to Manage Funds, that the resident is incapable of handling funds, the case manager will attempt to find a suitable delegate to manage the resident's funds. If no delegate can be found, the facility must assume the responsibility. If the resident disagrees with the designation of a delegate, the designation cannot be made, and the resident retains the right to manage, delegate, and direct use of his own money, if not adjudicated incompetent.

## (7) ACCESS TO FUNDS, RECORDS.

(a) The facility must provide each resident or delegate reasonable access to his or her own financial records and funds. Reasonable access is defined as seven business days for records and one business day for funds.

(b) The facility must provide a written statement, at least quarterly, to each resident, delegate, or a person chosen by the resident to receive the statement. The quarterly statement must reflect separately all of the resident's funds that the facility has deposited in an interest-bearing account plus the resident funds held by the facility in a petty cash account or other account. The statement must include at least the following:

(A) Identification number and location of any account in which that resident's personal funds have been deposited;

(B) Balances at the beginning of the statement period;

(C) Total deposits with source and withdrawals with identification;

(D) Interest earned, if any;

(E) Ending balances; and

(F) Reconciliation.

(c) The facility must provide a quarterly Resident Account Record on Form SDS 713 to the local SPD/Type B AAA within 15 days following the end of the calendar quarter and provide a copy to the resident or an individual delegated by the resident to receive the copy.

(d) The resident or delegate must have access to funds in accordance with OAR 411-085-0350.

(e) Within ten business days of the resident's transfer or discharge, or appointment of a new delegate as documented on the Form SDS 0542, the facility must provide a final accounting and return to the resident, or the delegate, all of the resident's funds that the facility has received for holding, safeguarding, and accounting, and that are maintained in a petty cash fund or individual account.

## (8) CHANGE OF OWNERSHIP.

(a) The facility must give each resident or delegate a written accounting of any personal funds held by the facility before any transfer of facility ownership occurs, with a copy to the local SPD/Type B AAA.

(b) The facility must provide the new owner and the local SPD/Type B AAA with a written accounting of all resident funds being transferred and must obtain a written receipt for those funds from the new owner.

## (9) LOCAL SPD/TYPE B AAA RESPONSIBILITY.

The local SPD/Type B AAA must:

(a) Monitor receipt of SDS 713 forms and review them quarterly for appropriateness of expenditures;

(b) Monitor resident resources for resources over the current Medicaid limit;

(c) For residents incapable of managing their own funds and having no one to delegate to do so, attempt to determine resident wishes, seek physician input on the physician statement, and find a delegate, delegating the facility if necessary and not in conflict with resident wishes;

(d) Notify the facility of inappropriate expenditures and report uncorrected problems to SPD Central Office and assist residents in obtaining legal counsel; and

(e) Track expensive or reusable items purchased for residents through resident funds or by SPD and assure their appropriate use after resident death.

## (10) DEATH OF RESIDENT.

(a) Within five business days following a resident's death, the facility must send a written accounting of the resident's funds to the executor or administrator of the resident's estate. If a deceased resident has no executor or administrator, the facility must provide the accounting to:

(A) The resident's next of kin;

(B) The resident's representative;

(C) The clerk of probate court of the county in which the resident died; and

(D) Estate Administration Unit, Seniors and People with Disabilities, P.O. Box 14021, Salem, OR 97309-5024.

(b) Within five business days following a resident's death, the facility must:

(A) Send a written accounting of the resident's funds and a listing of resident personal property, including wheelchairs, television sets, walkers, jewelry, etc., to the local SPD Estate Administration Unit;

(B) Hold personal property for 90 days, unless otherwise instructed by the SPD Estate Administration Unit; and

(C) Comply with the laws of Oregon regarding disbursal of resident funds, and any advance payments, or contact the Estate Administration Unit, SPD, for more detailed instructions.

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

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

# ADMINISTRATIVE RULES

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 35-1980, f. 6-30-80, ef. 7-1-80; Renumbered from 461-017-0160, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1984, f. 7-20-84, ef. 9-1-84; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 6-1989, f. & cert. ef. 5-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 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 services.

(a) Accounting, Auditing, and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(b) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(c) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(d) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident services are reimbursable. The allowance for mileage reimbursement will not exceed the amount determined reasonable 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 state/contiguous area trip per year for two employees will be allowed, as long as it relates to resident services.

(e) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(f) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(g) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(h) Compensation of Owners — Owner's compensation in accordance with OAR 411-070-0330 is allowable.

(i) Consultant Fees — Consultant fees are allowable provided they meet the criteria as outlined in OAR 411-070-0320, Consultants.

(j) Criminal Records Checks — Costs of criminal record checks of facility employees if mandated by federal or state law.

(k) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Lease-hold 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. Effective 07/01/2003, these costs must be reported in accordance with OARs 411-070-0359(1)(B), 411-070-0365, 411-070-0375 and 411-070-0385.

(l) Education & Training — Registration, tuition and book expense associated with education and training of personnel is allowed provided it is related to resident services. 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.

(m) 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 for employees, are not taxable as wages, and are allowable to the extent of employer participation.

(n) Food — Food products and supplements used in food preparation are allowable.

(o) Home Offices Costs — Home office costs are allowable in accordance with OAR 411-070-0345.

(p) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident services. Self-insurance costs are allowable only when expense is actually incurred.

(q) Interest — Interest on debt related to the provision of resident 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 (OAR 411-070-0375) will not be reimbursable. That portion of interest expense related to property or equipment must be reported in accordance with OAR 411-070-0359(1)(B), effective 07/01/2003.

(r) Legal Fees — Legal fees directly related to resident services are allowable. Legal fees related to non-allowable costs are not allowable. Legal fees claimed as related to resident services 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.

(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) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(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) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(x) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident services and the sound conduct and operation of the facility.

(y) 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 OAR 411-070-0359(1)(B), effective 07/01/2003.

(z) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident services.

(aa) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident service activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, will be allowable.

(bb) Supplies — Cost of supplies used in resident services or providing services related to resident services are allowable.

(cc) Taxes — Property taxes on assets used in rendering resident services are allowable. Long Term Care Facility taxes paid on patient days are allowable, effective 07/01/2003.

(dd) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provisions are allowable.

(ee) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

(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 Division of Medical Assistance Programs, other third party payors (see OAR 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 OAR 411-070-0359(1)(q));

(h) The cost of salaries and supplies devoted to religious activities; or

(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 bundled 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) Failure to bill or collect from third party payors whenever appropriate will not cause these expenses to be considered allowable.

(c) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or the Division of Medical Assistance Programs and are non-allowable on the Nursing Facility Financial Statement.

(d) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or the Division of Medical Assistance Programs, are non-allowable on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070, 736, 21, OL 2003

# ADMINISTRATIVE RULES

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; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 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, effective 07/01/2004.
  - (xiv) 436 — Management Fees;
  - (xv) 441 — Bad Debts;
  - (xvi) 439 — Other Interest Expense;
  - (xvii) 445B — Education and Training;
  - (xviii) 446 — Contributions;
  - (xix) 447 — Donated Services;
  - (xx) 448 — Freight;
  - (xxi) 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;
- (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 OAR 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; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; Suspended by SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0442

### 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 30, 2005 is at the 63rd percentile.

# ADMINISTRATIVE RULES

(ii) The Applicable Percentage for the period beginning July 1, 2005 through June 30, 2007 is at the 70th percentile.

(iii) The Applicable Percentage for the period beginning July 1, 2007 is at the 63rd 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 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0452

### Pediatric Nursing Facilities

#### (1) Pediatric Nursing Facility:

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21;

(b) A nursing facility that meets the criteria of section (1)(a) of this rule will be reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement.

(B) The per diem rate will be calculated as follows: The facility specific pediatric cost per resident day will be inflated by the annual change in the DRI Index as measured in the previous 4th quarter. The Oregon Medicaid Pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage (90.18%), determined in the implementation of the flat rate system in 1997, is applied to the weighted average cost to determine the pediatric rate.

(C) On July 1 of each non-rebase year after 1999, the pediatric rate will be increased by the annual change in the DRI Index, as measured in the previous 4th quarter. Beginning in 2001 rate rebasing will occur in alternate years. Rebasing of pediatric nursing facility rates will be calculated using the method described in paragraph (1)(b)(B) of this rule.

(c) Even though pediatric facilities will be reimbursed in accordance with subsection (1)(b) of this rule, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

#### (2) Licensed Nursing Facility With a Self-Contained Pediatric Unit:

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (residents under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the services of pediatric residents and alternate uses must not interfere with the primary use;

(b) A nursing facility that meets the criteria of subsection (2)(a) of this rule will be reimbursed for its pediatric residents served for in the pediatric unit at the per diem rate described in subsection (1)(b) of this rule commencing on July 1, 1999;

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements, and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; 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 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SSD 10-1999, f.11-30-99, cert.ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 411-070-0462

### Long-Term Care Upper Limit

(1) The Department will establish upper limit adjustment payments to each non-State operated governmental nursing facility.

(2) The upper limit adjustment must be paid at least annually for each State Fiscal Year. The payment to each facility is in proportion to the facility's Medicaid days during the cost reporting period that ended immediately preceding the State Fiscal Year, relative to the sum of all Medicaid days during the same period for facilities eligible and participating in the adjustment. The total funds for the adjustment are established each State Fiscal

Year subject to the anticipated level of nursing facility payments within the Year and to the payment limits of 42 CFR 447.272.

Stat. Auth.: ORS 410.070 & 42 CFR 447.272

Stats. Implemented: ORS 410.070 & 42 CFR 447.272

Hist.: SSD 6-1999, f. 26-29-99, cert. ef. 6-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; Suspended by SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

## 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 SPD 35 or SPD 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 SPD 35 or SPD 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 Trust Account — 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 — This account balance represents the cost value of inventory on hand at the end of the reporting period.

(j) 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.

(k) 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 SPD 35 or SPD 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 — Accumulated 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, 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 — Accumulated Depreciation — This account is of the same nature and is used in the same manner as Account 154.

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(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 — Accumulated 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 — Accumulated 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 — Accumulated 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 SPD 35 or SPD 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 SPD 35 or SPD 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 Trust 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 SPD 35 or SPD 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 SPD 35 or SPD 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 SPD 35 or SPD 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 owners 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 room and board revenue and related room and board contractual adjustments including revenue from bed hold days for routine service charges exclusive of ancillary charges. Routine service charges are to be reported in the following accounts:

(a) 301 — Private Resident — Complex Medical Needs — This account includes room and board revenue for complex medical needs routine private resident eservices including health maintenance organization (HMO) payer source for private residents. These are private pay residents whose medical needs correspond to the Medicaid complex medical needs criteria.

(b) 303 — Private Resident — Basic Rate — This account includes room and board revenue for basic rate routine private resident services including HMO payer source for private residents. These are private pay residents whose medical needs correspond to the Medicaid basic rate needs criteria.

(c) 304 — Private Resident — Assisted Living Facilities/Residential Care Facilities — This account includes room and board revenue for other than private complex medical needs and basic rate, non long-term care residents and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(d) 311 — Medicaid Resident — Complex Medical Needs — This account includes room and board revenue from all sources for complex medical needs Medicaid residents.

(e) 312 — Medicaid Resident — Pediatric — This account includes room and board revenue from all sources for pediatric Medicaid residents.

(f) 313 — Medicaid Resident — Basic Rate — This account includes room and board revenue from all sources for basic rate Medicaid residents.

(g) 314 — Medicaid — Assisted Living Facilities/Residential Care Facilities — This account includes room and board revenue for Medicaid, non long-term care resident services 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 SPD 35 or SPD 35A.

(h) 315 — Medicaid — HMO — This account includes room and board revenue from all sources for Medicaid-HMO resident services.

(i) 316 — Medicaid — Out of State — This account includes room and board revenue from all sources for non-Oregon Medicaid resident services.

(j) 318 — Medicare Resident — This account includes room and board revenue from all sources for Medicare resident services.

(k) 319 — Other Governmental Resident — This account includes room and board revenue from all sources for Veteran Affairs and other governmental program resident services other than Medicaid or Medicare and is to be explained on Schedule A to Form SPD 35 or SPD 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 and ancillary contractual adjustments are to be reported in the following accounts:

(a) 321 — Nursing Supplies — This account includes revenue from the sale of nursing supplies or services.

(b) 322 — Oxygen — This account includes revenue from the sale of oxygen (gas) and concentrator supplies.

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- (c) 323 — Prescription Drugs — This account includes revenue from the sale of prescription drugs.
- (d) 324 — Laboratory — This account includes revenue from laboratory services provided.
- (e) 345 — X-Ray — This account includes revenue from X-Ray services.
- (f) 326 — Equipment Rental — This account includes revenue from equipment rental.
- (g) 330 — Physical Therapy — This account includes revenue from physical therapy services provided.
- (h) 331 — Speech Therapy — This account includes revenue from speech therapy services.
- (i) 332 — Occupational Therapy — This account includes revenue from occupational therapy services.
- (j) 341 — Personal Purchases — This account includes revenue from residents for personal purchases.
- (k) 342 — Barber and Beauty — This account includes revenue from residents for barber and beautician services.
- (l) 349 — Other Ancillary — Items and amounts included in this account must be described on Schedule A to Form SPD 35 or SPD 35A.
- (m) 398 — Contractual Adjustments — This is a revenue offset account and includes all contractual adjustments to resident revenue and ancillary revenue.
- (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) 901 — Grants — This account includes revenue amounts received in the reporting period from public and privately funded grants and awards.
- (b) 902 — Donations — This account includes donations in the form of cash or goods and services received during the reporting period.
- (c) 911 — Interest — This account includes revenue from any interest bearing note, bank account, or certificate.
- (d) 912 — Staff & Guest Food Sales — This account includes revenue from facility food sales to individuals other than residents of the facility.
- (e) 913 — Vending Sales — This account includes revenue from vending machines or for resale items not reported in Accounts 813 and 351.
- (f) 914 — Television and Telephone Revenue — This account includes revenue from television and telephone sales to residents of the facility.
- (g) 915 — Independent Senior Housing — This account includes revenue from any other apartment and continuing care retirement community housing.
- (h) 916 — Hospital Revenue — This account includes revenue from hospital operations not related to the nursing facility.
- (i) 918 — Nursing Aide Training — This account is for reporting all revenue associated with OAR 411-070-0470, Nursing Assistant Training and Competency.
- (j) 919 — Miscellaneous Other Revenue — Items and amounts, including revenues for Mental Health revenues received from local governments, and Workers Compensation refunds, included in this account are to be described on Schedule A to Form SPD 35 or SPD 35A.
- (9) Property Expenses — These accounts are for reporting property expenses.
- (a) 452 — Interest — This account is for reporting all interest expense related to the acquisition of fixed assets, adjusted for historical cost limitations.
- (b) 453 — Rent Building — This account is for reporting all building rent or lease expenses.
- (c) 454 — Leased Equipment — This account is for reporting equipment rental and lease expense for all equipment used in the administrative and general and other operating expense categories.
- (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, such as privacy curtains and blinds.
- (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) 413 — Compensation — Bookkeeper — This account is for reporting all the compensation received by the facility bookkeeper, controller and chief financial officer.
- (d) 415 — Compensation — Other Administrative — This account is for reporting all of the compensation received by administrative, clerical, secretarial, accounting, central supply, in-service director and personnel.
- (e) 418 — Purchased Services — Administrative — This account is for reporting all non-employee services required in the administrative operations of the facility.
- (f) 440 — Payroll Taxes — Administrative — This account is for reporting all of the employer's portion of payroll taxes, including Federal Insurance Contributions Act (FICA) tax, unemployment and other payroll taxes not withheld from the employee's pay for administrative employees.
- (g) 441 — Worker's Compensation — Administrative — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for administrative employees.
- (h) 442 — Employee Benefits — Administrative — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established childcare benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for administrative employees.
- (i) 443 — Employee Paid Time Off — Administrative — This account is for reporting established vacation, holiday and sick pay programs for administrative employees.
- (j) 420 — Vending Expense — This account is for reporting expenses of non-medical, non-resident service items sold to the residents and non-residents including items sold through vending machines.
- (k) 423 — Personal Purchase — This account is for reporting all expenditures for personal items purchased for individual residents.
- (l) 425 — Office Supplies — This account is for reporting expenses of all office supplies except those chargeable to Account 863. Materials include stationery, postage, printing, bookkeeping supplies, and office supplies.
- (m) 426 — Communications — This account is for reporting all telephone, internet access, communication, and paging system charges.
- (n) 427 — Travel — This account is for reporting all transportation costs and mileage reimbursement associated with vehicles used for resident services 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.
- (o) 429 — Advertising — Help Wanted — This account is for reporting all help wanted advertising expense.
- (p) 430 — Advertising — Promotional — This account is for reporting all expenditures of the facility related to promotional advertising including yellow page advertising.
- (q) 431 — Public Relations — This account is for reporting all expenditures related to public relations.
- (r) 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.
- (s) 433 — Accounting & Related Data Processing — This account is for reporting all accounting, payroll, and other data and report processing expenses.

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(t) 435 — Legal Fees — This account is for reporting all legal fees and expenses. Legal fees must be reported in conformance with OAR 411-070-0359(1)(t).

(u) 436 — Management Fees — This account is for reporting all management fees charged to the facility, including management salaries and benefits at the home office.

(v) 437 — Insurance — Liability — This account is for reporting all liability insurance expenses, including employee dishonesty, Board of Director, and umbrella coverage.

(w) 439 — Other Interest Expense — This account is for reporting interest expense not attributable to the purchase of the facility and equipment.

(x) 444 — Bad Debts — This account is for reporting the expense recorded from recognizing a certain portion of accounts receivable as uncollectible.

(y) 445 — Education & Training — This account is for reporting registration, tuition, materials, and manual costs for training the staff included in the administrative and general expense category.

(z) 446 — Contributions — This account is for reporting the expense of any gift or donation.

(aa) 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 SPD 35 or SPD 35A.

(bb) 450 — Long Term Care Facility Tax, effective 07/01/2003.

(11) Other Operating Support Expenses — The following accounts are included in this category.

(a) 511 — Compensation — Other Operating Employees — This account is for reporting all compensation received by employee(s) responsible for providing facility repair and maintenance, dietary, laundry and housekeeping services.

(b) 540 — Payroll Taxes — Other Operating — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment and other payroll taxes not withheld from the employee's pay for other operating employees.

(c) 541 — Worker's Compensation — Other Operating — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for other operating employees.

(d) 542 — Employee Benefits — Other Operating — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established childcare benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for other operating employees.

(e) 543 — Employee Paid Time Off — Other Operating — This account is for reporting established vacation, holiday and sick pay programs for other operating employees.

(f) 551 — Purchased Services — Maintenance — This account is for reporting all non-employee services required in maintenance operations.

(g) 552 — Purchased Services — Dietary — This account is for reporting all non-employee services required in dietary operations including dietary consulting expenses.

(h) 553 — Purchased Services — Laundry — This account is for reporting all non-employee services in laundry operations.

(i) 554 — Purchased Services — Housekeeping — This account is for reporting all non-employee services required in housekeeping operations.

(j) 510 — Real Estate & Personal Property Taxes — This account is for reporting real estate and personal property tax expenses for the facility.

(k) 512 — Insurance — Property & Auto — This account is for reporting all insurance expenses other than liability insurance reportable in Account 437, and employee insurance expenses.

(l) 513 — Cable Television — This account is for reporting all cable and satellite television expenses.

(m) 514 — Heat & Electricity — This account is for reporting all facility heating and lighting expenses.

(n) 515 — Water, Sewer & Garbage — This account is for reporting all water, sewer and garbage expenses.

(o) 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.

(p) 526 — 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.

(q) 532 — Linen and Bedding — This account is for reporting the expense of all linen and bedding utilized within the facility.

(r) 536 — Laundry Supplies — This account is for reporting the expense of all supplies utilized by the laundry.

(s) 546 — Housekeeping Supplies — This account is for reporting the expense of all supplies utilized to provide housekeeping services.

(t) 549 — Miscellaneous — Other Operating — This account is for reporting other operating support expenses not specifically included in an identified account. Entries must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(12) Food — 522 Food — This account is for reporting all food products and supplements used in food preparations including dietary supplements.

(13) Direct Care Compensation — These accounts include compensation used in providing direct resident services.

(a) 640 — Payroll Taxes — Direct Care — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment and other payroll taxes not withheld from the employee's pay for direct care employees.

(b) 641 — Worker's Compensation — Direct Care — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for direct care employees.

(c) 642 — Employee Benefits — Direct Care — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established childcare benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for direct care employees.

(d) 643 — Employee Paid Time Off — Direct Care — This account is for reporting established vacation, holiday and sick pay programs for direct care employees.

(e) 651 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.

(f) 652 Compensation — Registered Nurses — This account is for reporting all compensation received by Registered Nurse employees of the facility who provide nursing services, other than the Director of Nursing Services, but including Resident Care Managers. If a Registered Nurse provides nursing services 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.

(g) 653 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 services. If a Licensed Practical Nurse provides nursing services 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.

(h) 654 — Compensation — Certified Medical Aides — This account is for reporting all compensation received by certified medical aides.

(i) 655 — Compensation — Certified Nursing Aides and Restorative Aides — This account is for reporting all compensation received by certified nursing aides and restorative aides not part of the physical therapy department.

(j) 656 Compensation — Other Nursing Employees — This account is for reporting all compensation received by non-licensed, non-professional employees who provide nursing services. If such employees provide nursing services 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.

(k) 661 — Compensation — Activities Employees — This account is for reporting all compensation of employees engaged in the planning and carrying out of resident recreational activities.

(l) 662 — Compensation — Social Workers — This account is for reporting all compensation of social workers and assistants employed to provide social service activities.

(m) 663 — Compensation — Medical Records — This account is for reporting all compensation of medical records employees.

(n) 664 — Compensation — Rehabilitation Employees — This account is for reporting all compensation of occupational and physical therapists, and technicians, and therapy 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 SPD 35 or SPD 35A.

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(o) 671 — Compensation — Religious Employees — This account is for reporting all compensation for individuals employed who provide religious services.

(p) 672 — Compensation — Hospital Employees — This account is for reporting the expense attributable to hospital employees not related to nursing facility long-term care.

(q) 681 — 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 SPD 35 or SPD 35A.

(r) 752 — Purchased Services — Registered Nurses — This account is for reporting the expense attributable to employment agencies that provide part-time registered nurse employees on a fee and salary basis.

(s) 753 — Purchased Services - Licensed Practical Nurses — This account is for reporting the expense attributable to employment agencies that provide part-time licensed practical nurse employees on a fee and salary basis.

(t) 754 — Purchased Services — Certified Medical Assistants — This account is for reporting the expense attributable to employment agencies that provide part time certified medical assistant employees on a fee and salary basis.

(u) 755 — Purchased Services — Certified Nursing Assistants & Restorative Aides — This account is for reporting the expense attributable to employment agencies that provide part-time certified nursing assistant and restorative aide employees on a fee and salary basis.

(v) 756 — Purchased Services — Other Nursing — This account is for reporting the expense attributable to employment agencies that provide part-time other nursing employees on a fee and salary basis, and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(14) Direct Care Supplies — These accounts include supplies and services used in providing direct resident services.

(a) 811 — Education & Training — This account is for reporting registration, tuition, and book expense associated with education and training of direct care personnel.

(b) 812 — 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).

(c) 816 — Nursing Supplies — This account is for reporting all medical supplies consumed by this department, exclusive of oxygen, used in providing direct care services.

(d) 819 — Physician Fees — This account is for reporting all expenditures for physician treatment, services and evaluation of the resident.

(e) 826 — Oxygen Supplies — This account is for reporting the expense of all oxygen (gas) and concentrator rentals.

(f) 836 — Pharmacy Supplies — This account is for reporting the expense of all materials utilized in the facility pharmacy operation.

(g) 837 — Drugs and Pharmaceuticals — Nursing Home — This account is for reporting all expenditures meeting the criteria of 411-070-0085(2)(j).

(h) 838 — 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) 846 — 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.

(j) 856 — 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.

(k) 859 — Equipment Rental — Chargeable — This account is for reporting chargeable equipment rental costs for equipment used in direct care services cost categories.

(l) 861 — Barber & Beauty — The cost of non-employee barber and beautician services will be reported in this account.

(m) 863 — Medical Records Supplies — This account is restricted to materials and software used in resident charting, including data processing for medical records.

(n) 866 — Activities & Recreational Supplies — This account is for reporting the expense of entertainers, and all materials used in providing resident recreational activities. Related transportation is to be reported in Account 427.

(o) 876 — 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 SPD 35 or SPD 35A.

(p) 882 — Utilization Review — This account is for reporting the expenses of all non-employee fees associated with utilization review.

(q) 889 — Consultant Fees — 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 SPD 35 or SPD 35A.

(r) 899 — Miscellaneous — Expenses reported in this account must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

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, 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; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08

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## Department of Justice

### Chapter 137

**Rule Caption:** Establishes Procedures for Criminal Records Checks for Applicants, Employees, Volunteers, and Contractors.

**Adm. Order No.:** DOJ 6-2007

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07

**Notice Publication Date:** 5-1-07

**Rules Adopted:** 137-007-0200, 137-007-0210, 137-007-0220, 137-007-0230, 137-007-0240, 137-007-0250, 137-007-0260, 137-007-0270, 137-007-0280, 137-007-0300, 137-007-0310, 137-007-0320, 137-007-0330

**Subject:** The rules establish procedures for the Department of Justice to perform criminal records checks and use the information obtained to evaluate the fitness of applicants, volunteers, and contractors (collectively “applicants”) of the Department. Criminal records checks under this rule include name-based checks through the Law Enforcement Data System (LEDS) and fingerprint-based checks for all applicants. The rules require applicants to provide personal information to facilitate criminal records checks and establish procedures to keep criminal history information confidential. The rules specify the crimes that the Department of Justice will consider when making determinations about the fitness of applicants to hold a position with the Department and establish procedural rules for challenges to the Department’s fitness determinations. The rules permit the Department to require applicants to pay the actual cost of criminal records checks.

**Rules Coordinator:** Carol Riches—(503) 947-4700

#### 137-007-0200

##### Statement of Purpose and Statutory Authority

(1) **“Purpose”** These rules control the Department’s acquisition of information about a subject individual’s criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, or contractor covered by OAR 137-007-0220. The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, or contractor.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert. ef. 9-5-07

#### 137-007-0210

##### Definitions

As used in OAR chapter 137, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) **“Approved”** means that, pursuant to a preliminary fitness determination under OAR 137-007-0240 or a final fitness determination under 137-007-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, or contractor in a position covered by 137-007-0220(2)(a)–(c).

# ADMINISTRATIVE RULES

(2) "Authorized Designee" means a Department employee authorized to obtain and review criminal offender information and other relevant information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Conviction" or "Convicted of" means that a court of law has entered a final judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "Criminal Offender Information" means records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including conviction, pleas, sentencing, confinement, probation, parole, and release.

(5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 137-007-0270.

(6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 137, division 007.

(7) "Criminal Records Check" or "CRC" means one or more of the following three processes undertaken to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 137-007-0240 or a final fitness determination under 137-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, or contractor in a position covered by 137-007-0220(2)(a)-(c).

(9) "Department" means the Department of Justice or any subdivision thereof. "Department" does not include a criminal justice agency as defined in ORS 181.534(1)(a)(B).

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or

(b) Failed to provide to the Department information material to determine his or her criminal history.

(11) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 137-007-0240 (preliminary fitness determination) or 137-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee in a position covered by 137-007-0220(2)(a)-(c).

(12) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(13) "Subject Individual" means an individual identified in OAR 137-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 180.267  
Stats. Implemented: ORS 181.534(9)  
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

(1)(a) Is applying for employment with the Department; or  
(b) Provides services or seeks to provide services to the Department as a volunteer or contractor; and  
(2) Is, or will be, working or providing services in a position in which the person:

(a) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations; or

(c) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0230

### Criminal Records Check Process

(1) Disclosure of Information by Subject Individual:

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the Department of Justice Criminal Records Request form and, if requested by the Department, a fingerprint card. The Criminal Records Request form shall require the following information: name, Social Security Number, driver's license or identification card number, prior residency in other states, and any other identifying information deemed necessary by the authorized designee. The Department of Justice Criminal Records Request form may also require details concerning any circumstance listed in OAR 137-007-0240(3)(a)-(f);

(b) A subject individual shall complete and submit to the Department the Department of Justice Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause;

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 137-007-0260(3)(d)(B);

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issue(s) hindering the completion of a criminal records check.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that a criminal records check be conducted when:

(a) An individual meets the definition of "subject individual;" or

(b) Required by federal law or regulation, or as a condition of federal funding, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct or request a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual;

(b) Oregon Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or review of any other information deemed relevant to the inquiry; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as deter-

## 137-007-0220

### Subject Individual

"Subject Individual" means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

# ADMINISTRATIVE RULES

mined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of, or information provided by, a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual fails to disclose a Social Security Number; the subject individual discloses a Social Security Number that appears to be invalid; or the subject individual does not have an Oregon driver's license or identification card; or

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0240

### Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee shall make that preliminary fitness determination based on information disclosed by the subject individual under OAR 137-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 137-007-0270;

(b) Has been arrested for or charged with a crime listed under OAR 137-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 137-007-0270;

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 137-007-0270;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 137-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 137-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 137-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the processes provided under OAR 137-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0250

### Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 137-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated before completion of a final fitness determination under OAR 137-007-0260, may not appeal the termination under the processes provided under 137-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 137-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment in or appointment to a position covered by 137-007-220(a)(c).

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0260

### Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 137-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall also consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 137-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 137-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) Intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 137-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon; and

(F) A recommendation of an employer.

(3) Possible Outcomes of a Final Fitness Determination:

(a) Automatic Approval. An authorized designee shall approve as fit a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 137-007-0270;

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 137-007-0270;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 137-007-0270;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

# ADMINISTRATIVE RULES

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule, an authorized designee may approve as fit the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines (i) that the evidence is not credible; or (ii) that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public;

(c) Restricted Approval:

(A) If an authorized designee approves as fit a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations;

(B) An authorized designee shall complete a new criminal records check and fitness determination under this rule on the subject individual prior to removing a restriction.

(d) Denial:

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position;

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process;

(C) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 137-007-0220(2)(a)–(c).

(4) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Fitness Determination. A completed final fitness determination is final unless the affected subject individual appeals by requesting a contested case hearing as provided by OAR 137-007-0300(2).

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 137-007-0260(2);

(e) The Department determines that the subject individual is not eligible or not qualified for the position of employee, volunteer, or contractor for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 137-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0300

### Appealing a Fitness Determination

(1) Model Rules of Procedure. In addition to the Model Rules of Procedure adopted by the Attorney General, the procedures set forth in this rule shall apply.

(2) Process:

(a) A subject individual may appeal a final fitness determination by submitting a written request for a contested case hearing to the address provided in the final fitness determination. Any such request for a hearing must be received by the Department within 14 calendar days of the date of the notice;

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by a hearing officer appointed by the Attorney General.

(3) Time and Place of Hearings. The time and place of hearing will be set by the hearing officer. Notice of the hearing shall be served on the Director of Human Resources and interested parties at least ten days in advance of the hearing date.

(4) Discovery. The Department or the hearing officer may protect information made confidential by ORS 181.534(15) or other applicable laws and rules as provided in OAR 137-003-0570(7) or (8).

(5) Disclosure of LEDS Information. Information obtained through LEDS shall be disclosed only in a manner consistent with Oregon State Police rules and regulations.

(6) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(7) Proposed Order, Exceptions and Default:

(a) Proposed Order. After a hearing, the person appointed by the Attorney General shall issue a proposed order;

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent;

(c) Default. A completed final fitness determination made under OAR 137-007-0260 becomes final:

(A) Unless the subject individual makes a timely request for hearing; or

(B) When a party withdraws a hearing request, notifies the agency or the hearing officer that the party will not appear, or fails to appear for the hearing.

(8) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 137-007-0260(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. The Department shall not be required to place a subject individual in any position or to enter into a contract or otherwise accept services.

(9) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation:

(a) To challenge the accuracy or completeness of information identified in this subsection (9), a subject individual may use any process made available by the agency that provided the information;

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness deter-

## 137-007-0270

### Crimes Relevant to a Fitness Determination

(1) Crimes Relevant to a Fitness Determination:

(a) All felonies;

(b) All Class A misdemeanors;

(c) ORS 167.315 (Animal Abuse II); 167.325 (Animal Neglect II); 418.630 (operating uncertified foster home); and 418.250(1) (relating to the supervision of child-care agencies);

(d) Any crime, in the State of Oregon or in any other jurisdiction, that is the substantial equivalent of any of the crimes listed in this subsection (1)(c), as determined by the Department;

(e) Any United States Military crime or international crime;

(f) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;

(g) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (1).

(2) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

Stat. Auth.: ORS 181.534, 180.267

Stats. Implemented: ORS 181.534(9)

Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0280

### Incomplete Fitness Determination.

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 137-007-0220;

(b) The subject individual does not provide materials or information under OAR 137-007-0230(1) within the timeframes established under that rule;

# ADMINISTRATIVE RULES

mination made under OAR 137-007-0260 by submitting a new Department of Justice Criminal Records Request form.

(10) Appealing a fitness determination under subsection (2) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under subsection (9) of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the authorized designee in consultation with the Human Resources Section decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534, 180.267  
Stats. Implemented: ORS 181.534(9)  
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0310

### Recordkeeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Department's Criminal Justice Division and the Oregon Department of State Police:

(a) Records the Department receives from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations;

(b) Only the Department's authorized designees shall have access to records the Department receives from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check;

(c) An authorized designee shall have access to records received from the Department's Criminal Justice Division and the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;

(d) Authorized designees shall maintain and disclose records received from the Department's Criminal Justice Division and the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto, these rules, federal regulations, and any written agreement between the Department and the Oregon Department of State Police;

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law;

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) Requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity prior to providing this criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.

(3) Other Records:

(a) The Department shall treat all criminal offender information received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including Department of Justice Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15);

(b) Within the Department, only authorized designees shall have access to the records identified under subsection (a);

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;

(d) Except as otherwise provided by law, a subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534, 180.267  
Stats. Implemented: ORS 181.534(9)  
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0320

### Authorized Designees

(1) Appointment:

(a) The Attorney General or the Attorney General's designee shall designate the positions that include the responsibilities of an authorized designee;

(b) Appointments shall be made by the Attorney General or the Attorney General's designee at his or her sole discretion.

(2) The Attorney General and the Deputy Attorney General may also serve as authorized designees.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is a family member of the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status:

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated;

(b) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 137-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position and thereby termination of his or her status as an authorized designee.

Stat. Auth.: ORS 181.534, 180.267  
Stats. Implemented: ORS 181.534(9)  
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## 137-007-0330

### Fees

The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534, 180.267  
Stats. Implemented: ORS 181.534(9)  
Hist.: DOF 6-2007, f. & cert ef. 9-5-07

## Economic and Community Development Department Chapter 123

**Rule Caption:** Conform Credit Enhancement Fund rules to the provisions of SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 4-2007(Temp)

**Filed with Sec. of State:** 8-28-2007

**Certified to be Effective:** 8-28-07 thru 2-22-08

**Notice Publication Date:**

**Rules Amended:** 123-021-0010, 123-021-0050

**Rules Suspended:** 123-021-0030

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms the existing rule to the legislation.

**Rules Coordinator:** Paulina Layton—(503) 986-0192

## 123-021-0010

### Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Application" means a request for a loan or other credit guarantee submitted to the Department by a Financial institution.

(2) "Average annual employment" means:

(a) In the case of a Borrower existing for more than twelve months preceding the date of application, the average level of employment for the twelve months preceding the date of application;

(b) In the case of a Borrower that has existed for less than twelve months prior to the date of application, the average of all monthly employment levels preceding the date of application;

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(c) In the case of a new Borrower, the number of employees at the time of application.

(3) "Borrower" means a business entity which meets the eligibility requirements of OAR 123-021-0010(19), and includes a prospective borrower where the context requires.

(4) "Brownfield" or "Brownfields" means real property where expansion or redevelopment is complicated by real or perceived environmental contamination.

(5) "Commission" means the Oregon Economic and Community Development Commission appointed under ORS 285A.040 or its designee.

(6) "Department" means the Economic and Community Development Department created under ORS 285A.070.

(7) "Deputy Director" means any Deputy Director or any Assistant Director appointed by the Director under ORS 285A.070.

(8) "Destination activities or facilities other than retail or food service" means a Qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination activity or facility are eligible. Sleeping accommodations without unique attraction capabilities are not Qualified businesses.

(9) "Director" means the Director of the Department appointed under ORS 285A.070.

(10) "Distressed area" means any area as defined by the Department under ORS 285A.010.

(11) "Eligible purposes" means the acquisition, improvement, rehabilitation, or construction of real or personal property, working capital for operations, export transactions, maintenance and other costs and expenses which are used for purposes other than acquiring real or personal property, but not including:

(a) An insured loan used for any personal, family, or household expenses of the Borrower or any guarantor;

(b) An insured loan used for construction financing;

(c) An insured loan for the construction of residential housing;

(d) An insured loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss. The Department will consider refinancing requests on a case by case basis, except in the case of loans where refinancing constitutes a portion of an application and is necessary to improve a collateral position. In evaluating such requests the Department will consider the requirements of this section and the financial benefits to the Borrower, the prospects for success, public benefits such as jobs created or retained, the extent to which Financial institutions agree to extend terms or provide other favorable financing to a Borrower, and the extent to which collateral securing an insured loan is improved.

(e) An insured loan used to purchase an existing Qualified business, except for:

(A) Acquisition/expansions where the majority of loan proceeds are used to support expansion improvements;

(B) Restructured enterprises, including Employee Stock Ownership Plans, where jobs might otherwise be lost.

(12) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred or may occur, if the release or potential release, poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal action; or

(d) Conduct a remedial action or removal action at a site.

(13) "Financial institution" means a financial institution defined in ORS 706.005.

(14) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(15) "Loan authorization" means a letter from the Director or Deputy Director or their designees to a Financial institution agreeing to insure a loan to a Borrower on the terms and conditions and subject to the requirements stated therein.

(16) "Loan insurance agreement" means the agreement between the Financial institution and the Department required by OAR 123-021-0100.

(17) "Manager" means the Manager of the Business Finance in the Department, or his/her designee.

(18) "Program(s)" means the loan insurance and other credit guarantee programs governed by this division of the rules.

(19) "Qualified business" means any existing or proposed business that, except when located in a distressed area, sells goods or services in markets for which national and international competition exists. In a distressed area, any existing or proposed business is a Qualified business. Any

company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a Brownfield is a Qualified business. Outside of a distressed area, any existing or prospective business entity that will result in or will aid, promote or facilitate, development of one or more of the following activities shall be a Qualified business:

(a) Manufacturing or other industrial production;

(b) Food processing;

(c) Aquaculture development or seafood processing;

(d) Convention facilities or trade centers;

(e) Destination facilities other than retail or food service;

(f) Transportation or freight facilities;

(g) Distribution facilities; or

(h) Other activities, as approved by the Department, that represent new technology or diversifying activity but not including:

(A) Construction of office buildings;

(B) Retail businesses, shopping centers and food service facilities;

(C) Motels or bed and breakfast hotels without unique attraction facilities;

(D) Professional services for medicine, law, dentistry or finance;

(E) Athletic, racquetball, handball clubs, private membership clubs, and golf courses;

(F) Sand and gravel facilities; or

(G) Newspapers.

(i) For the Evergreen Entrants Program, a Qualified business includes persons or enterprises without, or about to be without, existing line of credit Working capital loans. For the Evergreen Plus Program, a Qualified business includes persons or enterprises with existing line of credit Working capital loans.

(20) "Working capital loan" means any loan the proceeds of which are to be used for operating, maintenance and other costs and expenses or for purposes other than acquiring real or personal property.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08

## 123-021-0030

### Borrower Preferences

(1) Not less than 20 percent of all moneys available for loan guarantees from the Fund is reserved for loan guarantees to Emerging small business.

(2) The amounts reserved for the 1999–2001 biennium for Emerging small businesses is: \$13 million.

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

Stats. Implemented: ORS 285B.200 - 285B.218, SB 402 & SB 128

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; Suspended by EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08

## 123-021-0050

### Application Procedure

(1) The Department shall determine when an application is complete.

(2) It shall be the responsibility of the Financial institution to submit a complete application.

(3) The Department shall consider the application as expeditiously as possible after a complete application is received with the goal of processing applications within ten business days.

(4) The Department will review an application based on the following criteria and considerations:

(a) An application will not be approved unless the Department determines that there is a reasonable prospect that the Borrower will repay a loan according to its terms.

(b) An application will only be approved to the extent, in terms of amount, percentage and period of insurance, that is necessary and prudent for the Department to provide to complete the financing. In no event shall the insurance provided for a Borrower exceed the maximum permitted for a particular Insurance Program.

(c) No application will be approved unless the Department determines that the insured loan will be serviced by a Financial institution as required by the Department.

(d) No application will be approved unless the Department determines that the borrower is eligible and the insured loan proceeds will be used for an eligible purpose.

(e) No application will be approved unless the Department determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

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(f) In reviewing applications, the Department will consider the following, as applicable:

(A) The extent to which the Borrower demonstrates a need for an insured loan.

(B) The economic feasibility of the business endeavor as evidenced by the Borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.

(C) Whether the Borrower and any guarantors have satisfactory credit histories.

(D) Whether the Borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.

(E) The adequacy of the security offered for the loan.

(F) The extent to which the risk of financial loss is shared by others.

(G) The viability of the industry of which the Borrower is a part and the contribution of the Borrower to that industry.

(H) The extent to which the Borrower contributes to local economic development, market development and employment opportunities.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08

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**Rule Caption:** Conform Entrepreneurial Development Loan Fund rules to the provisions of SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 5-2007(Temp)

**Filed with Sec. of State:** 8-28-2007

**Certified to be Effective:** 8-28-07 thru 2-22-08

**Notice Publication Date:**

**Rules Amended:** 123-019-0020, 123-019-0040

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms the existing rule to the legislation.

**Rules Coordinator:** Paulina Layton—(503) 986-0192

## 123-019-0020

### Eligibility

(1) To be eligible for a loan from the Fund, each Applicant must meet at least two of the three criteria in this section:

(a) The Applicant must not have been operating for more than 36 months as of the date application is made to the Fund;

(b) The Applicant must have had total revenues of \$175,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

(c) At least 50 percent of the Applicant must be owned by an individual or individuals classified as Severely Disabled.

(2) The Applicant may not be effectively owned or controlled by another business entity or other Person that, either by itself or when combined with the Applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the Applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 – 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08

## 123-019-0040

### Loan Conditions

The Director may approve a loan request if the Director finds that:

(1) The Applicant and the Project are eligible for a loan from the Fund according to the criteria for a loan from the Fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.

(2) The Applicant has available, and has irrevocably committed to the Project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the Fund.

(3) The proposed Project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral and that the loan is fully secured by collateral value.

(4) The Applicant can provide good and sufficient Collateral for the loan. The Collateral coverage ratio for the loan is expected to be at least 1:1 applying the following advance ratios:

(a) Real property will generally be valued for Collateral purposes at 70 percent of the tax assessed value or 80 percent of appraised value;

(b) New construction will generally be valued for Collateral purposes at 80 percent of cost;

(c) Existing machinery will generally be valued for Collateral purposes at 40 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for Collateral purposes at 80 percent of acquisition cost.

(5) Applicants should be aware that the Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value. The Department may, in its sole discretion, assign a value of more or less than the above percentages.

(6) Monies in the Fund are or will be available for the proposed Project.

(7) The Applicant's financial resources and management capability appear adequate to assure success of the Project.

(8) The initial amount borrowed from the Fund by any borrower does not exceed \$25,000 and the total amount borrowed does not exceed \$40,000.

(9) The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's Collateral position is not diminished. The Director may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.

(10) The Applicant agrees to abide by all laws and regulations applicable to the Applicant's Project and will receive all applicable federal, state and local permits and licenses before the disbursement of any proceeds from the Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08

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**Rule Caption:** Conform the Oregon Business Development Fund rules to SB 350 (2007 Legislature) and current statute.

**Adm. Order No.:** EDD 6-2007(Temp)

**Filed with Sec. of State:** 8-29-2007

**Certified to be Effective:** 8-29-07 thru 2-23-08

**Notice Publication Date:**

**Rules Amended:** 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0020, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0055

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms the existing rule to the legislation and current statute.

**Rules Coordinator:** Paulina Layton—(503) 986-0192

## 123-017-0008

### Delegation

(1) Authority for the day-to-day operation of the Fund, including approval of loans and projects, and amendments thereto, is delegated to the Finance Committee.

(2) The Finance Committee shall adopt standards and procedures for the operation of the Fund. Such standards and procedures shall not be inconsistent with any part of this rule.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects orally or in writing, and to attend each Finance Committee meeting, as each individual Commissioner may in his or her sole discretion determine.

(4) The Commission shall review and evaluate the operation of the Fund with such frequency as it may from time to time determine, and may order any changes that it considers necessary or desirable.

(5) The Commission shall retain final authority over policies and administrative procedures governing the operation of the Fund.

(6) The Director or designee is authorized to execute any document reasonably necessary or convenient to close any loan approved by the

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Finance Committee or, in the case of loans of \$100,000 or less, by the Director.

(7) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of \$100,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0010

### Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Collateral" means property subject to a security interest, as defined in ORS 79.0102.

(3)(a) "Commission" means the Economic and Community Development Commission appointed under ORS 285A.040;

(b) "Finance Committee" means the Finance Committee for the Oregon Economic and Community Development Commission as authorized in ORS 285A.080.

(4) "Business Development Project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in or will aid, promote or facilitate, development of one or more of the following activities:

- (a) Manufacturing or other industrial production;
- (b) Agricultural development or food processing;
- (c) Aquacultural development or seafood processing;
- (d) Development or improved utilization of natural resources;
- (e) Convention facilities and trade centers;
- (f) Tourist facilities other than retail or food service businesses;
- (g) Transportation or freight facilities; and

(h) Other activities that represent new technology or type of economic enterprise that the Finance Committee determines is needed to diversify the economic base of an area but not including:

(A) Construction of office buildings, including corporate headquarters; and

(B) Retail businesses, shopping centers or food service facilities;

(C) An office area or facility providing an internal support function to, and serving as an integral part of, a business development project shall not be considered an office building under paragraph (h)(A) of this section.

(5) "Department" means the Economic and Community Development Department established under ORS 285A.070.

(6) "Director" means the Director of the Economic and Community Development Department appointed under ORS 285A.070 or designee.

(7) "Financial Institution" means any financial institution defined under ORS 706.008.

(8) "Fund" or "OBDF" means the Oregon Business Development Fund as defined and set forth in ORS 285B.050 – 285B.098.

(9) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(10) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(11) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(12) "Emerging Small Business" means any business as defined in ORS 200.005.

(13) "Distressed Area" means any area designated as a distressed area by the Department under ORS 285A.010.

(14) "Convention center" means a facility for the holding of meetings, conferences, conventions, trade shows or similar gatherings. Sleeping accommodations may be included but at least one-third of the OBDF proceeds must be used for public meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee, in its sole discretion, may approve financing for projects consisting solely or primarily of sleeping accommodations if the applicant sufficiently demonstrates that existing sleeping accommodations are inadequate for existing facility meeting space.

(15) "Destination resort" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

(16) "County" means any county or federally recognized Oregon Indian tribe.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0015

### Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(4). If the Department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(5), it may, notwithstanding the limitations imposed by ORS 285B.050(2)(g)(B), make loans to service and retail businesses operated by emerging small businesses which are located in or draw their workforces from within distressed areas as determined by the Department. The amount of loans the Department may make to service and retail businesses under (1) of this section shall be limited to the amount calculated under the method described in ORS 285B.059(5).

(2) Eligible purposes are the financing of land, buildings, fixture, equipment and machinery, research and development, and the provision of working capital.

(3) Eligible applicants are defined in OAR 123-017-0010(1).

(4) The relocation of a facility from one labor market area to another, if not accompanied by an expansion of the applicant's business or employment, is not an eligible activity unless:

(a) The relocation is caused by forces beyond the control of the applicant; or

(b) The relocation is necessary for the continued operation of the business; or

(c) There is no resulting loss of employment at the former site of the business.

(5) Relending of funds shall not be an eligible activity, except that the funds may be used for the local injection share of an SBA 503 or 504 Certified Development Company transaction.

(6) In cases where an otherwise eligible company or project has an insignificant (less than 25 percent) ineligible portion, the entire project may be determined eligible for a loan from the Fund.

(7) Other than as specified in section (6) of this rule, Fund financing will be limited to 40 percent of the amount of the eligible costs, except that Fund financing may equal up to 50 percent of eligible costs when the application is submitted through a Financial Institution.

(8) Tourist facilities shall not be eligible unless:

(a) The project can be qualified as a convention center; or

(b) The project can be qualified as a destination facility.

(9) Refinancing of existing debt, including existing trade payables and delinquent taxes, shall not be eligible unless the applicant demonstrates to the satisfaction of the Finance Committee that:

(a) The applicant contributes significantly to a target population or to a geographical area targeted by the Oregon Business Development Fund;

(b) Substantial strengthening of applicant's management has occurred;

(c) The applicant requires refinancing to remain viable. Assessment of viability will be made at the sole discretion of the Finance Committee;

(d) Existing lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(e) The applicant meets all other requirements set forth in statute or administrative rule, including demonstrating to the satisfaction of the Finance Committee that the project is feasible and a reasonable risk, has a reasonable prospect of repayment and can provide good and sufficient collateral.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059, 285B.080(3) & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 6-1991(Temp), f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

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## 123-017-0020

### Preference

(1) Except in the case of a loan made from the Oregon Targeted Development Account, the Finance Committee shall give preference to loan applications for projects that demonstrate an overall community benefit and that have one or more of the following characteristics:

(a) Have a ratio of at least one projected job created or saved per \$30,000 sought to be borrowed from the Oregon Business Development Fund.

(b) Are operated by businesses with fewer than 50 employees;

(c) Are located in rural or distressed areas of the state;

(d) Are located in Enterprise Zones designated under ORS 285C.050 — 285C.250;

(e) Employ displaced workers in the area;

(f) Assist in the economic diversification of the area;

(g) Contain a significant amount of owner equity capital. At least ten percent of the project costs for established companies (three years old or more) and 30 percent of project costs for start-ups (firms less than three years old, or firms making the transition from research and development to production) must come from equity or subordinated loans from the owners;

(h) Maximize participation by financial institutions and local development groups;

(i) Produce goods or services for the export market;

(j) Encourage the flow of capital from outside the local area; and

(k) Do not cause severe adverse competitive disadvantages to existing businesses.

(2) The Finance Committee shall be the sole judge of the relative importance of each of the above factors for each individual loan application under consideration. Factors will not necessarily be assigned the same weights under all circumstances.

(3) In the case of a loan made from the Oregon Targeted Development Account, the Finance Committee will strive to fund projects that will create or save at least one job for every \$20,000 of Oregon Business Development Fund investment.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1998(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0025

### Application Procedure

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the Department on a form approved by the Department, together with a \$100 application fee.

(3) If the amount of the loan being sought from the Fund is \$100,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds \$100,000 the Department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$100,000 or less.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.053 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0030

### Loan Conditions

(1) The Director (for loan requests of \$100,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution.

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan, as determined by the Commission. The Commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the Director finds there is an abundance of collateral and/or company or guarantor financial strength. The Economic and Community Development Commission may make loans to emerging small businesses in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding \$500,000 with the commission, under authority of ORS 285B.050-285B.098, for the previous 365 days.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the Director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0035

### Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the Director, on behalf of the state, and the Borrower may enter into a loan contract of not more than \$500,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c), as determined by the Finance Committee, that shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed rate of four percentage points less than the prevailing prime rate. The rate shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve Statistical Release H.15(519) that the Department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the Director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

# ADMINISTRATIVE RULES

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The term of the Fund loan will normally be matched to, and not exceed twice that of the commercial or private lender participating in the project. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection;

(f) May allow for other forms of payment on loans than scheduled principal and interest payments, as determined by the Finance Committee, or Director in the case of loans of \$100,000 or less.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) Any Borrower receiving a loan from the fund shall report to the Economic and Community Development Department the estimated number of jobs affected by the business development project financed under ORS 285B.050 to 285B.098.

(6) That the Borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance, worker's compensation, unemployment insurance and flood insurance (if applicable); and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing and recording fees, title insurance and appraisals.

(7) That the Borrower will provide to the Department on an annual basis, within 90 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the Department may require additional financial information.

(8) That the Borrower will provide an assignment of life insurance on active principals in Borrower. In cases of abundant collateral or substantial depth in management, the Finance Committee, or Director for loans under \$100,000, may waive this requirement.

(9) In the case of loans of more than \$100,000 that are funded by proceeds from the Oregon Lottery, that the Borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(10) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(11) If a project involves building construction, expansion, rehabilitation or modification, a loan from the Fund shall be permanent and not interim financing.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.062 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

## 123-017-0055

### Fees and Charges

(1) The Department shall charge and collect a fee of \$100 at the time the application is filed.

(2) In addition, the applicant, immediately upon receiving the loan proceeds, shall pay to the Department one and one-half percent of the principal amount of the loan.

(3) Monies referred to in (1) and (2) of this section shall be paid into the Fund.

(4) The Department may, in its sole discretion, use some or all of the money collected under section (2) of this rule, plus a maximum of an additional one and one-half percent as payment to a local development group, county or municipality for packaging the loan, processing applications, investigating proposed business development projects and servicing outstanding loans. The additional amount of up to one and one-half percent may be paid for projects which are located in an enterprise zone or in a distressed area or for which the OBDF loan being sought is not more than \$100,000. In no case shall the Department make any payment of more than \$10,000 for any one project. In no case shall the Department make any payment to any third party until the loan has been closed and the Department has collected the fee specified in section (2) of this rule.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.056, 285B.068 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-13-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08

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**Rule Caption:** Corrects the grant and loan amount under which a business is required to enter a first-source agreement.

**Adm. Order No.:** EDD 7-2007

**Filed with Sec. of State:** 8-30-2007

**Certified to be Effective:** 8-30-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 123-090-0050

**Subject:** This amendment corrects language to provide consistency in the amount of a grant or loan under which a business firm receiving Strategic Reserve Funds is required to enter into a first-source agreement.

**Rules Coordinator:** Paul J. Grove—(503) 986-0192

## 123-090-0050

### First Source Hiring

Any firm receiving an award of more than \$50,000 through the Strategic Reserve Fund shall enter into a first source agreement in accordance with division 70 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00; EDD 7-2007, f. & cert. ef. 8-30-07

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**Rule Caption:** Conform the Capital Access Program rules to the provisions of SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 8-2007(Temp)

**Filed with Sec. of State:** 9-4-2007

**Certified to be Effective:** 9-4-07 thru 2-29-08

**Notice Publication Date:**

**Rules Amended:** 123-018-0010, 123-018-0040, 123-018-0060, 123-018-0085, 123-018-0100, 123-018-0160

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms the existing rule to the legislation.

**Rules Coordinator:** Paul J. Grove—(503) 986-0192

## 123-018-0010

### Definitions

As used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

# ADMINISTRATIVE RULES

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.132.

(2) "Borrower" means a Qualified Business that has received a Qualified Loan from a Participating Financial Institution, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship or cooperative.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Economic and Community Development Department under ORS Chapter 285A.

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Environmental action" on a brownfield(s) means activities undertaken to:

(a) Determine if a release has occurred, or may occur, if the release or potential release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal action at a site.

(8) "Financial Institution" means a financial institution, as defined in ORS 706.008.

(9) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.147.

(10) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(11) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the Department for the benefit of a Financial Institution participating in Program.

(12) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program and has enrolled one or more qualified loans.

(13) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(14) "Program" means the Capital Access Program authorized by ORS 285B.126 to 285B.147.

(15) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(16) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include:

(a) A loan for the purchase of owner-occupied residential housing or for the construction, improvement, or purchase of residential housing that is owned or to be owned by the borrower;

(b) A loan for the purchase of real property that is not used for the business operations of the Borrower; and

(c) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075, 285B.135(3), 285B.138(4)

Stats. Implemented: ORS 285B.126 - 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-018-0040

### Agreement

All Agreements entered into between a Participating Financial Institution and the Department shall provide:

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.135;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution, less the portion of the interest that is available for withdrawal by the Department for administrative costs as described in OAR 123-018-0060;

(3) That the terms and conditions of Qualified Loans are to be determined solely by the Participating Financial Institution and Borrower;

(4) The method for enrolling Qualified Loans in the Program;

(5) That the Borrowers, the Participating Financial Institution, and (subject to the availability of money in the Fund) the Department will deposit moneys into the Participating Financial Institution's Loss Reserve Account when the Participating Financial Institution makes a Qualified Loan to a Borrower;

(6) A claims process for reimbursement of Losses that have been incurred from defaults on Enrolled Loans;

(7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such losses, up to the total amount of the then current balance available in the Loss Reserve Account, less the portion of the earned interest that belongs to the department for administrative costs.

(8) For disposition of any recoveries from a Borrower made by the Participating Financial Institution subsequent to being reimbursed for any Loss by the Department;

(9) Conditions for subrogation of the Department, at the Department's request, to the rights of the Participating Financial Institution in collateral, personal guarantees or other forms of security for the Qualified Loan;

(10) Conditions for withdrawal by the Department of excess balances or of certain interest earnings (see OAR 123-018-0150) in the Loss Reserve Account;

(11) Conditions for termination by the Department of the obligation to enroll Qualified Loans under the Program;

(12) Conditions for termination of the Agreement, and disposition by the Department of any remaining balance in the Loss Reserve Account;

(13) For withdrawal by the Participating Financial Institution from the Program and disposition by the Department of any remaining balance in the Loss Reserve Account;

(14) For the Participating Financial Institution to periodically report to the Department any information the Department requires, including financial information that is identifiable with, or identifiable from, the financial records of a Borrower;

(15) For inspection by the Department of the Participating Financial Institution's pertinent files relating to Enrolled Loans;

(16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or that the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities; and

(17) For other terms and conditions as the Department may require.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.132, 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-018-0060

### Ownership, Control, Investment of Loss Reserve Account

(1) All moneys in a Loss Reserve Account are the exclusive property of the State of Oregon, acting by and through the Department, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as described in this division of administrative rules or as contained in provisions of the applicable Agreement.

(2) The Department may transfer into the Capital Access Fund up to 50% of the interest earned on moneys in Loss Reserve Accounts to pay for administrative expenses incurred by the Department.

# ADMINISTRATIVE RULES

(3) Any earnings on the balance in a Loss Reserve Account are part of the Loss Reserve Account, except as described in this section and in OAR 123-018-0150.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-018-0085

### State Contributions to Loss Reserve Accounts

The Department shall determine the amount of money it transfers from the Fund to a Loss Reserve Account as follows:

(1) For each Enrolled Loan, the Department shall deposit an amount equal to or greater than the total fees transmitted as described in OAR 123-018-0080(1)(b) and as required in OAR 123-018-0070, subject to further limitations in this rule.

(2) If one or both of the following conditions exist, the Department shall deposit an amount equal to 200 percent of the minimum allowed by section (1) of this rule, except as otherwise restricted in section (4) of this rule:

(a) The Borrower's business operations that benefit from the Enrolled Loan are entirely located in a Distressed Area at the time that the Qualified Loan is made consistent with OAR 123-018-0080(1)(a); or

(b) The Enrolled Loan provides the Borrower with funding for use in an environmental action on a brownfield(s).

(3) Whenever the Department's total Loss Reserve Account deposits described in section (2) of this rule are greater than 35 percent of the total appropriated to the Fund, then the Department may deposit no more than 150 percent of the minimum allowed by section (1) of this rule.

(4) Whenever the Department's total Loss Reserve Account deposits pursuant to section (2) of this rule are 40 percent of the total appropriated to the Fund, the Department may deposit no more than the minimum allowed by section (1) of this rule.

(5) For any Participating Financial Institution, the Department may deposit 200 percent of the minimum allowed by section (1) of this rule if the Loss Reserve Account currently contains less than \$200,000 according to the most recent information provided to the Department at the time of loan enrollment.

(6) The Department may not transfer:

(a) An amount greater than \$35,000 per Enrolled Loan and associated, concurrent transactions with related business interests; or

(b) More than a total of \$150,000 from the Fund to a Loss Reserve Account for a single Qualified Business.

(9) Unless otherwise provided in this rule, the Department may transfer up to 200 percent of the minimum described in section (1) of this rule, if the Department finds the Qualified Loan advances economic development or job creation in this state by small business.

Stat. Auth.: ORS 285A.075, 285B.135(3) & 285B.138(4)

Stats. Implemented: ORS 285B.135 & 285B.138

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-018-0100

### Payment of Claims by Department

(1) The Department shall reimburse a Participating Financial Institution for Losses claimed as described in OAR 123-018-0090. The Department may reject a claim only if the Department determines the representations and warranties provided by the Participating Financial Institution at the time of enrolling the Qualified Loan were false.

(2) All interest earnings shall be available to pay Loss claims, except for:

(a) Earnings available for withdrawal by the Department from the Loss Reserve Account, as described in OAR 123-018-0060, and

(b) As provided for in OAR 123-018-0150.

(3) When there are insufficient funds in the Loss Reserve Account to cover the total amount of a Loss claim, the Department shall pay an amount equal to the balance of the Loss Reserve Account. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

(4) The Department shall reimburse Loss claims in the order it receives them. If a Participating Financial Institution files two or more Loss claims simultaneously and there are insufficient funds in the Loss Reserve Account to pay them, the Participating Financial Institution may designate the order the Loss claims are to be paid by the Department.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-018-0160

### Termination of and Withdrawal from Program

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any remaining balance in the Participating Financial Institution's Loss Reserve Account.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

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**Rule Caption:** Conform the Economic Development Revenue Bond rules to SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 9-2007(Temp)

**Filed with Sec. of State:** 9-4-2007

**Certified to be Effective:** 9-4-07 thru 2-29-08

**Notice Publication Date:**

**Rules Adopted:** 123-011-0036

**Rules Amended:** 123-011-0030, 123-011-0035, 123-011-0040, 123-011-0045

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms the existing rule to the legislation.

**Rules Coordinator:** Paul J. Grove—(503) 986-0192

## 123-011-0030

### Application

(1) An Applicant desiring issuance of Economic Development Revenue Bonds must submit a complete application to the Department in a form approved by the Department.

(2) The application shall be received by the Department at least 21 days prior to the Finance Committee meeting at which the application will be considered. The Department may waive this requirement at its sole discretion.

(3) A non-refundable application fee is to be submitted with the application:

(a) A \$250 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing of \$500,000 or less;

(b) A \$500 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing greater than \$500,000.

(4) Application materials may be obtained from the Oregon Economic and Community Development Department, 775 Summer Street N.E., Salem, OR 97310.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-011-0035

### Determination of Eligibility

(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 for eligibility for Economic Development Revenue Bonds. The review of the application will be based upon the standards set forth in this rule:

# ADMINISTRATIVE RULES

(a) The following economic activities are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under subsection (b) of this section:

- (A) Manufacturing or other industrial production;
- (B) Agricultural development or food processing;
- (C) Aquaculture development or seafood processing;
- (D) Development or improved utilization of natural resources;
- (E) Research and development;
- (F) Destination resorts;
- (G) Convention and trade centers;
- (H) Construction of buildings for corporate headquarters;
- (I) Product distribution facilities;
- (J) Transportation or freight facilities;

(K) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

(L) Sports facilities not otherwise prohibited under paragraph (2)(b)(D) of this rule;

(M) Nonprofit entities organized under Section 501(c)(3) of the U.S. Internal Revenue Code ;

(N) Utilities, except electricity, to serve a designated, specified industrial site. General utility systems or systems which provide service primarily to residential or non-industrial commercial customers are not eligible;

(O) Other activities which represent a new technology or type of economic enterprise that the Finance Committee determines is needed to diversify the economic base of an area.

(b) Activities or projects that will not be considered for the issuance of Oregon Economic Development Revenue Bonds include:

- (A) Retail businesses and shopping centers;
- (B) Food service not part of a convention center or destination resort;
- (C) Professional corporations for medicine, law, dentistry, or finance;
- (D) Athletic, racquetball, handball clubs, amusement parks, or similar endeavors;
- (E) Commercial office buildings except for corporate headquarters;
- (F) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;
- (G) Co-generation of electric power;
- (H) Activities expressly ineligible under ORS 285B.323(1).

(c) The following serve as elaboration and clarification of activities which are eligible for Economic Development Revenue Bonds:

(A) "Destination Resort" may include incidental food service. This classification is not intended to include sleeping accommodations which otherwise would not assist the development of the tourist industry. Sleeping accommodations that do not include major convention meeting facilities or other major non-residential facilities are not eligible. Preferential treatment by the developer to any land purchaser is not allowed;

(B) "Convention Centers" may include sleeping accommodations, but approximately 1/3 of the total bond issue must be used for convention meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee may approve financing for projects, as convention centers, consisting solely or primarily of sleeping accommodations, if the Applicant sufficiently demonstrates existing sleeping accommodations are inadequate for existing meeting facility space;

(C) "Corporate Headquarters" may qualify if the Applicant demonstrates it has at least one other facility subordinate to the facility for which eligibility is being requested. A minimum of 75 percent of the floor space must be allocated to the corporate headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

(D) "Transportation" is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire;

(E) In deciding whether or not to approve economic development revenue bonding for a utility project, the Finance Committee may consider all relevant factors including but not limited to the utility company's published tariff schedules and construction and extension procedures as filed with the Oregon Public Utility Commission;

(F) "Pollution Control" equipment may qualify as part of projects that otherwise qualify under this rule. Where pollution control equipment costs are incidental to the total capital investment of the project, the Finance Committee may qualify such equipment, provided the Oregon Department of Environmental Quality concurs;

(G) "In-State Plant Relocations" not accompanied by an expansion of the applicant's business or employment, may be considered when the Applicant is able to demonstrate that:

- (i) The relocation is caused by reasons beyond its control; or

(ii) The relocation will not cause a resulting loss of employment at the former site of the business; or

(iii) The relocation is necessary for the continued operation of the business.

(H) "Nonprofit entities" do not include religious, fraternal, or educational organizations;

(I) "Developer Project" may qualify. The Finance Committee shall have right of approval for each tenant occupying 25 percent or more of the leasable space. No more than 25 percent of the leasable space shall be leased to tenants relocating from another Oregon location, unless such relocation is accompanied by an expansion of the tenants' labor force. These conditions shall be incorporated into bond documents, shall survive closing and shall be enforceable for the term of the bond.

(d) Public Purpose. The Applicant must demonstrate that a public purpose is served by the proposed economic development project through economic diversification, creation of new jobs including construction activity, construction occurring before it otherwise could or would, economic activity occurring during economic slumps, tax dollars remaining in the State, and increased productivity. The Applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown;

(e) Prior to determining that an economic development project is an Eligible Project, the Finance Committee shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(B) Find that the project involved is consistent with the Department's comprehensive policy and programs;

(C) Find that the project will produce goods or services which are sold in markets for which national or international competition exists, or if the project is to be constructed and operated by a not-for-profit organization, that the project will not compete with local for-profit businesses;

(D) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys;

(E) Provide for public notice of, and public comment on, the action. The public hearing is not a contested case hearing. Members of the public are invited to present written or oral testimony. Only Finance Committee members and Department staff will ask questions.

(F) Notify a senior official (such as mayor or city manager) of the city or county (if in unincorporated county property) where the project will be located about the project and the potential use of economic development revenue bonds.

(f) The Finance Committee may deny an application if the Applicant does not demonstrate, to the satisfaction of the Finance Committee, that the project is financially feasible;

(g) The Finance Committee may deny an application if the Applicant (or any of the principals in the Applicant) is subject to any existing, pending or threatened litigation or unasserted claim, unless such litigation or claim is fully disclosed to the Finance Committee and the arrangements for the settlement thereof are acceptable to the Finance Committee. In any case where such litigation or claim is unknown to the Finance Committee at the time project eligibility is granted or if such litigation or claim arises subsequent to a grant of project eligibility, the Finance Committee may rescind the project eligibility;

(h) The Finance Committee may make any reasonable requirement of the Applicant related to the administration of the Oregon Economic Development Revenue Bond Program, including requirements that would survive closing and be enforceable for the term of the bond.

(3) The Finance Committee shall issue a Resolution for Project Eligibility for each economic development project determined to be an eligible project. The term of eligibility shall last 12 months unless extended by the Department or the Finance Committee.

(4) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project until the bonds have been redeemed, notwithstanding any contrary provision in any subsequently adopted administrative rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 1-1985(Temp), f. & ef. 2-26-85; EDD 3-1985, f. & ef. 6-28-85; EDD 5-1985(Temp), f. & ef. 10-4-85; EDD 6-1985(Temp), f. & ef. 10-22-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

# ADMINISTRATIVE RULES

## 123-011-0036

### Approval of Bond Closing Resolution

(1) Prior to the approval of bond financing for an eligible project, as evidenced by the commission's approval of a bond closing resolution, the commission shall:

(a) Determine that the project satisfies the applicable requirements of OAR chapter 123, division 8 (compliance with local land use planning requirements), as evidenced by documentation to be provided by the city or county (if in unincorporated county property) in which the project is located.

(b) Determine that the project involved is consistent with applicable adopted local economic development plans, as evidenced by documentation from the city or county.

(2) The applicant shall be responsible for obtaining the documentation described in (a) and (b) of this section.

Stat. Auth: ORS 285A.075

Stats. Implemented: ORS 285B.320 – 285B.371

Hist.: EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-011-0040

### Extension

(1) The Department may extend the eligibility granted by the Finance Committee for up to six months if the Department determines that the project still constitutes an eligible activity and that there is a reasonable prospect of the bonds being issued within the six-month extension period. The Applicant must provide updated financial information, and a project status report to the Department, on a form approved by the Department, at least 14 calendar days before eligibility expires.

(2) The Finance Committee may extend eligibility if the Department denies extended eligibility or if the initial extension granted by the Department under section (1) of this rule has expired. The Finance Committee must determine that the project still constitutes an eligible activity, and that there is a reasonable prospect of the bonds being issued within the extension period. The applicant must provide updated financial information, and a project status report, as well as an application for extension, on a form approved by the Department, at least one month prior to the expiration date of the original or extended eligibility period. The Finance Committee may waive this time period under extraordinary circumstances.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 – 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

## 123-011-0045

### Fees

In addition to the application fee specified in OAR 123-011-0030(5):

(1) The Applicant shall pay to the Department at the time of initial bond closing a closing fee of 1/2 of one percent of the total bond issue for the project. This initial fee shall not exceed \$50,000 for any single bond issue or single project eligibility.

(2) For the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of the initial bond closing a fee of 1/4th of one percent of the total bond issuance for the project.

(3) An Applicant for a current refunding of an outstanding bond shall pay to the Department a processing fee of \$250 that shall accompany the request for the refunding.

(4) The Applicant shall pay to the Department a closing fee of 1/10 of one percent of the amount of the refunding bond or for any additional bonds issued under a single project eligibility. This closing fee may be waived for any refunding bond issued within 18 months of the closing date of the bond issue to be refunded.

(5) The Department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the Department for processing any bond request.

(6) The commission may collect the above fees and expense reimbursements from an applicant that seeks to have an economic development project declared eligible for financing, even though the project has not been determined to be eligible for financing.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.326

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef. 11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction

11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08

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**Rule Caption:** Conform Regional Board/Partnership/Investment Strategy rules to the provisions of SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 10-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07 thru 2-29-08

**Notice Publication Date:**

**Rules Amended:** 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0220, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0525, 123-055-0620, 123-055-0900

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms existing rule to the legislation, as well addresses the legislative direction provided in the Budget Note to SB 5508.

**Rules Coordinator:** Paul J. Grove—(503) 986-0192

## 123-055-0100

### Purpose and Scope

In implementing the Regional Economic Development Act under ORS 285B.230 to 285B.269, this division of administrative rules is intended to clarify, facilitate and establish the following key pieces in the successful design, deliberation, execution and updating of a long-term planning framework for achieving economic development results:

(1) Regional associations and consensus among counties of this state;

(2) Boards of citizens for strategic planning and oversight of funded activities;

(3) Special, broad-based partnership arrangements to augment and, in some cases, to act as an umbrella for county-appointed boards;

(4) Processes for public development and approval of the locally determined investment Strategies; and

(5) Statewide interaction and support.

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0120

### Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Commission** means the State of Oregon Economic and Community Development Commission established by ORS 285A.040.

(2) **County-based Region** means a Region established by formal recognition of the Department on the basis of county government initiative, without a Regional Partnership.

(3) **Department** means the State of Oregon Economic and Community Development Department as organized under ORS 285A.070.

(4) **Director** means the director of the Department as appointed under ORS 285A.070.

(5) **Fiscal Entity** means a unit of local government, intergovernmental entity or nonprofit corporation jointly designated by the governing bodies of the counties comprising the Region and responsible for assisting the Regional Board in developing, implementing and administering the Investment Strategy, such that:

(a) If the governing bodies of the counties comprising the Region establish the Regional Board as an intergovernmental entity, the Regional Board may be the Region's Fiscal Entity; and

(b) The Fiscal Entity must in all cases have the authority and legal power to enter into a contract with the Department for receipt of Regionally Controlled Funds and with other entities receiving such funds as authorized by the Regional Board pursuant to and for purposes of the Investment Strategy.

(6) **Investment Strategy** means the document described under ORS 285B.239 and prepared by the Regional Board under ORS 285B.242, in accordance with OAR 123-055-0300 to 123-055-0399.

(7) **Partnership-based Region** means a Region for which:

(a) A Regional Partnership is associated with the Regional Board through and with agreement of the county partners; and

# ADMINISTRATIVE RULES

(b) Its specific geographic area essentially coincides with that of the Regional Partnership. (This definition in no way limits the types or purposes of Regional Partnerships).

(8) **Region** means a geographic area under ORS 285B.230(1), as described in OAR 123-055-0200, and represented by a Regional Board that prepares and submits an Investment Strategy. It may be either a County-based Region or a Partnership-based Region.

(9) **Regional Board** means a group of individuals appointed by county courts and boards of county commissioners under ORS 285B.230(2) and 285B.242(1), as described in OAR 123-055-0200 to 123-055-0299.

(10) **Regional Partnership** means an association under ORS 285B.230(4), formed by agreement of local and regional partners with the requisite agencies of the state government. It includes but is not limited to a Partnership-based Region.

(11) **Regionally Controlled Funds** means the Regional Investment Fund described in Division 057 of this chapter of administrative rules, and the moneys allocated, disbursed or expended thereunder for the projects of a particular Region, and all interest earned on such money by or for the Region. This term shall in no way be interpreted as affecting resources from any other fund or program under state law or associated with the Department.

(12) **Multi-Region Project** means a project that has a demonstrable economic impact in more than one Region where two or more Regional Investment Boards participate in the funding of the project.

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0200

### Formation and Reconfiguration

(1) Prior to designating a County-based Region, the Department shall do the following:

(a) Communicate with and assist representatives of county governments with considerations in forming a Region, which may include special meetings, fora, etc.; and

(b) Receive materials and advice from the counties' governing bodies, describing the Region's geographic area and the historical, cultural and economic linkages that underpin and justify its creation, including regional planning activities that already exist.

(2) The geographic area of a County-based Region may not include any area in another Region and shall consist of the following:

(a) Two or more counties;

(b) The entire area of the counties comprising the Region, unless the remaining portion of a county is contained in a Partnership-based Region; and

(c) A common border between at least two member counties, although any other county in the Region need not be contiguous to any or all of the other counties.

(3) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence.

(4) A Partnership-based Region is not bound by section (1) or (2) of this rule, and may encompass any geographic area consistent with the participation/involvement of relevant sub-county partners. The Department shall recognize it, insofar as it:

(a) Contains no area of another Region;

(b) Includes area in at least two counties; and

(c) Is clearly described in or as part of the Regional Partnership memorandum of understanding or associated information as provided to the Department.

(5) In order for any county area to be divided among two or more Regions:

(a) At least part of the county must be in a Partnership-based Region;

(b) The county's governing body must be a party to each applicable agreement in OAR 123-055-0240 and must appoint one or more members to the respective Regional Boards; and

(c) No such constituent part of the county may be attached to a Region as established or recognized by the Department, until all such parts are associated with an acknowledged Region.

(6) Regions may be reconfigured pursuant to the mutual consent of all affected counties (and partners of an ongoing Regional Partnership), and subject to the preparation, modification or amendment and approval of an Investment Strategy or Strategies for the new/reconfigured Region(s).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230, 285B.236, 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0220

### Board Composition and Implications

(1) Every Region must have a Regional Board, whose members are:

(a) Named individuals appointed by the governing bodies of the counties, through any method of the bodies' choice, including by clear arrangement or extension of a Regional Partnership; and

(b) Effective representatives of the interests prescribed under ORS 285B.242(1).

(2) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence and mandatory actions thereunder, regardless of any assistance provided by or through the Commission or Department:

(a) Public bodies, meetings and records (ORS Ch. 192);

(b) Government standards and practices (ethics, ORS Ch. 244);

(c) Public contracting and procurement (ORS Ch. 279A, 279B & 279C);

(d) Public funds (ORS Ch. 295);

(e) Minimum wage and hour standards;

(f) Municipal budgeting and audit laws; and

(g) Other similar matters.

Stat. Auth.: ORS 285A.075& ORS 285B.236(1)

Stats. Implemented: ORS 285B.230 & ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0240

### Regional Accords and Fiscal Entities

(1) The governing bodies of the counties comprising a Region shall jointly enter into a written agreement forming the Region and specifying applicable elements as follows:

(a) The size, makeup and organization of the Regional Board and the methods for nominating and appointing its members by the governing bodies;

(b) Indication of a Regional Partnership in the case of a Partnership-based Region;

(c) Any special name to be used in reference to the Region;

(d) Procedures, policies, duties and authority for the activities of the Regional Board and for the preparation and implementation of the Investment Strategy;

(e) If desired by the governing bodies of the counties comprising the Region, establishment of the Regional Board as an intergovernmental entity under ORS 190.010(5), 190.080 and 190.085 and designation of the Regional Board as the Region's Fiscal Entity; or

(f) Any other matters deemed appropriate by the governing bodies.

(2) If the agreement described in section (1) of this rule establishes the Regional Board as an intergovernmental entity and designates the Regional Board as the Region's Fiscal Entity, that agreement shall also specify the following:

(a) The authority, duties and functions of the Regional Board in its capacity as the Fiscal Entity for Region;

(b) The Regional Board's financial responsibility and budgetary processes with respect to Regionally Controlled Funds; and

(c) Contractual terms and other relevant administrative or fiduciary issues.

(3) If the Regional Board is not established as an intergovernmental entity that acts as the Region's Fiscal Entity, then the governing bodies of the counties comprising the Region shall jointly designate the Fiscal Entity for the Regional Board and enter into an agreement with that Fiscal Entity (preferably, one that is subsequent to and separate from the agreement described in section (1) of this rule) that specifies the following:

(a) The corporate/legal identity, role, function and duties of the Fiscal Entity for purposes of assisting the Regional Board in developing, implementing and administering the Investment Strategy;

(b) Powers and responsibilities of the Regional Board over the Fiscal Entity;

(c) The authority, financial responsibility and budgetary processes of the Fiscal Entity with respect to decisions by the Regional Board and with respect to the receipt and use of Regionally Controlled Funds; and

(d) Contractual terms and other relevant administrative or fiduciary issues.

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(4) The governing bodies of the counties comprising the Region shall jointly notify the Department in writing, as soon as reasonably possible, of the following:

(a) The identity of the Fiscal Entity; and

(b) Any actual or formally contemplated change in the designated Fiscal Entity.

(5) Alternatively for sections (3) and (4) of this rule, the Regional Board may directly designate and contract with the Fiscal Entity, and notify the Department accordingly, if it is established as an intergovernmental entity but not as the Region's Fiscal Entity.

(6) Other agreements that supplement or incorporate what is described in this rule may be executed as necessary and appropriate, especially for a Partnership-based Region.

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0300

### Content of Regional Investment Strategy

The regional investment program is intended to identify, address and coordinate economic development priorities, as well as coordinate public and private resources, in accordance with ORS 285B.233. Therefore, an Investment Strategy shall explicitly do the following:

(1) Address the statewide economic development strategy outlined in ORS 285A.020(3) to:

(a) Promote a favorable investment climate to strengthen businesses, create jobs and raise real wages;

(b) Improve the national and global competitiveness of Oregon companies; and

(c) Assist Oregon communities in building capacity to retain, expand and attract businesses.

(2) Focus on priorities identified by the Regional Board, along with the following priorities, as taken from ORS 285B.230(3):

(a) Promote the structures and processes of public and private organizations to effectively create, adapt, foster and sustain economic development in this state, emphasizing rural and distressed areas;

(b) Ensure that economic strategies will reinforce Oregon's long-term prosperity and livability; and

(c) Coordinate economic development efforts and efforts to support a locally skilled workforce in order to compete in the global economy.

(3) Address required elements in the form of an Investment Strategy pursuant to ORS 285B.239, including a Rural Action Plan based on the Strategy development handbook titled, "Elements of a Regional Investment Strategy" prepared by the Department.

(4) Demonstrate in measurable terms the extent to which, as well as how, the priorities in section (1-2) of this rule will be accomplished, as required under ORS 285B.236(2), by relating these to the regional performance measurements and regional benchmarks in the Investment Strategy under ORS 285B.239(h) and to Regional Performance Measures as described in OAR 123-055-0620.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285A.020, 285B.230, 285B.233, 285B.236 & 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0340

### Using Other Planning Exercises

Regions are encouraged to take advantage of other planning activities or sources of helpful guidance that exist in association with federal programs or resources, at the local level and in other circumstances, such that:

(1) In preparing and developing an Investment Strategy, a Regional Board may borrow and rely on technical resources and methods for strategic or economic planning, or the Region may integrate and make reference to recently completed planning work, including those associated with but not limited to the following:

(a) U.S. Economic Development Administration;

(b) U.S. Empowerment Zone/Enterprise Community Initiative; or

(c) Local comprehensive land use plans.

(2) In using models or relevant work as indicated in section (1) of this rule, the Regional Board shall ensure that all of the elements required under ORS 285B.230 to 285B.269 for a complete Investment Strategy are still included therein and are easily identified or identifiable through use of a key or other instructions in the primary document that the Region adopts.

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0400

### Strategy Preparation, Local Input, Refinement with Department and Regional Adoption

For purposes of developing Investment Strategies:

(1) The Department shall extend reasonable assistance to each Regional Board, its members and its Fiscal Entity, which may include provision of program guidance, attendance at local meetings or contact information for relevant organizations or government agencies, as the Department's time and resources permit. The Department shall guide in the development of Investment Strategies and shall assist with information gathering for any Region, if so requested by the Board Chair.

(2) For all Regions:

(a) In addressing the general preparation and substance of the Investment Strategy, the Regional Board shall provide opportunity for consultation with applicable representatives in the Region from the following:

(A) Private industries, the for-profit business community, the non-profit sector and workforce committees;

(B) Local/city governments and public service providers, including ports and other special districts;

(C) Tribal governments or councils; and

(D) State and federal agency partners, especially those listed under ORS 285B.230(4).

(b) The Regional Board may work with the Department in the refinement of the Investment Strategy through drafting stages and to ensure compliance with applicable statutes and addressing priorities outlined in OAR 123-055-0300.

(c) Public hearings shall be scheduled and conducted, as follows:

(A) A public hearing shall be held by each county governing body in the Region, after published notice, in accordance with the county's adopted public notice requirement, inviting public comments on the proposed Investment Strategy. After the public hearing in that county, the governing body shall take formal action on the adoption of the Investment Strategy.

(B) The Investment Strategy shall be made available to the public for inspection during the public notice period preceding the public hearing.

(d) In order for the final Investment Strategy to be regionally adopted, it must be approved by motion or resolution of the following:

(A) All of the counties in the Region (by a majority vote of each county governing body, as specified in the county charter); and

(B) The Regional Board (pursuant to its own procedures or bylaws).

(3) In response to a recommendation from the Department, Commission, or Regional Partnership, an Investment Strategy that has been regionally adopted may be modified, amended or appended by the Regional Board if the county governing bodies in the region, by formal action, authorize the Regional Board to make non-substantive or minor changes.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0420

### Review/Approval by Commission and Governor or Through Regional Partnership

The Regional Board shall provide a complete copy of the regionally adopted Investment Strategy, as developed and adopted consistent with OAR 123-055-0400, to the Department, at which point the Investment Strategy shall be handled according to either section (1) or (2) of this rule:

(1) Review and approval shall be done through a Regional Partnership, such that:

(a) These functions have been delegated to the Regional Partnership either by communication from the Commission to the Director or by a joint recommendation of the state agency directors under ORS 285B.230(4) (or their regional designees);

(b) The review and approval of the Investment Strategy proceeds according to the Regional Partnership's discretion and criteria, including but not limited to compliance with all applicable statutes; and

(c) Final approval of the Investment Strategy is formally submitted to the Commission or the state agency directors under ORS 285B.230(4) (or their regional designees) for recognition by the Department.

(2) Without delegation under subsection (1)(a) of this rule, review and approval shall proceed as follows:

# ADMINISTRATIVE RULES

(a) The Department examines the Investment Strategy to ensure compliance with applicable statutes and may seek and obtain missing or corrected information, as necessary, from the Regional Board;

(b) The Department submits the Investment Strategy to the Commission with summaries or assessments, as are appropriate or requested by the Commission;

(c) The Commission considers the submission by the Department and;

(d) Pursuant to any consultation that it chooses to have with the Regional Board, the Commission takes action either by returning the Investment Strategy to the Regional Board with instructions for modification or granting final approval of the Investment Strategy.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0440

### Strategy Implementation and Six-Year Update

Once approved as described in OAR 123-055-0420:

(1) An Investment Strategy shall be implemented at the direction and by authority of the Regional Board, in cooperation with a Regional Partnership as applicable, such that:

(a) The Department shall assist with implementation, as staff resources and time permit, especially for purposes of coordination with resources at the Department's disposal;

(b) Leverage of resources and opportunities other than Regionally Controlled Funds are to be continually considered for effectively and efficiently achieving economic development results; and

(c) Measuring and reporting progress, spending and so forth under the Investment Strategy shall be integral to implementation.

(2) An Investment Strategy is a living document, and at a minimum every six years, the Regional Board shall revise it as necessary and improve it wherever suitable. The revised and updated Investment Strategy shall be developed and approved consistent with OAR 123-055-0400 and 123-055-0420.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242, 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0460

### Relationship of Plan to Regionally Based Funding

For purposes of disbursing Regionally Controlled Funds to a Region, in accordance with Division 057 of this chapter of administrative rules:

(1) All disbursements of Regionally Controlled Funds will be made to the Region's Fiscal Entity, as designated in accordance with OAR 123-055-0240.

(2) Except for moneys described in OAR 123-057-0330 or 123-057-0430, the Department may make such disbursements only pursuant to final approval of the Investment Strategy.

(3) Such disbursements further depend on an effective and enforceable contract between the Department and the Fiscal Entity, as described in OAR 123-057-0170 and will not be made without such a contract.

(4) If a Region fails to adopt, submit or have an Investment Strategy finally approved, it may not receive its counties' Regionally Controlled Fund allocations, and the Department at the end of the biennium may proportionally reallocate such moneys to other Regions.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242, 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0525

### Relationship of Local Entities to Partnership

For purposes of Regional Partnerships under ORS 285B.230(4):

(1) The memorandum of understanding among local partners and the directors of the seven state agencies may take the form of two or more agreements or memoranda for purposes of establishing certain structures, objectives and efforts of the Regional Partnership.

(2) The local partners may join together under separate arrangements to form a mutual agreement as a unit, in order to achieve the following or comparable purposes:

(a) Simplify and more efficiently execute an agreement or memorandum between such unit and the directors of the seven state agencies; and

(b) Allow for designation of one or more representatives of the local partners to do the following:

(A) Act on behalf of that unit (or the union between that unit and the seven state agencies); and

(B) Interface with a fiscal agent for handling moneys (though not Regionally Controlled Funds) on behalf of that unit, regardless of whether this fiscal agent is the same as the Fiscal Entity for a corresponding Partnership-based Region.

(3) Not all of the local partners as indicated in ORS 285B.230(4) need to be included in a Regional Partnership, but shall participate only as interested. However:

(a) The county governments, as well as the major cities that are central to the regional economy, are expected to be part of the Regional Partnership; and

(b) No local partner that has a significant and applicable presence in the Regional Partnership's area shall be excluded if expressing a clear desire to actively participate in the general business of the Regional Partnership, prior to its formation. A Regional Partnership may make accommodations for revising its composition, whenever it redefines its basic objectives.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-055-0620

### Regional Performance Measures and Periodic Performance Reports by Region

In direct relation to the regional benchmarks established in the Investment Strategy under ORS 285B.239(h):

(1) Every Regional Board shall identify quantitative targets for regional performance measures that measure and evaluate the accomplishments of the Region's adopted priorities, including target goals for measuring:

(a) Long-term and short-term job creation and retention, including the number of jobs created and retained and wage levels.

(b) Leveraging long-term investments.

(c) Maximizing moneys leveraged with short-term investments;

(2) Every Regional Board shall propose criteria for the use, distribution and evaluation of its investment funds consistent with its adopted and approved Implementation Strategy.

(3) The proposed regional performance measures and distribution criteria shall be submitted to the Department for review by the Commission, which may recommend changes to the Regional Board, such that the Regional Board may adopt the recommendation or make counter-proposals to the Commission, and so forth, or other procedures may be arranged for negotiating regional performance measures and distribution criteria between the Commission and the Region or Regions, in order to finalize regional performance measures and distribution criteria, which the Commission may ultimately resolve as necessary.

(4) In addition to sections (1) to (3) of this rule, the Commission and the Department may develop models or methods to coordinate and facilitate the adoption and use of regional performance measures and distribution criteria by Regions at their discretion, and as the time and resources of the Commission or Department allow.

(5) Each report required under this rule shall be submitted to the governing bodies of the counties comprising the Region, the Commission, the Governor, the Legislative Assembly, the Department and other parties of the Regional Board's choosing.

(6) Periodically as determined and described by the Department, every Regional Investment Board shall in accordance with ORS 285B.239(i) to submit reports on regional performance measures allowing the Department, the Commission, the Legislature and the Governor to evaluate the effectiveness of each regions implementation strategy and ensuring the resources are being effectively used.

(7) The reports shall, at a minimum, relate to and be integrated with the Regional Board's biennial report to the Governor, Commission and the Legislative Assembly on the expenditure of Regionally Controlled Funds under 285B.263(6).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

# ADMINISTRATIVE RULES

## 123-055-0900

### Waiver of Provisions Not Required by Statute

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated to the satisfaction of the Director that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.269, and that it contributes to sound economic or community development.

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

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**Rule Caption:** Conform the Regionally Based Funds (Div. 57) rules to the provisions of SB 350 (2007 Legislature).

**Adm. Order No.:** EDD 11-2007(Temp)

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07 thru 2-29-08

### Notice Publication Date:

**Rules Amended:** 123-057-0110, 123-057-0130, 123-057-0150, 123-057-0190, 123-057-0210, 123-057-0230, 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

**Rules Suspended:** 123-057-0310

**Subject:** The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms existing rule to the legislation, as well addresses the legislative direction provided in the Budget Note to SB 5508.

**Rules Coordinator:** Paul J. Grove—(503) 986-0192

## 123-057-0110

### Purpose and Scope

This division of administrative rules is intended to establish technical clarity for the actual allocation, distribution, uses and evaluation of a Regional Board's past performance of their implementation Strategies with moneys from the Regional Investment Fund for effective implementation of long-term regional Investment Strategy in addition to other available resources.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0130

### Definitions

For purposes of this division of administrative rules, the definitions described in OAR 123-055-0120 apply. Moreover, unless the context demands otherwise:

(1) **Fixed Assets** mean plant, equipment or other tangible assets of an individual private business that have a useful life lasting longer than one year, and that are normally subject to depreciation for income tax purposes.

(2) **Grant Contract** means the contract between the Department and the Fiscal Entity for disbursement of Regionally Controlled Funds to the Region, as described in OAR 123-057-0170.

(3) **Strategic Regional Investment Opportunity Fund project** means a project or activity funded in collaboration by the department and regional boards, as determined under ORS 285B.263(2), to award projects or activities

(4) **Regional Fund** means the Regional Investment Fund under ORS 285B.260 and 285B.263.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0150

### Allocation to Regions

For purposes of allocating moneys from the Regionally Controlled Funds to each Region for a biennium:

(1) The Department shall in communication with interested parties devise a methodology for apportioning such moneys among all 36 counties, so that Regions may align as is most suitable for serving their needs and relationships.

(2) This methodology shall utilize demographic, economic, financial or other data and statistics to appropriately and effectively capture both the relative size and economic conditions of the counties and thus the Regions that comprise them.

(3) The Department shall report the methodology to the Commission for consideration.

(4) The Department shall review and may make improvements to the methodology with each biennium.

(5) In the case where a Region subdivides a county, the splitting of funds allocated to that county shall be determined by agreement among the Regions that contain parts of the county, and the county in question shall provide the Department with ratios for disbursement to the respective Fiscal Entities, such that:

(a) The ratios for the Regional Fund shall not greatly deviate from those of the relative population in each part of the county; and

(b) The Department shall disburse no moneys to any affected Region until the ratios have been determined and reported, as described in this section.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0190

### General Availability and Use of Funds

Subject to the Grant Contract:

(1) No moneys shall be disbursed to the Fiscal Entity until the Investment Strategy or its relevant update has been finally approved in accordance with division 055 of this chapter of administrative rules, except as described in OAR 123-057-0330 and 123-057-0430.

(2) Unless otherwise directed by the Department, Regionally Controlled Funds that are received by the Region through the Fiscal Entity shall be promptly returned to the Department:

(a) If not obligated by formal action of the Regional Board on or before July 1, one year after the end of the biennium; and

(b) If unexpended at the termination or expiration of the Grant Contract.

(3) Public entities that directly or indirectly receive Regionally Controlled Funds shall comply with public procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable state and local regulations.

(4) The Department's payment of Regionally Controlled Funds is subject to the availability of money in the Regional Fund. Regions shall proportionately share in any shortfall of lottery revenue.

(5) The Fiscal Entity shall maintain records of all activities associated with the Investment Strategy and expenditures of Regionally Controlled Funds. The Department is entitled to monitor the Fiscal Entity's records to verify compliance with the Grant Contract.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0210

### Common Requirements

Regionally Controlled Funds for implementing the Investment Strategy shall be obligated and expended subject to the Regional Board's evaluation of the merit and readiness of the project, in accordance with the adopted project selection criteria and subject to the consistency of the project with the priorities of the Investment and implementation Strategy, such that:

(1) All projects or activities funded meet the funding criteria as set forth in the Investment Strategy approved by the Commission to ensure funded projects and activities are in compliance 285B.239(1)(a)-(j) and in accordance with OAR 123-055-0620.

(2) The expenditure of the Regional Controlled Funds must be authorized by the Regional Board, according to the Region's procedures governing such authorization.

(3) Regionally controlled funds shall not be used as prohibited in OAR 123-057-0230.

(4) Any activity or project funded through this division of administrative rules shall indicate that it is state lottery-funded and authorized by the Regional Board in all public documentation and on a publicly visible sign associated with any project involving construction activity. The sign shall be provided by the Regional Board funding the project and the sign shall be approved by the Department prior to placing the sign at the project site.

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(5) Any public facility, as defined in ORS 447.210, for which construction costs are in any part paid for with Regionally Controlled Funds, shall be accessible to and made useable by handicapped persons in accordance with the U.S. Americans with Disabilities Act of 1990 (Public Laws 101-336).

(6) Any activity paid for in whole or in part with Regionally Controlled Funds that affects physical development of land shall comply with the applicable requirements of division 008 of this chapter of administrative rules, this state's land use laws and the local comprehensive plan.

(7) An individual private business receiving direct or substantial benefits from Regionally Controlled Funds may be required to comply with Division 070 of this chapter of administrative rules for entering into a first-source hiring agreement, but only if required by the Regional Board in the Investment Strategy.

(8) Regionally Controlled Funds may only be provided to private for-profit businesses for a project and activity, whether as a grant or a loan, if that project and activity is consistent in its own right with an activity specified in the Investment Strategy (apart from any general objective for financially inducing business development, recruitment or expansion) in accordance with ORS 285B.263(4).

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.260, 285B.263 & 461.740

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0230

### Common Prohibitions

Regionally Controlled Funds may not be used to do any of the following:

(1) Retire any debt;

(2) Reimburse any person or municipality for expenditures made or expenses incurred before final approval of the Investment Strategy, except for preparation and administration as described in 123-057-0430;

(3) Substitute for available budgeted resources in supporting ongoing public services or infrastructure that already exist, but rather shall support only new or enhanced local services benefiting the Region's capacity for economic development;

(4) Maintain existing staff of a public or private entity, except for staff time dedicated to:

(a) The administrative needs of the Investment Strategy or the Regional Board;

(b) Redirected or augmented efforts consistent with the Investment Strategy, such as new technical assistance for enhancing regional coordination or local economic development activities/capacity; or

(c) Continue to fulfill objectives or activities of the Investment Strategy as initiated in a previous biennium; or

(5) Assist in any way with the relocation of a business facility within this state from one labor market area to another, unless:

(a) The job losses in the originating labor market area are less than or equal to 0.1 percent of the most recently available estimate for the civilian labor force therein; or

(b) The relocation entails an improvement in the quality and a significant increase in the size of the business's total in-state employment, without being detrimental to any rural area, subject to determinations of the Department.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0310

### Objective and Geography

(1) The Rural Fund, as generally allocated by the Commission, provides a flexible source of financial assistance to benefit rural communities and to help them undertake locally-determined economic development projects and programs, potentially ineligible for support through other state or federal sources. It is intended to offer a vehicle by which Regional Boards can leverage other funding sources to the maximum extent possible for improving the economies of rural areas.

(2) The Rural Fund proportion of a project's funding out of Regionally Controlled Funds shall not significantly exceed the project's relative benefit for persons or communities in rural areas, as estimated by the Regional Board when authorizing the project.

(3) Location of the Rural Fund project or activity in a rural area is required, only if significant benefits accrue to the immediate vicinity where the project or activity takes place.

(4) A Regional Board may focus more strategically in defining what is meant by Rural@ for purposes of its Region, but as used in this division of administrative rule, Rural areas@ mean those parts of this state that are outside of:

(a) The acknowledged Portland Metropolitan Area Regional Urban Growth Boundary; and

(b) The acknowledged urban growth boundaries of cities with population of 30,000 or more, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285A.010, 285B.254 & 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; Suspended by EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0330

### Rural Set Aside

Moneys dedicated to the Rural Set Aside, as described in ORS 285B.239(2), shall be used for funding eligible activities in the Rural Action Plan as a part of the Investment Strategy as described in ORS 285B.239, such that:

(1) The amount of money dedicated to the Rural Set Aside is determined by the Regional Board prior to awarding funds for projects.

(2) The amount of money so dedicated each biennium to the Rural Set Aside is sufficient to adequately implement the Rural Action Plan in that biennium.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0350

### Rural Action Plan

(1) The rural action plan is an element of the Investment Strategy, and shall be reviewed and approved in the context of the six-year Investment Strategy subject to satisfaction of OAR 123-055-0400 and 123-055-0420.

(2) The rural action plan may merely refer to and highlight other Investment Strategy elements if the Investment Strategy is entirely or mostly oriented towards rural areas.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 8-2000(Temp), f. 5-2-00, cert. ef. 5-2-00 thru 9-30-00; EDD 13-2000, f. & cert. ef. 8-15-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0410

### Components

The Regional Fund is used for the following:

(1) Technical assistance and staff support for preparation and update of the Investment Strategy and for development and administration of a Regional Partnership;

(2) Personnel and expenses for administering the Investment Strategy and its implementation; and

(3) Projects and activities implementing an approved Investment Strategy.

(4) Other activities consistent with the adopted Investment Strategy in accordance with ORS 285B.239

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0430

### Dedicated to Strategy Preparation

As determined by the Commission, a maximum percentage of the moneys from the Regional Fund in each biennium may be dedicated by a Regional Board for preparation of the Investment Strategy and for support of a Regional Partnership, such that:

(1) The maximum limit established by the Commission is expressively included in the Grant Contract;

(2) The Department shall take reasonable efforts to make such monies available prior to approval of the Investment Strategy, including but not limited to executing the Grant Contract and specifically disbursing such moneys through it;

(3) The moneys may only be used for technical assistance and staff support for:

(a) Development and refinement of the Investment Strategy; or

(b) Development and administration of a Regional Partnership; and

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(4) Such moneys may be spent on relevant work and expenses incurred prior to disbursement of the funds or final approval of the Investment Strategy, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0450

### Guidelines for Financing Fixed Asset Acquisitions of Private Businesses

For purposes of grants or loans from the Regional Fund to individual private businesses for the acquisition of Fixed Assets, under ORS 285B.263(4), to complement existing public and private financing:

(1) Only a portion (not all) of the moneys for projects and activities in any biennium may be used for such purposes, including but not limited to the capitalization of a revolving loan fund or funds for private business projects.

(2) The Investment Strategy must contain the terms and conditions for such grants or loans, when the Investment Strategy is submitted for review pending final state-level approval, along with other provisions in the Investment Strategy applicable to relevant activities.

Stat. Auth.: ORS 285A.075 & 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0470

### Tourism and Industrial Marketing

For purposes of ORS 285B.245(1) and expending Regional Fund money for projects to market a Region for creating, expanding or retaining tourism or industrial activity, investments and related jobs:

(1) If a Region intends to use any of its Regional Fund allocation for such purposes, then the Investment Strategy must generally show how the projects to be funded will complement and will not conflict with statewide marketing campaigns and efforts aimed at travelers/tourists or at industrial investors, such that:

(a) This section may be fulfilled by describing procedural steps, criteria or the like for selecting and authorizing projects; and

(b) The Investment Strategy needs only to address the basic thrust of statewide campaigns, as they exist at the time that the Investment Strategy is locally adopted or updated in each biennium.

(2) Consistent with OAR 123-055-0600, the Department shall seek to coordinate such marketing efforts at the state and regional level, especially by emphasizing ways to effectively take advantage of each level's respective resources (or other types of resources).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0510

### Allocation

In each biennium: In accordance with ORS 285B.263(2) and 285B.266(3), the Department may allocate a specific portion of the Strategic Reserve Fund to be used as the Strategic Regional Investment Opportunity Fund.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0530

### Use and Criteria of Strategic Regional Investment Opportunity Project Moneys

In each biennium, the Commission may allocate funds from the Strategic Reserve Fund to create a Strategic Regional Investment Opportunity Fund. The Department shall allocate a portion of the Fund to each Regional Investment Board based upon consultation with Association of Oregon Counties, League of Oregon Cities, and Oregon Public Ports Association. This allocation shall:

(1) Ensure that each Strategic Regional Investment Opportunity Fund Project actualizes one or more of the following:

(a) The project is developed and brought forward to the Department by a Regional Partnership or Board, Business Development Officers or business partners;

(b) The project can demonstrate a significant private business investment, short or long term job creation or other long-term economic development impacts that results in job creation. ;

(c) Greater competitiveness and productivity by the Regions' traded-sector industries resulting in short term job creation or retention;

(d) The investment of these funds will close a critical gap in funding for eligible activities;

(e) Significant improvement in the variety, wage level and quality of jobs in the participating Regions;

(f) Collaboration with one or more industries or institutions that are important to the Regions' future:

(A) Eliminate barriers that impede competitiveness of existing businesses;

(B) Foster new or expanded businesses emerging in the Regions;

(C) Internationally market goods and services from the Regions; or

(D) Diversify the regional economies;

(i) Similar goals consistent with or conducive to statewide efforts and priorities for economic and community development.

(2) Insist that Strategic Regional Investment Opportunity Projects adhere to funding standards, as follows:

(a) By satisfying sound investment/underwriting principles;

(b) By combining with funds from private, local, regional, state or federal sources; and

(c) By ensuring that the project is ready to proceed in terms of delivering planned outcomes in a reasonable time, including but not limited to a thorough scope of work in the project application, contract and reporting requirements as described in this rule, clear commitment of other resources and the absence of barriers to the project's timely commencement.

(3) Forbid Strategic Regional Investment Opportunity Fund Projects that amount to the following:

(a) A subsidy for ongoing capacity of an organization or for ongoing operation and maintenance of a facility;

(b) Open-ended efforts that lack a demonstrable and realistic plan for effectively concluding the project, generating future resources or ensuring the usefulness of any deliverables/capacity in the future; or

(c) A failure to demonstrate the criteria as described in Section 1(b) of this rule.

(4) The Department shall fund projects in accordance with the following:

(a) The Department shall facilitate the identification and undertaking of Strategic Regional Investment Opportunity Fund Projects, through communications and assistance to Regional Boards and Fiscal Entities through the Department's Business Development Officers. Regions seeking to access their allocated portion of the funds shall do so through their regionally assigned Business Development Officer.

(b) Strategic Regional Investment Opportunity Fund projects addressing projects that meet the criteria as described in this rule may be advanced for approval upon joint recommendation of a Regional Partnership or Regional Boards Response Committee and a Business Development Officer. If the project is recommended, the Business Development Officer will draft a staff recommendation for signature.

(c) Following approval of project funding, projects are assigned to the most appropriate Division within the Department to negotiate final project conditions if any, performance measures and to develop and execute contract documents. The contract will specify the process and timing of disbursements of funds, conditions for reporting results, terms for repayment of funds where appropriate and the process for project closeout.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## 123-057-0710

### General Guidance

For purposes of ORS 285B.263(6), each Region shall prepare and submit a biennial report to the Governor, Commission and Legislative Assembly:

(1) This biennial report shall be prepared and submitted in conformance with the following:

(a) Format and procedures that the Department may prescribe; and

(b) The Region's periodic performance reports and regional performance measures and distribution criteria including goals pursuant to OAR 123-055-0620 and ORS 285B.239.

(2) The final biennial report shall be due at a time determined by the Department in relation to each general session of the Legislature, and shall include information from prior biennia not covered in the previous bienni-

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al report, as well as the most currently available information for the ongoing biennium.

(3) The biennial report shall describe all expenditures of Regionally Controlled Funds and, where multiple state funds are invested in a job creation or retention projects such as Strategic Regional Investment Opportunity Fund projects, the department will:

(a) In some manner, differentiate and proportion between the funding sources when reporting these job creation projects to the Legislature.

(4) The biennial report shall indicate the success of projects and programs as funded or completed, not only in terms of the project or program itself, but also in terms of how each one contributes to:

(a) Carrying out the Investment Strategy as whole;

(b) Carrying out the Rural Action Plan specifically;

(c) Affecting performance measures and regional benchmarks specified therein; and

(d) Achieving identified priorities for regional economic priorities, as both defined in statute and by the Regional Board itself in the Investment Strategy.

(5) The biennial report may (in addition to information about expenditures of Regionally Controlled Funds and about funded projects) address the Regional Board and the Investment Strategy's general progress and impact, especially in coordination with other resources and entities.

(6) The biennial report shall indicate the success of projects and activities as funded in accordance with the regionally adopted, six-year Commission approved Investment Strategy and project funding criteria that has been established by the adoption of the strategy and goals as described in ORS 285B.239 thru 285B.263. The Regions will be evaluated by Department Staff in accordance with ORS 285B.239(1)(h)(A, B, C) and ORS 285B.239(1)(i-j). If the Department determines the Region has funded projects not complying with the approved Investment Strategy, the Department shall reduce future allocations from the Regional Fund in a like percent of the funds spent on the projects not meeting the adopted criteria established by the Investment Strategy.

Stat. Auth.: ORS 285A.075285B.236(1)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

## Oregon Department of Education Chapter 581

**Rule Caption:** Amends rule to reflect current requirements for Certificate of Initial Mastery.

**Adm. Order No.:** ODE 17-2007

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 581-022-1110

**Subject:** Changes to requirements for Certificate of Initial Mastery were made during the 2003 Legislative Session. The rule was amended to reflect those changes as a temporary rule. These amendments would be approved as permanent rules.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

### 581-022-1110

#### Certificate of Initial Mastery Requirements

(1) Each district school board shall award a Certificate of Initial Mastery (CIM) to students who: Achieve all CIM level performance standards in the academic content standard areas of English, mathematics, and science, and additional local district CIM requirements, if any, as defined by district school board policy.

(2) School districts shall ensure that students have the opportunity to demonstrate the ability to learn, think, retrieve information, use technology and work effectively as individuals, and as individuals in groups.

(3) School districts shall administer all state assessments that are offered in English, mathematics, and science at grades 3, 4, 5, 6, 7, 8 and high school. School districts may administer state assessments in social sciences.

(4) School districts shall offer additional services or alternative public education options to students who do not meet the standards or who exceed all of the standards at any benchmark level. If after one year, the student, for whom such services or options were made available, has not yet met all standards, the school district, with the consent of the parents, shall make an appropriate placement as described in ORS 329.485(5).

(5) School districts shall award an alternative certificate specifying benchmarks and standards achieved to those students who, having received appropriate additional services and for whom alternative learning options were made available, do not meet the standards required for the CIM.

(6) School districts that have been granted timeline waivers under OAR 581-022-1920 must document both on awarded CIM certificates and student's records, the requirements that have been waived.

(7) Each school district board is authorized to grant individual students a waiver in accordance with ORS 329.487. Students receiving such a waiver may receive a CIM if all non-waived requirements are met. Districts must document both on awarded CIM certificates and in the students' records the requirements that have been waived.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.075, 329.465 & 329.485

Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 15-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; ODE 29-2001, f. & cert. ef. 12-20-01; ODE 17-2002, f. & cert. ef. 6-10-02; ODE 5-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05, Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06; ODE 17-2007, f. & cert. ef. 9-10-07

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**Rule Caption:** Amendment would change numbering to reflect previous amendment.

**Adm. Order No.:** ODE 18-2007

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 581-022-1130

**Subject:** The rule was previously amended and the amendment should have resulted in the rule being renumbered. One section of the rule was not renumbered and this amendment will correct that error.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

### 581-022-1130

#### Diploma Requirements

Each district school board with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (1)-(8) of this rule and all local school district requirements as described in district school board policies. A school district may award an alternative document to a student who has met some but not all of the graduation requirements:

(1) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Applied Arts, Fine Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(2) Unit of Credit Requirements for students graduating on or after July 1, 2009:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 2;

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(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Applied Arts, Fine Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Each student shall develop an education plan and build an education profile (as defined in OAR 581-022-1120, section (3)(a) and (b));

(4) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(5) Each student shall demonstrate career-related knowledge and skills in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development; and

(6) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-1120, section (3)(e));

(7) Students graduating in the 2006-2007 school year, and thereafter, must meet the requirements in section (3)-(6) of this rule.

(8) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(c) With any modification of the attendance requirements for graduation, school district staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district guidelines and the wishes of parents and guardians

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-

2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07

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(E) The Arts;

(F) Second Languages;

(G) Health Education; and

(H) Physical Education.

(b) Additional Common Curriculum Goals for:

(A) Technology.

(c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards; and

(d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards.

(3) The school district shall also provide instruction in other areas identified in chapter 581, division 022 of the Oregon Administrative Rules, including:

(a) Infectious diseases, including AIDS/HIV and Hepatitis B;

(b) Prevention education in drugs and alcohol; and

(c) Emergency plans and safety programs.

(4) The school district is also accountable to provide instruction in compliance with requirements set forth in ORS chapter 336, Conduct of Schools Generally.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.045

Hist.: EB 6-1997, f. & cert. ef. 6-9-97; ODE 7-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05; Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06; ODE 19-2007, f. & cert. ef. 9-10-07

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**Rule Caption:** Correction of typo.

**Adm. Order No.:** ODE 20-2007

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07

**Notice Publication Date:**

**Rules Amended:** 581-022-1350

**Subject:** The rulemaking notice originally filed contained the correct date. However, the final certificate filed with secretary of state contained a typographical error, this amendment corrects that error.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-022-1350

### Alternative Education Programs

(1) Sections (2)-(9) of this rule apply to each public or private alternative education program approved by a school district board on or after July 1, 2007. For the purposes of this rule, the term "program" includes "school."

(2) In order to provide innovative and more flexible ways of educating children, school districts may establish alternative education options within the public school system.

(3) School districts must adopt policies and procedures for the approval and at least annual evaluation of public and private alternative education programs under ORS 336.615-336.665 (Alternative Education Programs) that receive public funds. Those policies and procedures must provide that:

(a) The district's approval and at least annual evaluation must require that a public alternative program complies with all state statutes, rules and federal law applicable to public schools;

(b) Before contracting with or distributing any public school funds to a private alternative education program, the district must document that:

(A) The program is registered with the Oregon Department of Education (ODE) under the provisions of OAR 581-021-0072 by receiving a copy of the Department's written notice that the program's registration is approved for the current school year;

(B) The ODE has assigned the private alternative program an institution identification number;

(C) Before contracting with or distributing any public school funds to any private alternative education program for special education services identified in a child's IEP, the program is approved by the Department in compliance with OAR 581-015-0126;

(D) The program complies with the individual education plan for each student who is eligible to receive special education services;

(E) An education plan and education profile that meet the requirements of OAR 581-022-1120(3)(a) and (b) and 581-022-1130(3) are designed and implemented with each student in the program;

(F) The education plan includes criteria for determining if, when, where, and how the student may transition from the alternative program;

(G) A transportation plan is in place ensuring that the program is accessible to each student approved for placement in the program;

**Rule Caption:** Adds health and physical education to list of curriculum defined by state content standards.

**Adm. Order No.:** ODE 19-2007

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 581-022-1210

**Subject:** The proposed amendments would include reference to the instructional content areas of health and physical education as content areas that are defined by state adopted content standards.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-022-1210

### District Curriculum

(1) Each school district shall provide a planned K-12 instructional program.

(2) The planned K-12 instructional program shall include the following:

(a) Common Curriculum Goals and academic content standards to include:

(A) English;

(B) Mathematics;

(C) Science;

(D) Social Science (including history, geography, economics and civics);

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(H) The program assists the district in meeting its comprehensive K-12 instructional program in compliance with OAR 581-022-1210;

(I) The program assures that it provides an instruction based on academic content standards adopted by the State Board of Education and that students participate in district and state assessments of achievement for the grade level(s) the program serves;

(J) The program assists students in earning diploma credits consistent with OAR 581-022-1130 and 581-022-1131;

(K) The program collects and reports to the district each student's local and state assessment, attendance, behavior, graduation, dropout, and other data required by the district and the state;

(L) Student data is included in the district's at least annual evaluation of the program;

(M) The program complies with federal law; and

(N) If applicable, the private alternative education program is in compliance with its existing district contract.

(4) The contract between a school district and a private alternative education program must state that non-compliance with a rule or statute under this rule (OAR 581-022-1350) will result in the termination of the contract, and suspension or revocation of registration by the Department will terminate the district's contract with the private alternative program and that the private alternative education program's annual statement of expenditures is reviewed in the districts' evaluation in accordance with ORS 336.635(2).

(5) School districts shall adopt policies and procedures to approve placing students in district approved public alternative education programs and district approved private alternative education programs. Such policies and procedures must ensure that:

(a) Students placed in alternative education programs are those whose educational needs and interests are best served by participation in such programs and will include:

(A) Students identified pursuant to ORS 339.250;

(i) Who are being considered for suspension or expulsion pursuant to ORS 339.250(9);

(ii) Who have been suspended or expelled pursuant to ORS 339.250(4);

(iii) Whose attendance patterns have been found to be so erratic that the students are not benefiting from the regular educational program; or

(iv) Who have had a second or subsequent occurrence within any three-year period of a severe disciplinary problem;

(B) Students identified pursuant to ORS 329.485(4) and (5) and OAR 581-022-1110(5) who do not meet the standards or who exceed all of the standards at any benchmark level;

(C) Students admitted to the district pursuant to ORS 339.115(2) who have not yet turned 21 prior to the start of the school year and who need additional instruction to earn a diploma in compliance with OAR 581-022-1130;

(D) Students whose parents or legal guardians apply for the student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2) and OAR 581-021-0076; and

(E) Others who are individually approved for placement consistent with the district's board policies regarding the placement;

(b) Placement of a student in a public or private alternative education program may be made only if:

(A) The student is a resident of the district and the district has legal responsibility for the student's education consistent with ORS 327.006(7);

(B) After assessing the student's needs and interests and consulting with the parent or guardian, the district determines that the student is not benefiting, has not benefited, or will not benefit from attendance in other district schools or programs;

(C) The alternative program is determined by the district to best serve the student within local and state academic standards; and

(D) Placement in the program is made consistent with the student's education plan pursuant to OAR 581-022-1120(3)(a) and (b) and 581-022-1130(3) and with district policies and procedures;

(c) Placement in a public or private alternative education program must be made with the approval of the student's resident school district and attending school district; and

(d) Payment to private alternative education providers must be the actual cost of the program or an amount at least equivalent to 80 percent of the district's estimated current year's average per student net operating expenditure, whichever is less.

(6) A school district must adopt policies and procedures for notification of students, parents or guardians of students of:

(a) The law regarding alternative education programs;

(b) The availability of existing alternative education programs; and

(c) The procedures for students, parents, or guardians of students residing in the district to request the establishment of new alternative education programs.

(7) School districts must include opportunities for participation by educators, community members, and parents or guardians in the development of policies and procedures under this rule.

(8) School districts must have policies and procedures in place to ensure that, for the purposes of making claims for state school funds;

(a) Students enrolled in a public school district and receiving instruction in the district's comprehensive planned K-12 curriculum consistent with OAR 581-022-1210 and who are individually placed by the school district in an alternative education programs are accounted consistent with OAR 581-023-0006(7);

(b) Students supplementing home or private schooling by attending part-time and receiving less than comprehensive education from the district are accounted consistent with OAR 581-023-0006(6)(a);

(c) Students receiving online instruction are accounted consistent with reporting guidelines published in the Oregon Student Personnel Accounting Manual, and

(d) Activities claimed for state school funds and credits awarded in the alternative education program consistent with OAR 581-023-0008 are approved by the district and by the contract between a private alternative program and the district.

(9) School districts must have policies and procedures in place to ensure that data for each student in public and private alternative education programs are included in district reporting as required by ODE.

Stat. Auth.: ORS 326.051, 327.125, 336.625, 336.645

Stats. Implemented: ORS 327.006, 329.485, 336.615 - 336.665, 329.485, 339.115, 339.030,

339.250

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 2-1998, f. & cert. ef. 2-27-98; ODE 4-2003, f. & cert. ef. 3-14-03; ODE 12-2007, f. & cert. ef. 4-25-07; ODE 20-2007, f. & cert. ef. 9-10-07

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## Oregon Liquor Control Commission

### Chapter 845

**Rule Caption:** Amend rule to delete minimum time requirement for initial Alcohol Server Education classroom course.

**Adm. Order No.:** OLCC 16-2007

**Filed with Sec. of State:** 8-20-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 845-016-0015

**Subject:** This rule describes the Commission's standards and requirements for Alcohol Server Education (ASE) provider certification for those providing the initial course in a classroom setting. The Oregon Server Education Providers & Instructors Association (OSEPIA) petitioned the agency to amend this rule to delete the language requiring a minimum of 4.5 hours of instruction time, and replace it with language requiring the assessment of student comprehension at periodic intervals.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

#### 845-016-0015

##### Alcohol Server Education Provider Standards

To be certified, a provider must:

(1) Have a course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and that includes:

(a) Role-playing, case study exercises and other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons.

(b) Regular intervals where students demonstrate comprehension of the material through knowledge or skills before continuing to the next unit.

(c) Teaching techniques and methods the provider proposes and the Commission approves. The Commission will approve teaching techniques and methods based on the guidelines in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Teaching Techniques and Methods Standards, (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and

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(d) A student workbook that meets the Commission's Minimum Workbook Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR)

(2) Meet the minimum qualifications in OAR 845-016-0020(1) or have an authorized representative who meets these minimum qualifications, if the provider is not responsible for hiring, training or evaluating instructor qualifications or performance. The provider applicant must submit a completed Provider Staff Certification form describing the provider applicant or authorized representative's qualifications, as appropriate.

(3) Identify all course instructors and persons who train instructors and verify that they meet the qualifications in OAR 845-016-0020.

(4) Submit a completed Provider Staff Certification form and instructor fee for all course instructors as OAR 845-016-0020 requires.

(5) Comply with Secretary of State filing requirements for an Oregon business entity, nonprofit corporation, or assumed business name as specified in ORS 60, 62, 63, 65, 67, 70, and 648, if applicable.

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07; OLCC 16-2007, f. 8-20-07, cert. ef. 9-1-07

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Closure of the forebay at Round Butte Dam on Lake Billy Chinook.

**Adm. Order No.:** OSMB 10-2007(Temp)

**Filed with Sec. of State:** 9-4-2007

**Certified to be Effective:** 9-4-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 250-020-0161

**Subject:** This rule will close the forebay at Round Butte Dam on Lake Billy Chinook to recreational boating.

**Rules Coordinator:** June LeTarte—(503) 378-2617

### 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 is 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 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 buoied areas at:

- (A) Cove Palisades State Park Marina;
- (B) The Crooked River Launching Ramp;
- (C) The Lower Deschutes River Day Use Area;
- (D) The Upper Deschutes River Day Use Area;
- (E) Within 300 feet of a designated swimming area;
- (F) Within a cove at Chinook Island (Metolius Arm) as marked;
- (G) Within the cove at Camp Perry South (Metolius Arm) as marked.

(c) No person shall operate a boat inside the log boom enclosure around Round Butte Dam.

(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.

(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 thru 12-17-94; MB 10-1994, f. & cert. ef. 9-28-94; OSMB 2-2004(Temp), f. & cert. ef. 5-20-04 thru 9-20-04; Administrative correction 10-25-04; OSMB 6-2006, f. & cert. ef. 7-3-06; OSMB 10-2007(Temp), f. & cert. ef. 9-4-07 thru 12-31-07

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## Oregon University System, University of Oregon Chapter 571

**Rule Caption:** Clarify containers prohibited inside athletic facilities.

**Adm. Order No.:** UO 17-2007

**Filed with Sec. of State:** 8-31-2007

**Certified to be Effective:** 8-31-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 571-050-0011

**Subject:** Clarify containers prohibited inside athletic facilities.

**Rules Coordinator:** Deb Eldredge—(541) 346-3082

### 571-050-0011

#### Articles and Activities Prohibited Inside Athletic Facilities

(1) The following items are not allowed inside (or on the rampways, stairways, and tunnels leading into) any University facility which serves as a site for intercollegiate athletic competition whether or not such competition is actually occurring:

- (a) Glass containers of any kind;
- (b) Metal cans;
- (c) Weapons;
- (d) Fireworks, explosives, and munitions;

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- (e) Alcohol or alcoholic beverages or freezes;
- (f) Vacuum bottles and other similar insulated containers (thermos-type containers); and
- (g) Open plastic beverage containers, unless empty.
- (2) Exceptions to the above prohibition are limited to:
- (a) Alcoholic beverages and alcoholic beverage containers belonging to the University of Oregon, or to licensed concessionaires or catering services contracting with the University for its officially sponsored social functions, e.g., receptions, meetings, promotional activities, etc.;
- (b) Weapons of law enforcement officials and those duly licensed to carry them when carried in the manner permitted by the license;
- (c) Fireworks in the custody of any group operating or presenting an officially sanctioned fireworks display.
- (3) University employees or agents shall request, as a condition of the license to enter, that persons about to enter allow them to look inside all backpacks, briefcases, suitcases, athletic bags, packages, duffle bags, coolers, ice chests, picnic baskets, and other similar containers capable of concealing prohibited articles:
- (a) University employees and agents requesting such an inspection shall do so outside the facility's ticket gate. They shall inform persons in possession of the containers to which the inspection request pertains that they are free to decline the inspection and may receive a refund of the price of the ticket and parking (if parking fees were incurred) upon surrender of their tickets or, in the alternative, the persons may discard the container or prohibited items in the container or return them to a vehicle without inspection and then enter the facility without such items;
- (b) Personnel making the inspection requests are not obliged to cause entering spectators to wait in line while other inspections are proceeding. They must, however, request the inspection of the next person who appears carrying inspectable containers as soon as they have completed any given inspection;
- (c) Signs with lettering no less than two inches high shall be prominently displayed at each entrance to any proximate parking lot, at pedestrian entrances to the Autzen Stadium grounds off Centennial Boulevard and Day Island Road, at the south end of the Autzen Stadium footbridge, and no more than fifty feet in front of each inspection point. The signs shall itemize the prohibited articles, explain the potential request for inspection and the right-to-decline options, including refund. Similar explanations shall be printed on season ticket order forms and shall be displayed at ticket windows where tickets for events at University athletic facilities are regularly sold.
- (4) If prohibited articles are discovered during an inspection, the possessor of such items shall be offered the choice of discarding them in a public trash receptacle or of returning them to a vehicle.
- (5) If prohibited articles are openly possessed by a person inside the facility, that person shall be considered to have violated the license to enter and view the event. The license is then revoked and the person shall be requested to leave immediately. A refusal or failure to leave following such a request can cause the person to be treated as a trespasser.
- (6) If a refund is requested under the provisions of subsection (3)(a) of this rule, a bearer coupon shall be signed and delivered reasonably promptly by University officials. Such a coupon shall not name the person possessing the articles, but it shall specify the location, price and date. This bearer coupon may be turned in at (or mailed to) the University Athletic Department's ticket office for a full refund within 30 days.
- (7) Inspections allowed hereunder do not include pat-down inspections of clothing being worn but do extend to carried items.
- (8) Prohibited articles which may be seen without inspections are subject to the same consequences as specified in section (4) of this rule.
- (9) Open umbrellas are prohibited in all Autzen Stadium, Hayward Field and Howe Field seating areas, seating area aisles, and standing room only locations. Complaints about violations of this section shall be made to Athletic Department officials or their designated agents. Violators failing to respond to a request to close their umbrellas by Athletic Department officials or their agents may be required to leave the event.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 351.065 & 352.010

Hist.: UOO 7-1983(Temp), f. & cert. ef. 8-15-83; UOO 4-1984, f. & cert. ef. 7-31-84; UOO 5-1990, f. & cert. ef. 5-18-90; UO 3-2000(Temp), f. 9-20-00, cert. ef. 9-20-00 thru 3-18-01; Administrative correction 6-21-01; UO 17-2007, f. & cert. ef. 8-31-07

## Oregon University System, Western Oregon University Chapter 574

**Rule Caption:** Revision of process/requirements for coverage for health insurance for student athletes and parking services updates.

**Adm. Order No.:** WOU 3-2007

**Filed with Sec. of State:** 9-5-2007

**Certified to be Effective:** 9-5-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 574-060-0010, 574-085-0040, 574-085-0090, 574-085-0100, 574-085-0110

**Subject:** Revision of process/requirements for coverage for health insurance for student athletes and parking services updates

**Rules Coordinator:** Debra L. Charlton—(503) 838-8175

### 574-060-0010

#### Coverage for Health Insurance

(1) Western Oregon University is to coordinate the coverage for health insurance the athlete's family has, or is individually purchased by the student athlete, with that of the University's secondary medical insurance program, which is financed from Incidental Fees provided for athletic programs and administrative expenses.

(2) Participants in the Western Oregon University athletic programs must place their required family or personal comprehensive individual insurance program information on file with the Western Oregon University Athletic Office:

(a) Before receiving clearance to participate in any countable athletic-related activity; and

(b) Before any athlete is allowed to participate in any games, scrimmages or any other countable athletic-related activity, including conditioning activities and tryouts.

(3) The essence of this co-insurance program is:

(a) The injured student will first utilize the primary family or personal insurance;

(b) The portion not paid by the primary family or personal insurance will be paid by Western Oregon University athletic insurance financed by Incidental Fees;

(c) The University's athletic insurance coverage will pay the remainder, up to where the NCAA Catastrophic Insurance is activated.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070

Hist.: OCE 3-1978, f. & ef. 10-27-78; WOSC 6-1991, f. & cert. ef. 6-18-91; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 3-2007, f. & cert. ef. 9-5-07

### 574-085-0040

#### Vehicle Permits and Parking Areas

(1) All vehicles parked on the Western campus are required to display a recognized parking permit. Permits are not required at parking meters. Valid parking permits are required 24 hours per day, 6:00 a.m. Monday through 6:00 p.m. Friday. Permits are not required on Saturdays, Sundays and State recognized holidays except when classes are in session. Full year permits are valid from October 1 through September 30.

(2) All permits may be purchased at the Cashiers Office in the Administration Building. Guest permits are available at no charge in all department offices on campus.

(3) All permit prices are established in accordance with the Administrative Rule of the State Board of Higher Education, 580-040-0025. The cost of the permits is established to provide adequate funds to cover all operating and maintenance costs and meet bond debt service and reserve requirements. Parking Services is an auxiliary self-supporting entity and receives no financial support except through established parking fees. Permit fees may increase yearly based on the actual costs of operation, maintenance and debt service.

(4) Faculty and staff may pay for their primary and secondary permits by payroll deduction if arrangements are made between September 1 and October 1.

(5) Western recognizes a variety of parking permits, including but not limited to:

(a) "Day Permits" may be purchased for as many days as needed;

(b) "Weekly Permits" are valid for five (5) working days (Monday through Friday);

(c) "Monthly Permits" are valid through the same day of the following month;

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(d) "Term Permits" are valid through the last day of the term for which purchased;

(e) "Full Year Faculty/Staff Decals" are valid in all parking lots except J, J loop, N, Q and Q loop;

(f) "Full Year Student Commuter Decals" are valid in all parking lots except J, J loop, N, Q and Q loop;

(g) "Full Year Student Residence Halls Decals" are valid in lots G, J, J loop, and P only. Family Housing, Alderview and Arbuthnot residents are required to have a Special Permit displayed to park in the reserved areas (lot N, Q, Q loop and lot J);

(h) "Motorcycle/Moped decals" are valid in marked motorcycle stalls only. If a motorcycle owner wishes to park in a regular stall they may obtain a staff, commuter or residence hall permit decal at the automobile rate;

(i) "Car Pool Dangler" is provided for two or more persons who share rides. It is valid only in the vehicle where it is displayed and only for the vehicles registered to the car pool;

(j) "Contractor Dangler" may be issued to contractors and/or businesses involved with construction, equipment repair, etc., on campus;

(k) "Emeritus/Volunteer Decals" are issued to emeritus faculty/staff and/or volunteers working on campus when approved and on file in Parking Services located within the Cashiers Office. The permit is a staff/faculty permit that is valid October 1 through September 30 annually. Volunteer permits are valid only when doing volunteer work for the University. Staff, faculty and students are not allowed to use volunteer permits to park on campus;

(l) "Conference, Workshop and Special Event" permits and parking rentals are available upon request from departments or sponsors for distribution to conference, workshop and special event guests. Such events include: workshops, theater events, sporting events, conferences, etc., where adjacent parking lot enforcement is temporarily terminated or permits issued to support the event. (The lot is rented for a predetermined rate.) Permit rates are calculated according to the number of participants and duration of the conference/event, dates, times and the type of user;

(m) "Temporary Disabled" permits for persons with mobility type injuries/illnesses will be issued for up to a week of time without a doctor's note. A doctor's note will be required for extended periods of time over one week. A valid permit is required on their vehicle. "Temporary Disabled" permit holders may use disabled parking stalls and parking meters without paying them on Western property;

(n) "Guest Permits" are valid for 24 hours from the time of issue and are available in all department offices. Fifteen (15) working days must elapse prior to issuing another guest permit for the same vehicle/person. Faculty, staff and students, and persons doing business on campus are not considered guests. Departments are responsible for providing a parking permit to their guests within 30 minutes of their arrival. Citations issued to guests for "no permit" after 30 minutes have elapsed will have the citation dismissed and the department will be responsible for the administrative fee for the actual cost of processing and dismissing the citation;

(o) "Secondary" decals may be purchased for an additional vehicle if a primary permit has been purchased by the same registered owner. Only one vehicle at a time is valid on Western lots. Loaner vehicle permits may not be used in the place of Secondary permits. Both vehicles must be registered through DMV to the permit holder or their parents;

(p) "Loaner Vehicle" permits may be obtained if a vehicle other than the permitted one is on campus. They are valid up to 15 days per year and may be obtained at the Cashiers Office. If 15 days are used on a loaner vehicle the permit holder may purchase a secondary permit. Loaner vehicle permits are only available after a primary permit has been purchased. If additional days past the original 15 are used, the day permit charge will be placed on the requester's accounts receivable for each additional day that is requested;

(q) "Department Permits" may be purchased by departments in blocks of 20 permits, to be given away or sold at cost, and are valid for one day only;

(r) "OUS Permit" — Persons issued permits from the Oregon University System Board's Office may park in all parking lots except meters and reserved parking stalls;

(s) "Historical>Show Car Danglers" are available to historical or show car vehicles. The driver is required to produce a dash plaque from a car show as proof of historical or show car status. The dangler is valid only in the registered vehicle;

(t) "Car Dealer Dangler" is available to individuals who have a car dealer license and a copy of the license must be provided for validation. This dangler is valid on any vehicle. The dangler permit applicant will be

responsible for any citations received on any vehicle displaying this dangler.

(6) Western reserves the right to develop or change permits to meet parking needs.

(7) "Government Vehicles" — Vehicles belonging to cities, municipalities, counties, states or federal government are not required to purchase a permit and may park in any recognized parking space, excluding reserved, meter, service vehicle or a parking stall for persons with disabilities.

(8) The Oregon Military Academy (OMA) parking lot designated as "Lot O" may be used by Western as campus parking under the same rules and regulations governing campus, with the following additions: No Western permitted vehicle may park in Lot O from 5:00 p.m. Friday through 8:00 a.m. Monday; no overnight residence hall parking. Citations issued to OMA guests will be handled administratively by the Oregon Military Academy.

(9) "Permit Refunds" are issued on a prorated basis for full year permits only (secondary, replacement and dangler permits are not refundable), and under the following conditions:

(a) If unused, unopened, and in the original package and returned within 10 days of the beginning of the term;

(b) Prorated for whole terms to include fall and winter terms;

(c) If returned prior to the first 10 days of spring term;

(d) All current permits must be returned in order to receive a refund;

(e) No refund if permit purchased through payroll deduction, pre-tax.

(10) "Parking Meters" are located in all major parking lots. Holders of valid permits may park at meters if the meter has valid time.

(11) The following are instructions for properly displaying a permit:

(a) "Decal Permits" are to be located on the left rear bumper or outside on the left rear window where visible, using the adhesive on the back of the decal;

(b) "Paper Permits" are to be located on the driver's side dash and fully visible to the outside;

(c) "Danglers" are to be displayed on the rear view mirror or driver's side dash and visible to the outside of front windshield.

Stat. Auth.: ORS 351.070 & 352.072

Stats. Implemented: ORS 351.070, 351.072 & 352.360

Hist.: WOSC 1-1992, f. & cert. ef. 4-16-92; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 3-1996, f. & cert. ef. 12-11-96; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 3-2007, f. & cert. ef. 9-5-07

## 574-085-0090

### Parking Review Committee

(1) The Parking Review Committee (PRC) shall act in an advisory capacity and is coordinated by the Parking Services Coordinator or designee. The purpose of the committee is as follows:

(a) Provide recommendations to create or modify traffic policies and procedures on campus;

(b) Act as a quasi-judicial hearing body to arbitrate matters concerning enforcement, parking citations and traffic violations issued by Western officers;

(c) Provide recommendations to Parking Services that will enhance the ability of the office to meet campus needs and plan annual goals and objectives;

(d) Help facilitate system changes among the constituents on campus. Assist in making recommendations and changes in campus rules as they apply to parking lots, safety and system improvements.

(2) Parking Services policies related to personnel, organization, structure and fiscal decisions are not subject to Parking Committee Review and are the responsibility of the Director of Business Services and/or the President.

(3) During the academic school year, meetings shall be scheduled monthly and include written meeting minutes of all committee review recommendations and decisions. Generally an employee of Parking Services shall be present to act as staff to the committee.

(4) The Parking Review Committee will include members from the faculty, student body and full time classified staff. All members will be subject to final confirmation by the President or the President's designee.

(5) Each member of the Parking Review Committee will be appointed for a period of two years. Terms of office will be staggered to provide continuity.

(6) The Parking Services Coordinator or designee, being responsible for the enforcement of these regulations, will be an ex-officio (non-voting) member of the PRC, serving as an advisor concerning parking problems on the campus.

Stat. Auth.: ORS 351.070 & 352.072

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Stats. Implemented: ORS 351.070, 351.072 & 352.360  
Hist.: WOSC 1-1992, f. & cert. ef. 4-16-92; WOSC 1-1994, f. & cert. ef. 8-12-94; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 3-2007, f. & cert. ef. 9-5-07

## 574-085-0100

### Penalties for Offenses

- (1) All fines are subject to annual change based on enforcement expenses. (Refer to OAR 574-050-0005 for amounts.):
- (a) "No permit" — No valid permit visible in or on vehicle (7 a.m.–5 p.m.);
  - (b) "No permit" — No valid permit visible in or on vehicle (5 p.m.–7 a.m.);
  - (c) "Loading/Reserved Space/15/30 minute zones";
  - (d) "Fire Lanes and Driveways" — parked in marked or posted area;
  - (e) "Misuse or altered permit" — altered, counterfeited, defaced, transferred to different vehicle, false vehicle information provided, misused;
  - (f) "Expired Meter";
  - (g) "Parking on grass/sidewalks";
  - (h) "Failure to comply with street/lot signs" including traffic signs on institution property:
    - (i) "Not a designated stall";
    - (j) "Wrong lot" — parked in other than designated lot;
    - (k) "Permit not properly displayed/affixed to vehicle";
    - (l) "Vehicle Impoundment/Boot";
    - (m) "Disabled Space" — Parking in a space designated for persons with disabilities (ORS 811.615(5));
    - (n) "Blocking Disabled Space/Area";
    - (o) "Other" — including but not limited to parking in reserved spaces, or taking two spaces.

(2) Failure to pay fines within 10 working days will result in a service charge.

(3) Vehicles receiving five or more citations may have their parking privileges revoked.

(4) Improper driving including, but not limited to, such offenses as: reckless driving, driving while intoxicated, speeding, driving the wrong way on a one way street, failing to stop at stop signs, driving on grass or landscaped areas, excessive noise, other offenses not specified herein which are violations of the motor vehicle laws and ordinances of the State of Oregon or the City of Monmouth. Violators are subject to prosecution in the appropriate state or municipal court or through the Student Conduct Court or Student Judicial Board.

(5) Persons with vehicles receiving a citation in a metered zone are subject to additional citations being issued when it is documented that the vehicle has not been moved in more than two hours.

(6) Persons with vehicles that have received a citation, and have not taken steps to correct the violation, are subject to additional citations.

(7) Vehicles that are in violation and have received a citation may not be issued an additional citation unless the driver of the vehicle is made aware of said violation.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 1-1992, f. & cert. ef. 4-16-92; WOSC 1-1994, f. & cert. ef. 8-12-94; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 3-2007, f. & cert. ef. 9-5-07

## 574-085-0110

### Enforcement and Appeals

(1) All penalties prescribed in 574-085-0050, other than violations referred to appropriate courts of law as provided in paragraph (4) will be administratively enforced by Western. A traffic citation of notice of offense, together with the scheduled fine, will be given to the violator or placed on the violator's vehicle.

(2) All appeals must be submitted within 10 working days from the date of the citation. Appeals submitted after 10 working days will not be considered for review/appeal unless the person can prove they are indigent, at which time the appeal date may be extended.

(3) The following types of reasons are not acceptable grounds for appeal:

- (a) Lack of knowledge of the regulations, for example, "new to campus" or "did not read regulations";
- (b) Other vehicles were also parked improperly;
- (c) Late to class or appointment;
- (d) Disagreement with or inability to pay the amount of the fine(s);
- (e) Lack of space;
- (f) Unread or misunderstood signs.

(4) Fines for cited violations shall be paid to the Western Business Office, unless otherwise indicated on the citation, in the amount of the fine posted, and a "Petition for Parking Citation Appeal" filed within 10 working days after the citation is issued.

(5) Any person wishing to appeal a citation must prepare a "Petition for Parking Citation Appeal" for a hearing, indicating why the citation should not be enforced. Petition forms are available at Parking Services located within the Cashiers Office in the Administration Building. The citation must be paid and the form filed within 10 working days of citation issuance. Staff, faculty, and students may have the citation charge placed on their account in lieu of paying by cash or check. Payment of the citation(s) must accompany the appeal before it will be reviewed for persons other than staff, faculty, and students. Those appeals received in writing that do not indicate a desire to appear before the Parking Review Committee (PRC) will be handled administratively by Parking Services or designee.

(6) A person appealing the citation must appear before the PRC to present his/her case. In the event a person is unable to appear before the PRC, the appeal will be reviewed in his/her absence.

(7) In considering appeals, the PRC will have full authority to:

- (a) Dismiss the violation (excluding handicap violations);
- (b) Find the individual not guilty of the violation on the citation;
- (c) Find the individual guilty of the violation and either impose the fine stipulated in these regulations or impose a lesser fine;

(d) Enter a finding of guilty and, without imposing a fine, issue a reprimand or warning, or impose a fine but suspend its payment during a fixed probationary period;

(e) Find the individual guilty of the violation and reduce the fine to an administrative fee for dismissing the citation.

(8) A student who fails to pay for a violation on or before 10 working days after citation issuance will have a service charge added to their accounts receivable and forfeit the right of appeal unless extenuating circumstances arise where a person can prove they had no knowledge of the issued citation.

(9) The student's registration packet and enrollment may also be withheld if any penalties under these regulations remain unpaid at the time of registration.

(10) A faculty or staff member who fails to pay for any citation within 10 working days will have a service charge placed on accounts receivable and will forfeit their right to appeal.

(11) If a guest receives a citation for "no permit," it may be waived if Parking Services is notified immediately and there are extenuating circumstances where the guest was not aware of the permit requirements. The person must demonstrate proof of being a guest and had no knowledge of parking regulations.

(12) A person receiving a citation for "no permit" may have it dismissed if a full year primary permit is purchased within 10 working days of citation issuance. Only one citation may be dismissed per person per year.

(13) Departments which have guests, visitors, speakers, etc., are required to have parking permits for their guests upon arrival. In the event a citation is issued to a department guest, the Cashiers Office will defer the citation to the department.

Stat. Auth.: ORS 351.070 & 352.072

Stats. Implemented: ORS 351.070, 351.072 & 352.360

Hist.: WOSC 1-1992, f. & cert. ef. 4-16-92; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 3-1996, f. & cert. ef. 12-11-96; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 3-2007, f. & cert. ef. 9-5-07

## Parks and Recreation Department Chapter 736

**Rule Caption:** Revise the list of parks where the Day Use fee applies.

**Adm. Order No.:** PRD 7-2007

**Filed with Sec. of State:** 8-28-2007

**Certified to be Effective:** 8-28-07

**Notice Publication Date:** 11-1-06

**Rules Amended:** 736-015-0010, 736-015-0030

**Subject:** Permanently amends existing rule, adding L. L. "Stub" Stewart Memorial State Park to the list of day use fee parks, dropping Fogarty Creek from the list, correcting the listing of Fall Creek Recreation Site to Fall Creek Recreation Area (Winberry) and removing references to citations for failure to pay fees which are now covered in division 10.

**Rules Coordinator:** Colleen Rogers—(503) 986-0730

# ADMINISTRATIVE RULES

## 736-015-0010

### General Regulations

(1) The commission shall establish fees through rule to promote department financial self-sufficiency and 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.

(2) Unless posted otherwise, a person shall pay established rates prior to use.

(3) The director may establish rates and rental charges for services, facilities and products that are optional, nonessential or complement the basic services described in this division. The director shall establish rates that take into consideration 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.: 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 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; 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 11-1986, f. & ef. 7-9-86; 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 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; Renumbered from 736-010-0098, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07

## 736-015-0030

### Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking permit at selected park areas.

(2) General Regulations:

(a) Parking permits are to be affixed and clearly displayed in the lower left corner of the windshield;

(b) Permits are not transferable.

(3) Day Use Parking Permit Fees:

(a) Daily Vehicle — \$3;

(b) 12-month Permit — \$25;

(c) 24-month Permit — \$40;

(d) A person may purchase up to two additional parking permits in combination with the purchase of a 12- or 24-month permit for vehicles registered to the person. A 12-month Permit — \$5 each; 24-month Permit — \$10 each.

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits:

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits;

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas;

(c) The vendor's fee will be included in the price of the permit; no vendor fee shall be collected on extra vehicle permits;

(d) Only department staff 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.

(5) 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) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;

(e) Park concessionaires and their employees;

(f) A person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;

(i) Other persons as designated by the director.

(6) Park Areas Subject to Day-Use Fees: Park areas 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), L.L. "Stub" Stewart Memorial State Park, 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 Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle 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

Hist.: 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 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07

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**Rule Caption:** Revise Park Area rules regarding prohibited activities and fee collection.

**Adm. Order No.:** PRD 8-2007

**Filed with Sec. of State:** 8-28-2007

**Certified to be Effective:** 8-28-07

**Notice Publication Date:** 11-1-06

**Rules Amended:** 736-010-0015, 736-010-0020, 736-010-0025, 736-010-0030, 736-010-0040

**Subject:** Permanently amends existing rule, to bring the definitions in line with departmental restructuring; to allow a peace officer to evict persons who violate park rules from a park area; cleans up language for contesting an exclusion; allows the department to have a vehicle towed if it interferes with park operations or visitor safety; cleans up language on confining domestic animals in a park; prohibits interfering with a park employee in the performance of their duties; prohibit entering or occupying a closed park facility; prohibit kayaking over water falls when the park manager has determined the activity to be a danger to participants; prohibit diving from rocks into a lake or stream or other body of water when the park manager has determined the activity to be a danger to participants; require park visitors to pay rates established in OAR 736 division 15 for facilities and services used at a park.

**Rules Coordinator:** Colleen Rogers—(503) 986-0730

## 736-010-0015

### Definitions

As used in this division, unless the context requires otherwise:

(1) "District Manager" means the immediate supervisor of park managers within a specified geographic region of the state.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the department director.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce park area rules.

(6) "Park Area" means any state park, wayside, corridor, monument, historic, trail, or recreation area, including the ocean shore adjacent to any park area boundary, under the jurisdiction of the department.

(7) "Park Employee" means an employee of the department.

(8) "Park Manager" means the supervisor or designated employee in charge of a park area.

(9) "Park Resources" means any natural, cultural, or human-made structure or feature of a park area.

(10) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(11) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(12) "Violate" includes failure to comply.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111 & 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 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07

# ADMINISTRATIVE RULES

## 736-010-0020

### General Regulations

(1) The director may establish seasons, overnight length of stay, camper checkout times and procedures to adjust daily park area opening and closing times.

(2) The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park area with a county, city, or political subdivision thereof for the purposes of enforcing park rules, and applicable state, county or city laws.

(3) A park manager or park employee may seek compliance from the public with any park area rule.

(4) A park manager or designated park employee may order any person that violates any park area rule to leave a park area.

(5) A park manager or an enforcement officer may exclude a person that violates any park area rule from the park area for a specified period of time.

(6) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any park area rule and may order a person who violates one or more park area rules to leave the park area.

(7) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates any park area rule; federal, state, county, or city law; or court order from a park area for a specified period of time.

(8) A park manager or designated park employee may protect the safety or health of the public or protect park resources. This authority includes actions that may temporarily:

(a) Permit or limit specific activities or uses in designated portions of a park area;

(b) Designate a location within a park for a single use to avoid conflicts between users;

(c) Restrict access to or close an entire park area;

(d) Restrict access to or close a portion of a park area; or

(e) Exclude a person from a park area.

(9) A person excluded from a park area may contest the exclusion notice by filing a written appeal within seven days of the exclusion date. The person excluded must submit the appeal to the District Manager responsible for the park where the notice of exclusion was issued.

Stat. Auth.: ORS 390.050, 390.121, 390.124

Stats. Implemented: ORS 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 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 9-1982(Temp), f. & ef. 6-28-82; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1998, f. 1-15-98, cert. ef. 1-20-98; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07

## 736-010-0025

### Motor Vehicles

(1) All park area roadways are considered public roadways and all provisions of motor vehicle laws of the State of Oregon are applicable and enforceable. Motorists must comply with motor vehicle regulatory signs posted in park areas.

(2) Motor vehicles shall be operated only on roads and in parking areas constructed or designated for motor vehicle use.

(3) Where not otherwise posted, motor vehicles may not be operated within a park area at speeds in excess of 25 miles per hour.

(4) Automobiles, trailers, or other vehicles shall be parked only in designated parking areas.

(5) The department may have a vehicle towed at the owner's expense if a vehicle is parked in a fire lane, roadway, campsite, entry way, driveway or other location in a manner that impedes park operations, safety, or both.

(6) Abandoned vehicles exceeding 72 hours or vehicles owned by a person who has been excluded or who is in violation of criminal trespass may be towed at the owner's expense.

(7) All motor vehicles and trailers parking overnight in day use areas must obtain a permit. Motor vehicles and trailers without a permit are subject to towing at the owner's expense.

(8) Unlicensed motorized vehicles, except park area service vehicles, may not be operated in park areas unless otherwise posted, with the exception of the operation of motor assisted scooters by disabled persons on bicycle lanes or paths.

(9) A person may operate an Off-Highway Vehicle (OHV) only in designated off-highway riding areas or on park roadways which are signed for OHV use.

(10) A person may operate an OHV in park areas only during those seasons and hours of operation which are established by the park manager.

(11) A person shall operate an OHV below the maximum permissible decibel level.

(12) A person may not operate a motor assisted scooter in a park area, including on a bicycle lane or bicycle path.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.330, 819.110, 819.120, 811 et seq., 814.500, 814.516,

814.550 & 814.554

Hist.: 1 OTC 17, 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 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1994, f. & cert. ef. 2-9-94; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07

## 736-010-0030

### Domestic Animals

(1) Domestic animals means those animals whose food and shelter are provided by a human custodian. Handler means any person who either brings a domestic animal into a park area or keeps a domestic animal in a park area.

(2) A handler shall either confine the domestic animal or keep it on a leash not more than six feet long. The animal shall be under physical control at all times.

(3) A handler is responsible for the animal's behavior and containment and for the removal of the animal's waste while in the park area.

(4) With the exception of certified human service animals, domestic animals are prohibited in the following locations:

(a) Park area buildings and structures;

(b) Bodies of water, except hunting dogs are allowed in those areas described in OAR 736-010-0055;

(c) Beaches adjacent to designated for swimming areas; and

(d) Other areas where posted.

(5) The park manager or an enforcement officer may take any measure deemed necessary (including the removal of the animal from the park area) to protect park resources or to prevent interference by the animal with the safety, comfort, or well being of any person in the park area.

(6) Park employees may seize any domestic animal running at large in a park area and release to an animal pound or animal control officer.

(7) The park manager may designate a portion of a park area as open to dogs off leash for the purposes of training dogs, open field trials, or exercising dogs, when the handler is in control of the dog.

(8) A person may not ride, drive, lead, or keep a horse or other large animal in any park area, except on such roads, trails, or areas designated for that purpose. A handler may not hitch or confine a horse or other large animal in a manner that may cause damage to any tree, shrub, improvement or structure.

Stat. Auth. ORS 390.124

Stats. Implemented: ORS 390.111

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 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; Renumbered from 736-015-0050, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07

## 736-010-0040

### Visitor Conduct

(1) Fires in park areas shall be confined to:

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

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

(c) Portable stoves used in established campsites, picnic areas, or beach areas where fires are permitted.

(2) Every fire shall be extinguished before its users leave the park area. No fire shall be permitted to cause personal injury or damage to private property or park resources.

(3) The park manager may restrict or prohibit fires due to high fire hazard conditions.

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

(5) A person shall leave garbage, recyclables, sewage or waste in a park area only in the designated containers provided.

(6) A person may not dispose of garbage, recyclables, sewage, or waste generated by activities conducted outside a park area in a park area, with the exception of recreational vehicle sewage and gray water holding tank contents to be disposed of in designated dump stations.

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

(8) A person may not engage in the following activities in park areas:

# ADMINISTRATIVE RULES

- (a) Use or operation of any noise producing machine, vehicle, device or instrument in a manner that may disturb other park area visitors;
- (b) Use of a public address system or similar device without written permission of the park manager;
- (c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other substances without the written permission of the park manager;
- (d) Use of a metal detector or similar device without a permit from the department;
- (e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;
- (f) Entering or occupying any building, facility or portion of a park area that has been closed to public access;
- (g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area;
- (h) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility;
- (i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well being of any person in the park area;
- (j) Smoking in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking;
- (k) Activities or conduct which constitutes a public nuisance or hazard;
- (l) Public indecency as defined in ORS 163.465;
- (m) Base-jumping, hang gliding, paragliding or similar activities are not permitted in park areas without a permit from the park manager. The use of hang gliders is permitted at Cape Kiwanda State Natural Area;
- (n) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging property, except in those park area locations and for those purposes specified in OAR 736-010-0055(7);
- (o) Place a sign, marker or inscription of any kind except in designated areas within a park area without written permission from the park manager;
- (9) A person may not distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park area unless they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.
- (10) A person may not operate a concession, solicit, sell or offer for sale, peddle, hawk or vend any goods, wares, merchandise, food, liquids or services in a park area without prior written authorization from the park director.
- (11) All money or goods found by the public in park areas having a value of \$20 or more must be turned over to the park manager. All money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.
- (12) The director or designee may close rock formations and cliffs within a park area to descending, scaling or technical rock climbing.
- (13) The director or designee may close lakes, streams or waterfalls to kayaking, boating, diving or swimming when the park manager has determined the activity to be a danger to participants.
- (14) A person using a park area shall pay rates as established in OAR chapter 736, division 15 for use of selected facilities or the purchase of services or products.

Stat. Auth.: OAR 390.124  
Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006  
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 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 8-1993, f. & cert. ef. 5-11-93; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1996, f. 8-14-96, cert. ef. 8-15-96; PRD 4-2000, f. & cert. ef. 4-5-00; Renumbered from 736-010-0045, 736-010-0070, 736-010-0125, 736-015-0045 & 736-015-0067, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of a Rulemaking to Adopt Federal Pipeline Safety Regulations.

**Adm. Order No.:** PUC 9-2007

**Filed with Sec. of State:** 9-10-2007

**Certified to be Effective:** 9-10-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 860-024-0020, 860-024-0021

**Subject:** Pursuant to ORS 757.039(3), the Commission has agreements with US Department of Transportation (USDOT) that the Oregon PUC will adopt federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. These rule amendments update Oregon PUC's gas safety rules to be current with federal gas pipeline safety regulations by adopting the published USDOT amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The adopted amendments are from the Code of Federal Regulations, CFR Title 49, Part 192 (5 amendments), Part 193 (1 amendment), and Part 199 (4 amendments).

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-024-0020

### Gas Pipeline Safety

Every gas operator shall construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 192, and amendments through No. 103 — Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on July 10, 2006.

(3) 49 CFR, Part 199, and amendments through No. 23 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on March 8, 2005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 172, f. & ef. 1-14-76 (Order No. 76-036); PUC 180, f. 4-8-77, ef. 5-1-77 (Order No. 77-232); PUC 2-1978, f. & ef. 3-16-78 (Order No. 78-158); PUC 6-1980, f. & ef. 10-22-80 (Order No. 80-777); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05; PUC 9-2007, f. & cert. ef. 9-10-07

## 860-024-0021

### Liquefied Natural Gas Safety

Every gas operator shall construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 193, and amendments through No. 19 — Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on July 10, 2006.

(3) 49 CFR, Part 199, and amendments through No. 23 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on March 8, 2005.

[Publications: Publications referenced are available from the agency.]

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

Stat. Implemented: ORS 757.039

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05; PUC 9-2007, f. & cert. ef. 9-10-07

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**Rule Caption:** In the Matter of Amending OARs 860-021-0033 and 860-021-0034 implementing HB 2053 and correcting references.

**Adm. Order No.:** PUC 10-2007

**Filed with Sec. of State:** 9-13-2007

**Certified to be Effective:** 9-13-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 860-021-0033, 860-021-0034

**Subject:** This rulemaking implements HB 2053 which changes the calculation of the annual fees payable to the Public Utility Commission by electric companies. Prior to the adoption of these amendments, regulated electric companies paid an annual fee to the Public Utility Commission based on a kWh charge; the amendment to

## ADMINISTRATIVE RULES

OAR 860-021-0033 implements HB 2053 changing the fee calculation to be revenue-based. These rule amendments also make housekeeping rule reference changes to both 860-021-0033 and 860-021-0034.

**Rules Coordinator:** Diane Davis—(503) 378-4372

### **860-021-0033**

#### **Annual Fees Payable to the Commission by an Electric Utility**

(1) On statement forms prescribed by the Commission, each electric company must provide the requested information for the subject year.

(2) Each electric company must pay to the Commission an annual fee on gross operating revenues derived within Oregon at a rate determined by Commission orders entered on or after March 1 of each year. Each electric company must pay the annual fee on or before the date specified in a notice, which date must be at least 15 days after the mailing of the notice. For the purpose of this section, the gross operating revenues of an electric company do not include revenues from sales of power for resale to the extent that the revenues from those sales exceed an amount equal to 25 percent of the total revenues received by the electric company from sales of electricity to end users in the preceding calendar year.

(3) Each electric company must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0110, if the Commission has not received the electric company's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the electric company.

(4) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(5) For any year in which an electric company's statement form was due, the Commission may audit the electric company as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the electric company has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the electric company has overpaid its annual fee, the Commission may, at its discretion, recompense the electric company with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 14-1998, f. & cert. ef. 7-15-98; PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; Renumbered from 860-011-0022, PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 10-2007, f. & cert. ef. 9-13-07

### **860-021-0034**

#### **Annual Fees Payable to the Commission by Gas Utility or Steam Heat Utility**

(1) On statement forms prescribed by the Commission, each gas utility and steam heat utility must provide the requested information for the subject year.

(2) Each gas utility and steam heat utility must pay to the Commission an annual fee on gross operating revenues derived within Oregon at a rate determined by Commission orders entered on or after March 1 of each year.

(3) Each gas utility and steam heat utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0110, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(4) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(5) For any year in which a gas utility or steam heat utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 11-1999, f. & cert. ef. 11-18-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 10-2007, f. & cert. ef. 9-13-07

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**Secretary of State,  
Elections Division  
Chapter 165**

**Rule Caption:** Administrative Discontinuation of a Political Committee by Elections Division.

**Adm. Order No.:** ELECT 6-2007

**Filed with Sec. of State:** 8-27-2007

**Certified to be Effective:** 8-27-07

**Notice Publication Date:** 8-1-07

**Rules Amended:** 165-012-0240

**Subject:** This proposed rule amendment updates the criteria for the Elections Division to administratively discontinue a political committee and provides a requirement for the Elections Division to attempt to notify the committee of the proposed discontinuation no later than 30 days prior to administratively discontinuing the committee. The proposed amendment also updates language to reflect changes in statute that made the Elections Division the filing officer for all political committees.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

### **165-012-0240**

#### **Administrative Discontinuation of a Political Committee**

(1) The Elections Division may administratively discontinue a political committee when:

(a) The committee has failed to file one required September Supplemental Report, the committee has not been active or filed other reports for one election, or the committee has not filed any transactions under ORS 260.057 for one calendar year; and

(b) The committee's ending cash balance on the last report filed is not more than \$2000.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the Elections Division shall attempt to notify the committee of the proposed discontinuation.

(A) For a candidate committee:

(a) By certified mail sent to the mailing address reported on the most recent Statement of Organization for the candidate and by first class mail to the most recent mailing address for the candidate reported in the Oregon Centralized Voter Registration System; and

(b) By regular mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(B) For a political committee notice will be sent by certified mail sent to the mailing address reported on the most recent Statement of Organization for the treasurer and by first class mail to the most recent mailing address for the treasurer reported in the Oregon Centralized Voter Registration System.

# ADMINISTRATIVE RULES

(3) The notice shall inform the committee that it will be discontinued by the Elections Division unless the committee informs the Elections Division of reasons why the committee does not meet the criteria of this rule for administrative discontinuation within 20 days of the mailing of the notice. The written notice shall also include:

(a) Notification that the statement of organization will be administratively discontinued in 30 days; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, 260.046

Stats. Implemented: ORS 260.046

Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05; ELECT 6-2007, f. & cert. ef. 8-27-07

## Teacher Standards and Practices Commission Chapter 584

**Rule Caption:** Corrects reference to Professional Technical License title to Career and Technical Education Teaching License.  
**Adm. Order No.:** TSPC 6-2007

**Filed with Sec. of State:** 9-12-2007

**Certified to be Effective:** 9-12-07

**Notice Publication Date:** 7-1-07

**Rules Amended:** 584-036-0081

**Subject:** 1) Corrects (4)(e) to state Career and Technical Education Teaching License.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

### 584-036-0081

#### Conditional Assignment Permits

Upon filing a correct and complete application in form and manner prescribed by the commission, a school district, registered charter school or registered private school in Oregon may request a conditional assignment permit (CAP) for any educator holding a Initial, Continuing, Basic, Standard or Five-year License.

(1) Use of this administrative rule by a charter school or private school is voluntary. However, a CAP may be necessary for an educator teaching out of field in order for the educator to use that experience for purposes of licensure renewal.

(2) The CAP is not a license, but only conditional approval to teach out-of-field for a period not to exceed three years.

(3) The district, charter school or private school applying for a permit is assumed to have informed the educator for which the CAP is being requested. Failure to inform the educator may result in an invalid CAP upon a finding by the Commission that the educator did not grant the district, charter school or private school permission to add the CAP to the educator's license.

(4) Licenses not eligible for a CAP include but are not limited to the following provisional licenses:

- (a) Restricted Transitional;
- (b) Limited Teaching License;
- (c) American Indian Language;
- (d) Teaching Associate License;
- (e) Career and Technical Education Teaching License;
- (f) NCLB Alternative Route License;
- (g) Substitute Teaching License;
- (h) Restricted Substitute Teaching License; or
- (i) Exceptional Administrator License.

(5) This temporary supplemental permit is issued for three years and is not renewable and is not eligible for a 120 day extension beyond its expiration date. The CAP is valid for teaching at one or more designated grade

authorization levels not included on the applicant's license, or in one or more designated subject-matter endorsement areas not included on the applicant's license, or both only if the approval has been granted by the Commission.

(6) CAPs will not be backdated to cover improper teaching assignments. Districts and educators who violate the provisions of this rule may be subject to forfeiture of state school funds pursuant to ORS 342.173 and OAR 584-050-0060 to 584-050-0070.

(7) A CAP is required for any amount of time at any:

(a) Assignment at an unauthorized grade level;

(b) Teaching assignments for more than 10 hours weekly without the appropriate subject-matter endorsement;

(c) Teaching in more than one unendorsed subject-matter endorsement area; or

(d) Administration; school counseling; or school psychology if the educator holds a teaching license only. Educators holding a Basic or Standard Teaching License with an elementary endorsement must only have a CAP for counseling if the assignment exceeds .49 FTE.

(8) The permit is restricted to use within the district, charter school or private school that has applied for it. However, a new district, charter school or private school may request the same type of conditional assignment so long as three years has not elapsed since the date the CAP was first issued.

(9) A CAP for teaching may be issued to an educator holding a Initial, Continuing, Basic, Standard or Five-Year license in teaching, school counseling, school psychology, or administration.

(10) A district, charter school or private school must:

(a) Apply for a CAP by October 31 for the fall term or otherwise within six weeks after the assignment has begun; and

(b) Agree to provide professional assistance specific to the assignment for the educator during the first year of the conditional assignment.

(11) CAPs submitted in error by the district, charter school or private school may be removed upon contacting TSPC and indicating the nature of the error.

(12) A CAP cannot be renewed or later re-issued for the same authorization level or specialty endorsement approved.

(13) After a CAP has expired, the educator must have completed all requirements necessary to add the appropriate endorsement, grade-level authorization or new licensure program in order to continue working in the area in which the educator is not properly licensed.

(14) Districts, charter schools or private schools and co-applicant educators may jointly petition the Executive Director for a hardship extension for one year under the following conditions:

(a) The district, charter school or private school and educator must explain hardship and the exact circumstances that have prevented the educator from obtaining the endorsement, authorization level or license needed to remain in the conditional assignment; and

(b) The educator has made progress toward completing the requirements which includes but is not limited to:

(A) Having taken any applicable subject-matter tests at least two times; or

(B) Has completed at least half of the coursework for any program required to continue to teach the subject; and

(c) The educator and the district, charter school or private school have a plan for completing the requirements for the assignment in the next year.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.143, 342.153, 342.165, 342.223 – 342.232

Hist.: TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 6-2007, f. & cert. ef. 9-12-07

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123-065-0350	7-1-07	Amend	7-1-07	123-065-4260	1-8-07	Amend(T)	2-1-07
123-065-1050	1-8-07	Amend(T)	2-1-07	123-065-4260	7-1-07	Amend	7-1-07
123-065-1050	7-1-07	Amend	7-1-07	123-065-4310	1-8-07	Amend(T)	2-1-07
123-065-1060	1-8-07	Adopt(T)	2-1-07	123-065-4310	7-1-07	Amend	7-1-07
123-065-1070	1-8-07	Adopt(T)	2-1-07	123-065-4323	1-8-07	Amend(T)	2-1-07
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123-065-1500	1-8-07	Amend(T)	2-1-07	123-065-4328	1-8-07	Amend(T)	2-1-07
123-065-1500	7-1-07	Amend	7-1-07	123-065-4328	7-1-07	Amend	7-1-07
123-065-1520	1-8-07	Amend(T)	2-1-07	123-065-4380	1-8-07	Amend(T)	2-1-07
123-065-1520	7-1-07	Amend	7-1-07	123-065-4380	7-1-07	Amend	7-1-07
123-065-1530	1-8-07	Amend(T)	2-1-07	123-065-4440	1-8-07	Amend(T)	2-1-07
123-065-1530	7-1-07	Amend	7-1-07	123-065-4440	7-1-07	Amend	7-1-07
123-065-1540	1-8-07	Amend(T)	2-1-07	123-065-4450	1-8-07	Amend(T)	2-1-07
123-065-1540	7-1-07	Amend	7-1-07	123-065-4450	7-1-07	Amend	7-1-07
123-065-1553	1-8-07	Amend(T)	2-1-07	123-065-4470	1-8-07	Amend(T)	2-1-07
123-065-1553	7-1-07	Amend	7-1-07	123-065-4470	7-1-07	Amend	7-1-07
123-065-1590	1-8-07	Amend(T)	2-1-07	123-065-4550	1-8-07	Amend(T)	2-1-07
123-065-1590	7-1-07	Amend	7-1-07	123-065-4550	7-1-07	Amend	7-1-07
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123-065-1600	7-1-07	Amend	7-1-07	123-065-4610	7-1-07	Amend	7-1-07
123-065-1620	1-8-07	Amend(T)	2-1-07	123-065-4970	1-8-07	Amend(T)	2-1-07
123-065-1620	7-1-07	Amend	7-1-07	123-065-4970	7-1-07	Amend	7-1-07
123-065-1710	1-8-07	Amend(T)	2-1-07	123-065-4980	1-8-07	Amend(T)	2-1-07
123-065-1710	7-1-07	Amend	7-1-07	123-065-4980	7-1-07	Amend	7-1-07
123-065-1720	1-8-07	Amend(T)	2-1-07	123-065-4990	1-8-07	Amend(T)	2-1-07
123-065-1720	7-1-07	Amend	7-1-07	123-065-4990	7-1-07	Amend	7-1-07
123-065-1740	1-8-07	Amend(T)	2-1-07	123-065-7200	1-8-07	Amend(T)	2-1-07
123-065-1740	7-1-07	Amend	7-1-07	123-065-7200	7-1-07	Amend	7-1-07
123-065-2520	1-8-07	Amend(T)	2-1-07	123-065-7300	1-8-07	Amend(T)	2-1-07
123-065-2520	7-1-07	Amend	7-1-07	123-065-7300	7-1-07	Amend	7-1-07
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123-065-2550	1-8-07	Amend(T)	2-1-07	123-065-7500	1-8-07	Amend(T)	2-1-07
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123-065-3200	7-1-07	Amend	7-1-07	123-065-1070	7-1-07	Adopt	7-1-07
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125-007-0220(T)	12-28-06	Repeal	2-1-07	137-025-0480	1-1-07	Amend	1-1-07
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125-007-0280(T)	12-28-06	Repeal	2-1-07	137-055-5510	1-2-07	Amend	2-1-07
125-007-0290	12-28-06	Amend	2-1-07	137-055-6010	1-2-07	Adopt	2-1-07
125-007-0290(T)	12-28-06	Repeal	2-1-07	137-055-6020	1-2-07	Amend	2-1-07
125-007-0300	12-28-06	Amend	2-1-07	137-055-6021	1-2-07	Amend	2-1-07
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333-030-0030	7-13-07	Amend	8-1-07	333-100-0055	3-1-07	Amend	4-1-07
333-030-0035	7-13-07	Amend	8-1-07	333-100-0057	3-1-07	Amend	4-1-07
333-030-0040	7-13-07	Amend	8-1-07	333-100-0060	3-1-07	Amend	4-1-07
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333-030-0060	7-13-07	Amend	8-1-07	333-102-0001	3-1-07	Amend	4-1-07
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333-030-0070	7-13-07	Amend	8-1-07	333-102-0010	3-1-07	Amend	4-1-07
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333-102-0360	3-1-07	Amend	4-1-07	333-113-0007	3-1-07	Amend	4-1-07
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333-102-0900	3-1-07	Amend	4-1-07	333-113-0101	3-1-07	Amend	4-1-07
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333-116-0447	3-1-07	Amend	4-1-07	333-116-1030	3-1-07	Amend	4-1-07
333-116-0450	3-1-07	Amend	4-1-07	333-118-0010	3-1-07	Amend	4-1-07
333-116-0460	3-1-07	Amend	4-1-07	333-118-0020	3-1-07	Amend	4-1-07
333-116-0470	3-1-07	Amend	4-1-07	333-118-0030	3-1-07	Amend	4-1-07
333-116-0475	3-1-07	Amend	4-1-07	333-118-0040	3-1-07	Amend	4-1-07
333-116-0480	3-1-07	Amend	4-1-07	333-118-0050	3-1-07	Amend	4-1-07
333-116-0490	3-1-07	Amend	4-1-07	333-118-0060	3-1-07	Amend	4-1-07
333-116-0495	3-1-07	Amend	4-1-07	333-118-0070	3-1-07	Amend	4-1-07
333-116-0500	3-1-07	Amend	4-1-07	333-118-0080	3-1-07	Amend	4-1-07
333-116-0525	3-1-07	Amend	4-1-07	333-118-0090	3-1-07	Amend	4-1-07
333-116-0530	3-1-07	Amend	4-1-07	333-118-0100	3-1-07	Amend	4-1-07
333-116-0540	3-1-07	Amend	4-1-07	333-118-0110	3-1-07	Amend	4-1-07
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333-116-0570	3-1-07	Amend	4-1-07	333-118-0140	3-1-07	Amend	4-1-07
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333-116-0640	3-1-07	Amend	4-1-07	333-120-0020	3-1-07	Amend	4-1-07
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333-120-0130	3-1-07	Amend	4-1-07	333-250-0045	2-1-07	Amend	3-1-07
333-120-0150	3-1-07	Amend	4-1-07	333-250-0046	2-1-07	Amend	3-1-07
333-120-0160	3-1-07	Amend	4-1-07	333-250-0047	2-1-07	Amend	3-1-07
333-120-0170	3-1-07	Amend	4-1-07	333-250-0048	2-1-07	Amend	3-1-07
333-120-0180	3-1-07	Amend	4-1-07	333-250-0049	2-1-07	Amend	3-1-07
333-120-0190	3-1-07	Amend	4-1-07	333-250-0050	2-1-07	Amend	3-1-07
333-120-0200	3-1-07	Amend	4-1-07	333-250-0060	2-1-07	Amend	3-1-07
333-120-0210	3-1-07	Amend	4-1-07	333-250-0070	2-1-07	Amend	3-1-07
333-120-0215	3-1-07	Amend	4-1-07	333-250-0080	2-1-07	Amend	3-1-07
333-120-0220	3-1-07	Amend	4-1-07	333-250-0090	2-1-07	Repeal	3-1-07
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333-120-0250	3-1-07	Amend	4-1-07	333-255-0010	2-1-07	Amend	3-1-07
333-120-0260	3-1-07	Amend	4-1-07	333-255-0020	2-1-07	Amend	3-1-07
333-120-0300	3-1-07	Amend	4-1-07	333-255-0030	2-1-07	Amend	3-1-07
333-120-0310	3-1-07	Amend	4-1-07	333-255-0040	2-1-07	Amend	3-1-07
333-120-0320	3-1-07	Amend	4-1-07	333-255-0050	2-1-07	Amend	3-1-07
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333-120-0410	3-1-07	Amend	4-1-07	333-255-0071	2-1-07	Amend	3-1-07
333-120-0420	3-1-07	Amend	4-1-07	333-255-0072	2-1-07	Amend	3-1-07
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333-120-0460	3-1-07	Amend	4-1-07	333-255-0081	2-1-07	Amend	3-1-07
333-120-0500	3-1-07	Amend	4-1-07	333-255-0082	2-1-07	Amend	3-1-07
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333-120-0520	3-1-07	Amend	4-1-07	333-255-0091	2-1-07	Amend	3-1-07
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340-041-0007	3-15-07	Amend	4-1-07	340-228-0602	12-22-06	Adopt	2-1-07
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340-041-0021	3-15-07	Amend	4-1-07	340-228-0604	12-22-06	Adopt	2-1-07
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340-041-0028	3-15-07	Amend	4-1-07	340-228-0606	12-22-06	Adopt	2-1-07
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340-041-0046	3-15-07	Amend	4-1-07	340-228-0610	12-22-06	Adopt	2-1-07
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340-041-0104	3-15-07	Amend	4-1-07	340-228-0616	12-22-06	Adopt	2-1-07
340-041-0121	3-15-07	Amend	4-1-07	340-228-0618	12-22-06	Adopt	2-1-07
340-041-0175	3-15-07	Amend	4-1-07	340-228-0620	12-22-06	Adopt	2-1-07
340-041-0180	3-15-07	Amend	4-1-07	340-228-0622	12-22-06	Adopt	2-1-07
340-041-0185	3-14-07	Amend	4-1-07	340-228-0624	12-22-06	Adopt	2-1-07
340-041-0195	3-14-07	Amend	4-1-07	340-228-0626	12-22-06	Adopt	2-1-07
340-041-0201	3-15-07	Amend	4-1-07	340-228-0628	12-22-06	Adopt	2-1-07
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340-041-0260	3-15-07	Amend	4-1-07	340-228-0632	12-22-06	Adopt	2-1-07
340-041-0271	3-15-07	Amend	4-1-07	340-228-0634	12-22-06	Adopt	2-1-07
340-041-0300	3-15-07	Amend	4-1-07	340-228-0636	12-22-06	Adopt	2-1-07
340-041-0315	3-15-07	Amend	4-1-07	340-228-0638	12-22-06	Adopt	2-1-07
340-041-0320	3-15-07	Amend	4-1-07	340-228-0640	12-22-06	Adopt	2-1-07
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340-242-0160	4-12-07	Amend	5-1-07	345-015-0300	5-15-07	Amend	6-1-07
340-242-0180	4-12-07	Amend	5-1-07	345-015-0310	5-15-07	Amend	6-1-07
340-242-0190	4-12-07	Amend	5-1-07	345-015-0320	5-15-07	Amend	6-1-07
340-242-0200	4-12-07	Amend	5-1-07	345-015-0350	5-15-07	Amend	6-1-07
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340-242-0220	4-12-07	Amend	5-1-07	345-015-0370	5-15-07	Amend	6-1-07
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345-015-0110	5-15-07	Amend	6-1-07	345-026-0010	5-15-07	Amend	6-1-07
345-015-0120	5-15-07	Amend	6-1-07	345-026-0048	5-15-07	Amend	6-1-07
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345-015-0140	5-15-07	Amend	6-1-07	345-026-0080	5-15-07	Amend	6-1-07
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345-026-0390	5-15-07	Amend	6-1-07	345-076-0015	5-15-07	Repeal	6-1-07
345-027-0000	5-15-07	Amend	6-1-07	345-076-0020	5-15-07	Amend	6-1-07
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345-027-0028	5-15-07	Amend	6-1-07	345-076-0027	5-15-07	Repeal	6-1-07
345-027-0030	5-15-07	Amend	6-1-07	345-076-0029	5-15-07	Repeal	6-1-07
345-027-0050	5-15-07	Amend	6-1-07	345-076-0030	5-15-07	Repeal	6-1-07
345-027-0060	5-15-07	Amend	6-1-07	345-076-0032	5-15-07	Repeal	6-1-07
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345-050-0070	5-15-07	Amend	6-1-07	345-095-0070	5-15-07	Amend	6-1-07
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345-060-0045	5-15-07	Amend	6-1-07	345-095-0118	5-15-07	Amend	6-1-07
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407-020-0010	2-1-07	Adopt	3-1-07	410-007-0310	9-1-07	Am. & Ren.	10-1-07
407-020-0015	2-1-07	Adopt	3-1-07	410-007-0320	9-1-07	Am. & Ren.	10-1-07
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409-021-0010	2-1-07	Amend	3-1-07	410-007-0370	9-1-07	Renumber	10-1-07
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409-021-0130	2-1-07	Am. & Ren.	3-1-07	410-008-0005	5-25-07	Renumber	7-1-07
409-021-0140	2-1-07	Am. & Ren.	3-1-07	410-008-0010	5-25-07	Renumber	7-1-07
409-021-0150	2-1-07	Adopt	3-1-07	410-008-0015	5-25-07	Renumber	7-1-07
409-022-0010	1-1-07	Adopt	1-1-07	410-008-0020	5-25-07	Renumber	7-1-07
409-022-0020	1-1-07	Adopt	1-1-07	410-008-0025	5-25-07	Renumber	7-1-07
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409-022-0050	1-1-07	Adopt	1-1-07	410-009-0050	7-1-07	Renumber	8-1-07
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409-022-0070	1-1-07	Adopt	1-1-07	410-009-0070	7-1-07	Renumber	8-1-07
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409-030-0000	5-16-07	Amend(T)	7-1-07	410-009-0100	7-1-07	Renumber	8-1-07
409-030-0000	9-1-07	Amend	9-1-07	410-009-0110	7-1-07	Renumber	8-1-07
409-030-0005	11-28-06	Amend(T)	1-1-07	410-009-0120	7-1-07	Renumber	8-1-07
409-030-0005	9-1-07	Amend	9-1-07	410-009-0130	7-1-07	Renumber	8-1-07
409-030-0010	5-16-07	Amend(T)	7-1-07	410-009-0140	7-1-07	Renumber	8-1-07
409-030-0010	9-1-07	Amend	9-1-07	410-009-0150	7-1-07	Renumber	8-1-07
409-030-0020	11-28-06	Amend(T)	1-1-07	410-009-0160	7-1-07	Renumber	8-1-07
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410-011-0110	7-1-07	Renumber	8-1-07	410-122-0340	7-1-07	Amend	8-1-07
410-011-0120	7-1-07	Renumber	8-1-07	410-122-0360	1-1-07	Amend	1-1-07
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410-020-0010	3-30-07	Repeal	5-1-07	410-122-0375	1-1-07	Amend	1-1-07
410-020-0020	3-30-07	Repeal	5-1-07	410-122-0380	1-1-07	Amend	1-1-07
410-020-0030	3-30-07	Repeal	5-1-07	410-122-0400	1-1-07	Amend	1-1-07
410-020-0040	3-30-07	Repeal	5-1-07	410-122-0420	1-1-07	Amend	1-1-07
410-020-0050	3-30-07	Repeal	5-1-07	410-122-0470	7-1-07	Repeal	8-1-07
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410-120-1280	1-1-07	Amend	1-1-07	410-122-0510	1-1-07	Amend	1-1-07
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410-122-0203	1-1-07	Amend	1-1-07	410-131-0020	1-1-07	Repeal	2-1-07
410-122-0204	1-1-07	Amend	1-1-07	410-131-0080	1-1-07	Amend	1-1-07
410-122-0204	7-1-07	Amend	8-1-07	410-131-0280	7-1-07	Amend	7-1-07
410-122-0205	1-1-07	Amend	1-1-07	410-132-0000	1-1-07	Repeal	2-1-07
410-122-0207	1-1-07	Amend	1-1-07	410-136-0020	1-1-07	Repeal	2-1-07
410-122-0208	1-1-07	Amend	1-1-07	410-136-0160	7-1-07	Amend	7-1-07
410-122-0209	1-1-07	Amend	1-1-07	410-141-0000	1-1-07	Amend	1-1-07
410-122-0210	1-1-07	Amend	1-1-07	410-141-0060	1-1-07	Amend	1-1-07
410-122-0240	1-1-07	Amend	1-1-07	410-141-0070	1-1-07	Amend	1-1-07
410-122-0280	1-1-07	Amend	1-1-07	410-141-0080	1-1-07	Amend	1-1-07
410-122-0320	1-1-07	Amend	1-1-07	410-141-0220	1-1-07	Amend	1-1-07
410-122-0320	7-1-07	Amend	8-1-07	410-141-0420	1-1-07	Amend(T)	2-1-07

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410-141-0480	1-1-07	Amend	1-1-07	411-050-0440	1-1-07	Amend	2-1-07
410-141-0520	1-1-07	Amend	1-1-07	411-050-0441	1-1-07	Repeal	2-1-07
410-142-0000	1-1-07	Repeal	2-1-07	411-050-0442	1-1-07	Repeal	2-1-07
410-142-0225	1-1-07	Adopt	1-1-07	411-050-0443	1-1-07	Amend	2-1-07
410-143-0000	1-1-07	Repeal	2-1-07	411-050-0443	7-1-07	Amend	8-1-07
410-147-0040	7-1-07	Amend	7-1-07	411-050-0444	1-1-07	Adopt	2-1-07
410-147-0120	1-1-07	Amend	1-1-07	411-050-0445	1-1-07	Amend	2-1-07
410-147-0300	7-1-07	Amend	7-1-07	411-050-0445	7-1-07	Amend	8-1-07
410-147-0320	1-1-07	Amend	1-1-07	411-050-0447	1-1-07	Amend	2-1-07
410-147-0362	7-1-07	Adopt	7-1-07	411-050-0450	1-1-07	Amend	2-1-07
410-147-0365	1-1-07	Amend	1-1-07	411-050-0455	1-1-07	Amend	2-1-07
410-147-0460	1-1-07	Amend	1-1-07	411-050-0460	1-1-07	Amend	2-1-07
410-147-0480	1-1-07	Amend	1-1-07	411-050-0465	1-1-07	Amend	2-1-07
410-147-0500	7-1-07	Amend	7-1-07	411-050-0480	1-1-07	Amend	2-1-07
410-147-0620	1-1-07	Amend	1-1-07	411-050-0481	1-1-07	Amend	2-1-07
410-148-0020	7-1-07	Amend	7-1-07	411-050-0483	1-1-07	Amend	2-1-07
410-148-0040	7-1-07	Amend	7-1-07	411-050-0485	1-1-07	Amend	2-1-07
410-148-0100	7-1-07	Amend	7-1-07	411-050-0487	1-1-07	Amend	2-1-07
410-148-0260	1-1-07	Amend	2-1-07	411-050-0491	1-1-07	Adopt	2-1-07
411-005-0100	6-1-07	Repeal	7-1-07	411-054-0000	11-1-07	Adopt	10-1-07
411-020-0002	12-21-06	Amend	2-1-07	411-054-0005	11-1-07	Adopt	10-1-07
411-020-0020	12-21-06	Amend	2-1-07	411-054-0008	11-1-07	Adopt	10-1-07
411-020-0100	12-21-06	Amend	2-1-07	411-054-0010	11-1-07	Adopt	10-1-07
411-020-0120	12-21-06	Amend	2-1-07	411-054-0012	11-1-07	Adopt	10-1-07
411-026-0000	12-1-06	Amend	1-1-07	411-054-0013	11-1-07	Adopt	10-1-07
411-026-0010	12-1-06	Amend	1-1-07	411-054-0016	11-1-07	Adopt	10-1-07
411-026-0020	12-1-06	Amend	1-1-07	411-054-0019	11-1-07	Adopt	10-1-07
411-026-0030	12-1-06	Amend	1-1-07	411-054-0025	11-1-07	Adopt	10-1-07
411-026-0040	12-1-06	Amend	1-1-07	411-054-0027	11-1-07	Adopt	10-1-07
411-026-0050	12-1-06	Amend	1-1-07	411-054-0028	11-1-07	Adopt	10-1-07
411-026-0060	12-1-06	Amend	1-1-07	411-054-0030	11-1-07	Adopt	10-1-07
411-026-0070	12-1-06	Amend	1-1-07	411-054-0034	11-1-07	Adopt	10-1-07
411-026-0080	12-1-06	Amend	1-1-07	411-054-0036	11-1-07	Adopt	10-1-07
411-027-0000	4-17-07	Amend	6-1-07	411-054-0040	11-1-07	Adopt	10-1-07
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411-030-0020	5-1-07	Amend(T)	5-1-07	411-054-0055	11-1-07	Adopt	10-1-07
411-030-0080	5-1-07	Amend(T)	5-1-07	411-054-0060	11-1-07	Adopt	10-1-07
411-030-0090	3-30-07	Amend(T)	5-1-07	411-054-0065	11-1-07	Adopt	10-1-07
411-030-0090	9-1-07	Amend	10-1-07	411-054-0070	11-1-07	Adopt	10-1-07
411-030-0090(T)	9-1-07	Repeal	10-1-07	411-054-0080	11-1-07	Adopt	10-1-07
411-031-0020	4-17-07	Amend	5-1-07	411-054-0085	11-1-07	Adopt	10-1-07
411-031-0020(T)	4-17-07	Repeal	5-1-07	411-054-0090	11-1-07	Adopt	10-1-07
411-031-0040	4-17-07	Amend	5-1-07	411-054-0093	11-1-07	Adopt	10-1-07
411-031-0040(T)	4-17-07	Repeal	5-1-07	411-054-0100	11-1-07	Adopt	10-1-07
411-050-0400	1-1-07	Amend	2-1-07	411-054-0105	11-1-07	Adopt	10-1-07
411-050-0401	1-1-07	Amend	2-1-07	411-054-0110	11-1-07	Adopt	10-1-07
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411-050-0410	1-1-07	Amend	2-1-07	411-054-0135	11-1-07	Adopt	10-1-07
411-050-0412	1-1-07	Amend	2-1-07	411-054-0140	11-1-07	Adopt	10-1-07
411-050-0415	1-1-07	Amend	2-1-07	411-054-0200	11-1-07	Adopt	10-1-07
411-050-0420	1-1-07	Amend	2-1-07	411-054-0300	11-1-07	Adopt	10-1-07
411-050-0420	7-1-07	Amend	8-1-07	411-055-0000	11-1-07	Repeal	10-1-07
411-050-0430	1-1-07	Amend	2-1-07	411-055-0003	11-1-07	Repeal	10-1-07
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411-055-0019	11-1-07	Repeal	10-1-07	411-070-0005	9-10-07	Amend(T)	10-1-07
411-055-0024	11-1-07	Repeal	10-1-07	411-070-0027	9-10-07	Amend(T)	10-1-07
411-055-0029	11-1-07	Repeal	10-1-07	411-070-0035	9-10-07	Amend(T)	10-1-07
411-055-0034	11-1-07	Repeal	10-1-07	411-070-0040	9-1-07	Amend	10-1-07
411-055-0039	11-1-07	Repeal	10-1-07	411-070-0043	9-1-07	Amend	10-1-07
411-055-0045	11-1-07	Repeal	10-1-07	411-070-0085	9-10-07	Amend(T)	10-1-07
411-055-0051	11-1-07	Repeal	10-1-07	411-070-0091	9-10-07	Amend(T)	10-1-07
411-055-0061	11-1-07	Repeal	10-1-07	411-070-0095	9-10-07	Amend(T)	10-1-07
411-055-0081	11-1-07	Repeal	10-1-07	411-070-0130	3-13-07	Amend	4-1-07
411-055-0085	11-1-07	Repeal	10-1-07	411-070-0359	9-10-07	Amend(T)	10-1-07
411-055-0091	11-1-07	Repeal	10-1-07	411-070-0428	9-10-07	Suspend	10-1-07
411-055-0101	11-1-07	Repeal	10-1-07	411-070-0442	9-10-07	Amend(T)	10-1-07
411-055-0111	11-1-07	Repeal	10-1-07	411-070-0452	9-10-07	Amend(T)	10-1-07
411-055-0115	11-1-07	Repeal	10-1-07	411-070-0462	9-10-07	Suspend	10-1-07
411-055-0121	11-1-07	Repeal	10-1-07	411-070-0465	9-10-07	Amend(T)	10-1-07
411-055-0131	11-1-07	Repeal	10-1-07	411-330-0020	7-1-07	Amend(T)	8-1-07
411-055-0141	11-1-07	Repeal	10-1-07	411-330-0030	7-1-07	Amend(T)	8-1-07
411-055-0151	11-1-07	Repeal	10-1-07	411-335-0010	1-1-07	Amend	2-1-07
411-055-0161	11-1-07	Repeal	10-1-07	411-335-0020	1-1-07	Amend	2-1-07
411-055-0170	11-1-07	Repeal	10-1-07	411-335-0030	1-1-07	Amend	2-1-07
411-055-0180	11-1-07	Repeal	10-1-07	411-335-0050	1-1-07	Amend	2-1-07
411-055-0190	11-1-07	Repeal	10-1-07	411-335-0060	1-1-07	Amend	2-1-07
411-055-0200	11-1-07	Repeal	10-1-07	411-335-0070	1-1-07	Amend	2-1-07
411-055-0210	11-1-07	Repeal	10-1-07	411-335-0080	1-1-07	Amend	2-1-07
411-055-0220	11-1-07	Repeal	10-1-07	411-335-0090	1-1-07	Amend	2-1-07
411-055-0230	11-1-07	Repeal	10-1-07	411-335-0100	1-1-07	Amend	2-1-07
411-055-0240	11-1-07	Repeal	10-1-07	411-335-0110	1-1-07	Amend	2-1-07
411-055-0250	11-1-07	Repeal	10-1-07	411-335-0120	1-1-07	Amend	2-1-07
411-055-0260	11-1-07	Repeal	10-1-07	411-335-0130	1-1-07	Amend	2-1-07
411-055-0270	11-1-07	Repeal	10-1-07	411-335-0140	1-1-07	Amend	2-1-07
411-055-0280	11-1-07	Repeal	10-1-07	411-335-0150	1-1-07	Amend	2-1-07
411-056-0000	11-1-07	Repeal	10-1-07	411-335-0160	1-1-07	Amend	2-1-07
411-056-0005	11-1-07	Repeal	10-1-07	411-335-0170	1-1-07	Amend	2-1-07
411-056-0007	11-1-07	Repeal	10-1-07	411-335-0190	1-1-07	Amend	2-1-07
411-056-0008	11-1-07	Repeal	10-1-07	411-335-0200	1-1-07	Amend	2-1-07
411-056-0010	11-1-07	Repeal	10-1-07	411-335-0210	1-1-07	Amend	2-1-07
411-056-0015	11-1-07	Repeal	10-1-07	411-335-0220	1-1-07	Amend	2-1-07
411-056-0018	11-1-07	Repeal	10-1-07	411-335-0230	1-1-07	Amend	2-1-07
411-056-0020	11-1-07	Repeal	10-1-07	411-335-0240	1-1-07	Amend	2-1-07
411-056-0030	11-1-07	Repeal	10-1-07	411-335-0270	1-1-07	Amend	2-1-07
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411-056-0040	11-1-07	Repeal	10-1-07	411-335-0320	1-1-07	Amend	2-1-07
411-056-0045	11-1-07	Repeal	10-1-07	411-335-0330	1-1-07	Amend	2-1-07
411-056-0055	11-1-07	Repeal	10-1-07	411-335-0340	1-1-07	Amend	2-1-07
411-056-0060	11-1-07	Repeal	10-1-07	411-335-0350	1-1-07	Amend	2-1-07
411-056-0070	11-1-07	Repeal	10-1-07	411-335-0360	1-1-07	Amend	2-1-07
411-056-0075	11-1-07	Repeal	10-1-07	411-335-0380	1-1-07	Amend	2-1-07
411-056-0085	11-1-07	Repeal	10-1-07	411-335-0390	1-1-07	Amend	2-1-07
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411-346-0170	7-5-07	Amend	8-1-07	413-015-0705	3-20-07	Repeal	5-1-07
411-346-0180	7-5-07	Amend	8-1-07	413-015-0710	3-20-07	Repeal	5-1-07
411-346-0190	7-5-07	Amend	8-1-07	413-015-0715	3-20-07	Repeal	5-1-07
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413-200-0388	3-20-07	Adopt	5-1-07	414-300-0100	7-13-07	Amend	8-1-07
413-200-0390	3-20-07	Amend	5-1-07	414-300-0200	7-13-07	Amend	8-1-07
413-200-0390	7-13-07	Amend(T)	8-1-07	414-300-0220	7-13-07	Amend	8-1-07
413-200-0390	7-13-07	Amend(T)	8-1-07	414-300-0260	7-13-07	Amend	8-1-07

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414-350-0050	12-1-06	Amend	1-1-07	416-530-0080	7-13-07	Amend	8-1-07
414-350-0050	7-13-07	Amend	8-1-07	416-530-0090	7-13-07	Amend	8-1-07
414-350-0080	7-13-07	Amend	8-1-07	416-530-0100	7-13-07	Amend	8-1-07
414-350-0100	12-1-06	Amend	1-1-07	416-530-0110	7-13-07	Amend	8-1-07
414-350-0100	7-13-07	Amend	8-1-07	416-530-0125	7-13-07	Amend	8-1-07
414-350-0110	12-1-06	Amend	1-1-07	416-530-0130	7-13-07	Amend	8-1-07
414-350-0120	12-1-06	Amend	1-1-07	416-530-0140	7-13-07	Amend	8-1-07
414-350-0120	7-13-07	Amend	8-1-07	416-530-0150	7-13-07	Amend	8-1-07
414-350-0180	7-13-07	Amend	8-1-07	416-530-0160	7-13-07	Amend	8-1-07
415-012-0050	5-25-07	Amend	7-1-07	416-530-0170	7-13-07	Amend	8-1-07
415-012-0080	5-25-07	Amend	7-1-07	423-001-0006	5-11-07	Amend(T)	6-1-07
415-051-0120	7-24-07	Repeal	9-1-07	423-010-0023	5-11-07	Amend(T)	6-1-07
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415-056-0010	3-8-07	Amend	4-1-07	423-045-0010	2-16-07	Amend(T)	4-1-07
415-056-0015	3-8-07	Amend	4-1-07	423-045-0015	2-16-07	Amend(T)	4-1-07
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415-056-0025	3-8-07	Amend	4-1-07	423-045-0105	2-12-07	Adopt	3-1-07
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416-115-0010	2-13-07	Adopt	3-1-07	423-045-0112	2-12-07	Adopt	3-1-07
416-115-0020	2-13-07	Adopt	3-1-07	423-045-0115	2-12-07	Adopt	3-1-07
416-115-0030	2-13-07	Adopt	3-1-07	423-045-0120	2-12-07	Adopt	3-1-07
416-115-0040	2-13-07	Adopt	3-1-07	423-045-0125	2-12-07	Adopt	3-1-07
416-115-0050	2-13-07	Adopt	3-1-07	423-045-0130	2-12-07	Adopt	3-1-07
416-115-0060	2-13-07	Adopt	3-1-07	423-045-0135	2-12-07	Adopt	3-1-07
416-115-0070	2-13-07	Adopt	3-1-07	423-045-0140	2-12-07	Adopt	3-1-07
416-115-0080	2-13-07	Adopt	3-1-07	423-045-0150	2-12-07	Adopt	3-1-07
416-115-0090	2-13-07	Adopt	3-1-07	423-045-0155	2-12-07	Adopt	3-1-07
416-115-0100	2-13-07	Adopt	3-1-07	423-045-0160	2-12-07	Adopt	3-1-07
416-115-0110	2-13-07	Adopt	3-1-07	423-045-0165	2-12-07	Adopt	3-1-07
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416-115-0210	2-13-07	Adopt	3-1-07	436-009-0022	7-1-07	Amend	7-1-07
416-115-0220	2-13-07	Adopt	3-1-07	436-009-0025	7-1-07	Amend	7-1-07
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436-170-0100	2-1-07	Adopt	3-1-07	459-005-0130	2-21-07	Amend	4-1-07
436-170-0200	2-1-07	Adopt	3-1-07	459-005-0140	2-21-07	Amend	4-1-07
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437-002-0005	5-15-07	Amend	9-1-07	459-005-0591	2-16-07	Amend(T)	4-1-07
437-002-0047	5-15-07	Adopt	9-1-07	459-005-0591	7-26-07	Amend	9-1-07
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461-145-0130	1-1-07	Amend	2-1-07	461-155-0290	4-1-07	Amend	5-1-07
461-145-0130	4-1-07	Amend	5-1-07	461-155-0291	3-1-07	Amend(T)	4-1-07
461-145-0140	1-1-07	Amend	2-1-07	461-155-0291	4-1-07	Amend	5-1-07
461-145-0140	4-1-07	Amend	5-1-07	461-155-0295	3-1-07	Amend(T)	4-1-07
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461-145-0420	4-1-07	Amend	5-1-07	461-160-0560	1-1-07	Am. & Ren.	2-1-07
461-145-0433	4-1-07	Amend	5-1-07	461-160-0580	1-1-07	Amend	2-1-07
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629-022-0150	1-11-07	Amend	2-1-07	635-005-0030	2-14-07	Amend	3-1-07
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629-022-0200	1-11-07	Amend	2-1-07	635-005-0042	1-1-07	Amend(T)	1-1-07
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629-022-0230	1-11-07	Amend	2-1-07	635-005-0042(T)	6-8-07	Repeal	7-1-07
629-022-0250	1-11-07	Amend	2-1-07	635-005-0055	12-1-06	Amend(T)	1-1-07
629-022-0300	1-11-07	Amend	2-1-07	635-005-0055	12-26-06	Amend	2-1-07
629-022-0310	1-11-07	Repeal	2-1-07	635-005-0055	2-14-07	Amend	3-1-07
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629-022-0330	1-11-07	Repeal	2-1-07	635-005-0055	9-1-07	Amend(T)	10-1-07
629-022-0340	1-11-07	Repeal	2-1-07	635-005-0055(T)	12-26-06	Suspend	2-1-07
629-022-0350	1-11-07	Repeal	2-1-07	635-005-0055(T)	6-8-07	Repeal	7-1-07
629-022-0360	1-11-07	Repeal	2-1-07	635-006-0232	1-12-07	Amend	2-1-07
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629-022-0380	1-11-07	Amend	2-1-07	635-006-1015	2-14-07	Amend	3-1-07
629-022-0390	1-11-07	Amend	2-1-07	635-006-1015(T)	1-12-07	Repeal	2-1-07
629-022-0410	1-11-07	Amend	2-1-07	635-006-1035	1-12-07	Amend	2-1-07
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629-606-0100	11-21-06	Repeal	1-1-07	635-008-0170	4-19-07	Amend	6-1-07
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629-606-0500	11-21-06	Repeal	1-1-07	635-013-0004	5-1-07	Amend	6-1-07
629-606-0600	11-21-06	Repeal	1-1-07	635-013-0004	8-25-07	Amend(T)	10-1-07
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731-001-0270	3-26-07	Repeal	5-1-07	731-005-0600	1-24-07	Amend	3-1-07
731-001-0280	3-26-07	Repeal	5-1-07	731-005-0600(T)	1-24-07	Repeal	3-1-07
731-001-0290	3-26-07	Repeal	5-1-07	731-146-0010	11-17-06	Amend	1-1-07
731-001-0300	3-26-07	Repeal	5-1-07	731-147-0010	11-17-06	Amend	1-1-07
731-001-0310	3-26-07	Repeal	5-1-07	731-148-0010	11-17-06	Amend	1-1-07
731-001-0320	3-26-07	Repeal	5-1-07	731-149-0010	11-17-06	Amend	1-1-07
731-001-0330	3-26-07	Repeal	5-1-07	733-030-0011	3-1-07	Amend	4-1-07
731-001-0340	3-26-07	Repeal	5-1-07	733-030-0016	3-1-07	Amend	4-1-07
731-001-0350	3-26-07	Repeal	5-1-07	733-030-0021	3-1-07	Amend	4-1-07
731-001-0360	3-26-07	Repeal	5-1-07	733-030-0026	3-1-07	Amend	4-1-07
731-001-0370	3-26-07	Repeal	5-1-07	733-030-0036	3-1-07	Amend	4-1-07
731-001-0380	3-26-07	Repeal	5-1-07	733-030-0045	3-1-07	Amend	4-1-07
731-001-0390	3-26-07	Repeal	5-1-07	733-030-0050	3-1-07	Amend	4-1-07
731-001-0400	3-26-07	Repeal	5-1-07	733-030-0055	3-1-07	Amend	4-1-07
731-001-0410	3-26-07	Repeal	5-1-07	733-030-0065	11-24-06	Amend	1-1-07
731-001-0420	3-26-07	Repeal	5-1-07	733-030-0090	3-1-07	Amend	4-1-07
731-001-0430	3-26-07	Repeal	5-1-07	733-030-0100	3-1-07	Amend	4-1-07
731-001-0440	3-26-07	Repeal	5-1-07	733-030-0105	3-1-07	Amend	4-1-07
731-001-0450	3-26-07	Repeal	5-1-07	733-030-0110	3-1-07	Amend	4-1-07
731-001-0460	3-26-07	Repeal	5-1-07	733-030-0135	11-24-06	Amend	1-1-07
731-001-0470	3-26-07	Repeal	5-1-07	733-030-0350	11-24-06	Amend	1-1-07
731-001-0480	3-26-07	Repeal	5-1-07	734-010-0230	1-24-07	Amend	3-1-07
731-001-0490	3-26-07	Repeal	5-1-07	734-010-0240	1-24-07	Amend	3-1-07
731-001-0500	3-26-07	Repeal	5-1-07	734-020-0014	6-25-07	Adopt	8-1-07
731-001-0510	3-26-07	Repeal	5-1-07	734-020-0015	6-25-07	Amend	8-1-07
731-001-0520	3-26-07	Repeal	5-1-07	734-020-0016	6-25-07	Adopt	8-1-07
731-001-0530	3-26-07	Repeal	5-1-07	734-020-0017	6-25-07	Adopt	8-1-07
731-001-0540	3-26-07	Repeal	5-1-07	734-051-0020	1-26-07	Amend	3-1-07
731-001-0550	3-26-07	Repeal	5-1-07	734-051-0035	1-26-07	Amend	3-1-07
731-001-0560	3-26-07	Repeal	5-1-07	734-051-0040	1-26-07	Amend	3-1-07
731-001-0570	3-26-07	Repeal	5-1-07	734-051-0070	1-26-07	Amend	3-1-07
731-001-0580	3-26-07	Repeal	5-1-07	734-051-0115	1-26-07	Amend	3-1-07
731-001-0590	3-26-07	Repeal	5-1-07	734-051-0125	1-26-07	Amend	3-1-07
731-001-0600	3-26-07	Repeal	5-1-07	734-051-0145	1-26-07	Amend	3-1-07
731-001-0610	3-26-07	Repeal	5-1-07	734-051-0155	1-26-07	Amend	3-1-07
731-001-0620	3-26-07	Repeal	5-1-07	734-051-0225	1-26-07	Amend	3-1-07
731-001-0630	3-26-07	Repeal	5-1-07	734-051-0285	1-26-07	Amend	3-1-07
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731-001-0700	3-26-07	Repeal	5-1-07	734-059-0050	7-19-07	Adopt(T)	9-1-07
731-001-0710	3-26-07	Repeal	5-1-07	734-082-0005	7-19-07	Amend	9-1-07
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735-050-0020	8-1-07	Amend	7-1-07	736-017-0020	12-15-06	Adopt	1-1-07
735-062-0000	8-1-07	Amend	7-1-07	736-017-0025	12-15-06	Adopt	1-1-07
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735-064-0235	12-13-06	Amend	1-1-07	736-146-0050	2-7-07	Adopt	3-1-07
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736-201-0090	7-1-07	Adopt	6-1-07	800-014-0070	2-1-07	Amend	2-1-07
736-201-0095	7-1-07	Adopt	6-1-07	800-015-0005	2-1-07	Amend	2-1-07
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736-201-0125	7-1-07	Adopt	6-1-07	800-020-0035	2-1-07	Amend	2-1-07
736-201-0130	7-1-07	Adopt	6-1-07	800-020-0065	2-1-07	Amend	2-1-07
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736-201-0145	7-1-07	Adopt	6-1-07	800-025-0040	2-1-07	Amend	2-1-07
736-201-0150	7-1-07	Adopt	6-1-07	800-025-0050	2-1-07	Amend	2-1-07
736-201-0155	7-1-07	Adopt	6-1-07	800-025-0060	2-1-07	Amend	2-1-07
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809-015-0010	3-14-07	Amend	4-1-07	812-004-0470	1-1-07	Amend	1-1-07
809-020-0025	3-14-07	Amend	4-1-07	812-004-0480	1-1-07	Amend	1-1-07
811-010-0085	11-24-06	Amend	1-1-07	812-004-0500	1-1-07	Amend	1-1-07
812-001-0130	1-1-07	Amend	1-1-07	812-004-0500	7-1-07	Amend	8-1-07
812-001-0135	1-1-07	Adopt	1-1-07	812-004-0510	1-1-07	Amend	1-1-07
812-001-0160	7-1-07	Amend	8-1-07	812-004-0520	1-1-07	Amend	1-1-07
812-001-0200	7-1-07	Amend	8-1-07	812-004-0520	7-1-07	Amend	8-1-07
812-001-0500	1-1-07	Amend	1-1-07	812-004-0530	1-1-07	Amend	1-1-07
812-002-0130	1-1-07	Repeal	1-1-07	812-004-0535	1-1-07	Amend	1-1-07
812-002-0140	1-1-07	Amend	1-1-07	812-004-0540	1-1-07	Amend	1-1-07
812-002-0143	1-1-07	Adopt	1-1-07	812-004-0540	7-1-07	Amend	8-1-07
812-002-0220	7-1-07	Amend	8-1-07	812-004-0550	1-1-07	Amend	1-1-07
812-002-0250	1-1-07	Amend	1-1-07	812-004-0560	1-1-07	Amend	1-1-07
812-002-0440	1-1-07	Amend	1-1-07	812-004-0590	1-1-07	Amend	1-1-07
812-002-0460	1-1-07	Amend	1-1-07	812-004-0600	1-1-07	Amend	1-1-07
812-002-0480	1-1-07	Amend	1-1-07	812-004-0600	7-1-07	Amend	8-1-07
812-002-0537	1-1-07	Amend	1-1-07	812-005-0200	1-1-07	Amend	1-1-07
812-002-0540	1-1-07	Amend	1-1-07	812-005-0210	1-1-07	Amend	1-1-07
812-002-0670	1-1-07	Amend	1-1-07	812-005-0210	9-1-07	Amend	10-1-07
812-002-0673	7-1-07	Adopt	8-1-07	812-005-0800	1-1-07	Amend	1-1-07
812-003-0130	7-1-07	Amend	8-1-07	812-005-0800	7-1-07	Amend	8-1-07
812-003-0140	1-1-07	Amend	1-1-07	812-006-0300	3-1-07	Amend	4-1-07
812-003-0150	1-1-07	Amend	1-1-07	812-006-0400	3-1-07	Amend	4-1-07
812-003-0160	1-1-07	Amend	1-1-07	812-006-0400(T)	3-1-07	Repeal	4-1-07
812-003-0175	1-1-07	Amend	1-1-07	812-006-0450	7-1-07	Amend	8-1-07
812-003-0240	2-1-07	Amend	3-1-07	812-007-0000	1-1-07	Amend	1-1-07
812-003-0260	1-1-07	Amend	1-1-07	812-007-0010	1-1-07	Amend	1-1-07
812-003-0260	9-1-07	Amend	10-1-07	812-007-0020	1-1-07	Amend	1-1-07
812-003-0280	1-1-07	Amend	1-1-07	812-007-0030	1-1-07	Amend	1-1-07
812-003-0300	1-1-07	Amend	1-1-07	812-007-0040	1-1-07	Amend	1-1-07
812-003-0400	1-1-07	Amend	1-1-07	812-007-0050	1-1-07	Amend	1-1-07
812-003-0430	1-1-07	Amend	1-1-07	812-007-0060	1-1-07	Amend	1-1-07
812-003-0450	5-1-07	Adopt	6-1-07	812-007-0070	1-1-07	Amend	1-1-07
812-003-0450	9-1-07	Amend	10-1-07	812-007-0080	1-1-07	Amend	1-1-07
812-004-0001	1-1-07	Amend	1-1-07	812-007-0090	1-1-07	Amend	1-1-07
812-004-0110	1-1-07	Amend	1-1-07	812-008-0040	1-1-06	Amend	1-1-07
812-004-0110	7-1-07	Amend	8-1-07	812-008-0072	1-1-06	Amend	1-1-07
812-004-0120	1-1-07	Amend	1-1-07	812-008-0074	1-1-06	Amend	1-1-07
812-004-0140	1-1-07	Amend	1-1-07	812-009-0010	1-1-07	Amend	1-1-07
812-004-0160	1-1-07	Amend	1-1-07	812-009-0020	1-1-07	Amend	1-1-07
812-004-0180	1-1-07	Amend	1-1-07	812-009-0050	1-1-07	Amend	1-1-07
812-004-0195	1-1-07	Amend	1-1-07	812-009-0070	1-1-07	Amend	1-1-07
812-004-0210	1-1-07	Amend	1-1-07	812-009-0090	1-1-07	Amend	1-1-07
812-004-0240	1-1-07	Amend	1-1-07	812-009-0100	1-1-07	Amend	1-1-07
812-004-0250	1-1-07	Amend	1-1-07	812-009-0120	1-1-07	Amend	1-1-07
812-004-0260	1-1-07	Amend	1-1-07	812-009-0140	1-1-07	Amend	1-1-07
812-004-0300	1-1-07	Amend	1-1-07	812-009-0160	1-1-07	Amend	1-1-07
812-004-0320	1-1-07	Amend	1-1-07	812-009-0160	7-1-07	Amend	8-1-07
812-004-0340	1-1-07	Amend	1-1-07	812-009-0200	1-1-07	Amend	1-1-07
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812-010-0020	1-1-07	Amend	1-1-07	813-012-0150	1-11-07	Amend	2-1-07
812-010-0040	1-1-07	Amend	1-1-07	813-012-0160	1-11-07	Amend	2-1-07
812-010-0085	1-1-07	Amend	1-1-07	813-012-0170	1-11-07	Amend	2-1-07
812-010-0090	1-1-07	Amend	1-1-07	813-012-0180	1-11-07	Adopt	2-1-07
812-010-0100	1-1-07	Amend	1-1-07	813-030-0005	1-11-07	Amend	2-1-07
812-010-0110	1-1-07	Amend	1-1-07	813-030-0010	1-11-07	Amend	2-1-07
812-010-0120	1-1-07	Amend	1-1-07	813-030-0020	1-11-07	Amend	2-1-07
812-010-0140	1-1-07	Amend	1-1-07	813-030-0025	1-11-07	Amend	2-1-07
812-010-0200	1-1-07	Amend	1-1-07	813-030-0030	1-11-07	Amend	2-1-07
812-010-0220	1-1-07	Amend	1-1-07	813-030-0031	1-11-07	Amend	2-1-07
812-010-0260	1-1-07	Amend	1-1-07	813-030-0032	1-11-07	Amend	2-1-07
812-010-0290	1-1-07	Amend	1-1-07	813-030-0034	1-11-07	Amend	2-1-07
812-010-0300	1-1-07	Amend	1-1-07	813-030-0035	1-11-07	Amend	2-1-07
812-010-0320	1-1-07	Amend	1-1-07	813-030-0040	1-11-07	Amend	2-1-07
812-010-0340	1-1-07	Amend	1-1-07	813-030-0044	1-11-07	Amend	2-1-07
812-010-0360	1-1-07	Amend	1-1-07	813-030-0046	1-11-07	Amend	2-1-07
812-010-0380	1-1-07	Amend	1-1-07	813-030-0047	1-11-07	Amend	2-1-07
812-010-0420	1-1-07	Amend	1-1-07	813-030-0060	1-11-07	Amend	2-1-07
812-010-0425	1-1-07	Amend	1-1-07	813-030-0062	1-11-07	Amend	2-1-07
812-010-0430	1-1-07	Amend	1-1-07	813-030-0066	1-11-07	Amend	2-1-07
812-010-0460	1-1-07	Amend	1-1-07	813-030-0067	1-11-07	Amend	2-1-07
812-010-0470	1-1-07	Amend	1-1-07	813-030-0068	1-11-07	Amend	2-1-07
812-010-0480	1-1-07	Amend	1-1-07	813-030-0070	1-11-07	Adopt	2-1-07
813-010-0006	1-11-07	Amend	2-1-07	813-035-0005	1-11-07	Amend	2-1-07
813-010-0011	1-11-07	Amend	2-1-07	813-035-0011	1-11-07	Amend	2-1-07
813-010-0016	1-11-07	Amend	2-1-07	813-035-0016	1-11-07	Amend	2-1-07
813-010-0021	1-11-07	Amend	2-1-07	813-035-0018	1-11-07	Amend	2-1-07
813-010-0023	1-11-07	Repeal	2-1-07	813-035-0021	1-11-07	Amend	2-1-07
813-010-0024	1-11-07	Repeal	2-1-07	813-035-0029	1-11-07	Amend	2-1-07
813-010-0028	1-11-07	Repeal	2-1-07	813-035-0033	1-11-07	Amend	2-1-07
813-010-0029	1-11-07	Amend	2-1-07	813-035-0036	1-11-07	Amend	2-1-07
813-010-0032	1-11-07	Amend	2-1-07	813-035-0040	1-11-07	Amend	2-1-07
813-010-0033	1-11-07	Amend	2-1-07	813-035-0045	1-11-07	Amend	2-1-07
813-010-0036	1-11-07	Amend	2-1-07	813-035-0051	1-11-07	Amend	2-1-07
813-010-0042	1-11-07	Amend	2-1-07	813-035-0070	1-11-07	Adopt	2-1-07
813-010-0051	1-11-07	Amend	2-1-07	813-035-0700	1-11-07	Repeal	2-1-07
813-010-0700	1-11-07	Amend	2-1-07	813-035-0705	1-11-07	Repeal	2-1-07
813-010-0705	1-11-07	Amend	2-1-07	813-035-0710	1-11-07	Repeal	2-1-07
813-010-0710	1-11-07	Amend	2-1-07	813-035-0715	1-11-07	Repeal	2-1-07
813-010-0715	1-11-07	Amend	2-1-07	813-035-0720	1-11-07	Repeal	2-1-07
813-010-0720	1-11-07	Amend	2-1-07	813-038-0005	5-10-07	Adopt	6-1-07
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813-012-0020	1-11-07	Amend	2-1-07	813-038-0020	5-10-07	Adopt	6-1-07
813-012-0030	1-11-07	Amend	2-1-07	813-038-0025	5-10-07	Adopt	6-1-07
813-012-0040	1-11-07	Amend	2-1-07	813-038-0030	5-10-07	Adopt	6-1-07
813-012-0050	1-11-07	Amend	2-1-07	813-038-0035	5-10-07	Adopt	6-1-07
813-012-0060	1-11-07	Amend	2-1-07	813-038-0040	5-10-07	Adopt	6-1-07
813-012-0070	1-11-07	Amend	2-1-07	813-042-0000	1-11-07	Adopt	2-1-07
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813-012-0090	1-11-07	Amend	2-1-07	813-042-0010	1-11-07	Adopt	2-1-07
813-012-0100	1-11-07	Amend	2-1-07	813-042-0010(T)	1-11-07	Repeal	2-1-07
813-012-0110	1-11-07	Amend	2-1-07	813-042-0020	1-11-07	Adopt	2-1-07
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813-042-0030(T)	1-11-07	Repeal	2-1-07	813-120-0100	1-11-07	Amend	2-1-07
813-042-0040	1-11-07	Adopt	2-1-07	813-120-0100(T)	1-11-07	Repeal	2-1-07
813-042-0040(T)	1-11-07	Repeal	2-1-07	813-130-0000	1-11-07	Amend	2-1-07
813-042-0050	1-11-07	Adopt	2-1-07	813-130-0000(T)	1-11-07	Repeal	2-1-07
813-042-0050(T)	1-11-07	Repeal	2-1-07	813-130-0010	1-11-07	Amend	2-1-07
813-042-0060	1-11-07	Adopt	2-1-07	813-130-0010(T)	1-11-07	Repeal	2-1-07
813-042-0060(T)	1-11-07	Repeal	2-1-07	813-130-0020	1-11-07	Amend	2-1-07
813-042-0070	1-11-07	Adopt	2-1-07	813-130-0020(T)	1-11-07	Repeal	2-1-07
813-042-0070(T)	1-11-07	Repeal	2-1-07	813-130-0030	1-11-07	Amend	2-1-07
813-042-0080	1-11-07	Adopt	2-1-07	813-130-0030(T)	1-11-07	Repeal	2-1-07
813-042-0080(T)	1-11-07	Repeal	2-1-07	813-130-0040	1-11-07	Amend	2-1-07
813-042-0090	1-11-07	Adopt	2-1-07	813-130-0040(T)	1-11-07	Repeal	2-1-07
813-042-0090(T)	1-11-07	Repeal	2-1-07	813-130-0050	1-11-07	Amend	2-1-07
813-042-0100	1-11-07	Adopt	2-1-07	813-130-0050(T)	1-11-07	Repeal	2-1-07
813-042-0100(T)	1-11-07	Repeal	2-1-07	813-130-0060	1-11-07	Amend	2-1-07
813-042-0110	1-11-07	Adopt	2-1-07	813-130-0060(T)	1-11-07	Repeal	2-1-07
813-042-0110(T)	1-11-07	Repeal	2-1-07	813-130-0070	1-11-07	Amend	2-1-07
813-060-0005	1-11-07	Amend	2-1-07	813-130-0070(T)	1-11-07	Repeal	2-1-07
813-060-0010	1-11-07	Amend	2-1-07	813-130-0080	1-11-07	Amend	2-1-07
813-060-0020	1-11-07	Amend	2-1-07	813-130-0080(T)	1-11-07	Repeal	2-1-07
813-060-0025	1-11-07	Amend	2-1-07	813-130-0090	1-11-07	Amend	2-1-07
813-060-0030	1-11-07	Amend	2-1-07	813-130-0090(T)	1-11-07	Repeal	2-1-07
813-060-0031	1-11-07	Amend	2-1-07	813-130-0100	1-11-07	Amend	2-1-07
813-060-0032	1-11-07	Amend	2-1-07	813-130-0100(T)	1-11-07	Repeal	2-1-07
813-060-0036	1-11-07	Adopt	2-1-07	813-130-0110	1-11-07	Amend	2-1-07
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813-060-0040	1-11-07	Amend	2-1-07	813-130-0120	1-11-07	Amend	2-1-07
813-060-0044	1-11-07	Amend	2-1-07	813-130-0120(T)	1-11-07	Repeal	2-1-07
813-060-0045	1-11-07	Amend	2-1-07	813-130-0130	1-11-07	Amend	2-1-07
813-060-0047	1-11-07	Amend	2-1-07	813-130-0130(T)	1-11-07	Repeal	2-1-07
813-060-0055	1-11-07	Amend	2-1-07	813-130-0140	1-11-07	Adopt	2-1-07
813-060-0056	1-11-07	Amend	2-1-07	813-130-0140(T)	1-11-07	Repeal	2-1-07
813-060-0061	1-11-07	Amend	2-1-07	813-205-0000	1-11-07	Amend	2-1-07
813-060-0062	1-11-07	Amend	2-1-07	813-205-0000(T)	1-11-07	Repeal	2-1-07
813-060-0065	1-11-07	Amend	2-1-07	813-205-0010	1-11-07	Amend	2-1-07
813-060-0070	1-11-07	Adopt	2-1-07	813-205-0010(T)	1-11-07	Repeal	2-1-07
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813-090-0031(T)	1-11-07	Repeal	2-1-07	813-205-0020(T)	1-11-07	Repeal	2-1-07
813-090-0035	1-11-07	Amend	2-1-07	813-205-0030	1-11-07	Amend	2-1-07
813-090-0035(T)	1-11-07	Repeal	2-1-07	813-205-0030(T)	1-11-07	Repeal	2-1-07
813-090-0036	1-11-07	Amend	2-1-07	813-205-0040	1-11-07	Amend	2-1-07
813-090-0036(T)	1-11-07	Repeal	2-1-07	813-205-0040(T)	1-11-07	Repeal	2-1-07
813-090-0070	1-11-07	Amend	2-1-07	813-205-0050	1-11-07	Amend	2-1-07
813-090-0070(T)	1-11-07	Repeal	2-1-07	813-205-0050(T)	1-11-07	Repeal	2-1-07
813-110-0010	1-11-07	Amend	2-1-07	813-205-0051	1-11-07	Amend	2-1-07
813-110-0010(T)	1-11-07	Repeal	2-1-07	813-205-0051(T)	1-11-07	Repeal	2-1-07
813-110-0015	1-11-07	Amend	2-1-07	813-205-0052	1-11-07	Adopt	2-1-07
813-110-0015(T)	1-11-07	Repeal	2-1-07	813-205-0052(T)	1-11-07	Repeal	2-1-07
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813-110-0030(T)	1-11-07	Repeal	2-1-07	813-205-0060(T)	1-11-07	Repeal	2-1-07
813-110-0033	1-11-07	Amend	2-1-07	813-205-0070	1-11-07	Amend	2-1-07
813-110-0033(T)	1-11-07	Repeal	2-1-07	813-205-0070(T)	1-11-07	Repeal	2-1-07
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813-205-0100(T)	1-11-07	Repeal	2-1-07	820-020-0025	11-21-06	Amend	1-1-07
813-205-0110	1-11-07	Adopt	2-1-07	820-020-0030	11-21-06	Amend	1-1-07
813-205-0110(T)	1-11-07	Repeal	2-1-07	820-020-0035	11-21-06	Amend	1-1-07
813-205-0120	1-11-07	Adopt	2-1-07	820-020-0045	11-21-06	Amend	1-1-07
813-205-0120(T)	1-11-07	Repeal	2-1-07	820-040-0040	11-21-06	Amend	1-1-07
813-205-0130	1-11-07	Adopt	2-1-07	836-009-0011	9-14-07	Amend	10-1-07
813-205-0130(T)	1-11-07	Repeal	2-1-07	836-020-0770	2-12-07	Amend	3-1-07
818-001-0015	3-1-07	Repeal	4-1-07	836-031-0800	2-12-07	Adopt	3-1-07
818-001-0021	3-1-07	Repeal	4-1-07	836-031-0805	2-12-07	Adopt	3-1-07
818-001-0087	5-1-07	Amend	6-1-07	836-031-0810	2-12-07	Adopt	3-1-07
818-012-0030	3-1-07	Amend	4-1-07	836-031-0815	2-12-07	Adopt	3-1-07
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820-010-0010	4-5-07	Amend	5-1-07	836-053-0050	8-20-07	Amend(T)	10-1-07
820-010-0200	11-21-06	Amend	1-1-07	836-053-0060	8-20-07	Amend(T)	10-1-07
820-010-0204	11-21-06	Adopt	1-1-07	836-053-0065	8-20-07	Amend(T)	10-1-07
820-010-0205	11-21-06	Amend	1-1-07	836-071-0146	1-1-08	Adopt	4-1-07
820-010-0206	11-21-06	Adopt	1-1-07	836-071-0180	1-1-08	Amend	4-1-07
820-010-0207	11-21-06	Amend	1-1-07	836-071-0215	1-1-08	Amend	4-1-07
820-010-0208	11-21-06	Adopt	1-1-07	836-071-0220	1-1-08	Amend	4-1-07
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820-010-0225	11-21-06	Amend	1-1-07	836-071-0250	1-1-08	Amend	4-1-07
820-010-0226	11-21-06	Adopt	1-1-07	836-080-0750	1-1-08	Adopt	10-1-07
820-010-0227	11-21-06	Adopt	1-1-07	836-080-0755	1-1-08	Adopt	10-1-07
820-010-0228	11-21-06	Adopt	1-1-07	836-080-0760	1-1-08	Adopt	10-1-07
820-010-0230	11-21-06	Amend	1-1-07	836-080-0765	1-1-08	Adopt	10-1-07
820-010-0230	4-5-07	Amend	5-1-07	836-080-0770	1-1-08	Adopt	10-1-07
820-010-0231	11-21-06	Adopt	1-1-07	836-080-0775	1-1-08	Adopt	10-1-07
820-010-0231	4-5-07	Amend	5-1-07	837-012-0305	1-1-07	Amend	2-1-07
820-010-0255	11-21-06	Amend	1-1-07	837-012-0310	1-1-07	Amend	2-1-07
820-010-0300	11-21-06	Amend	1-1-07	837-012-0315	1-1-07	Amend	2-1-07
820-010-0305	11-21-06	Amend	1-1-07	837-012-0320	1-1-07	Amend	2-1-07
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820-010-0325	8-15-07	Amend	9-1-07	837-012-0330	1-1-07	Amend	2-1-07
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820-010-0635	11-21-06	Amend	1-1-07	837-012-1250	12-1-06	Amend	1-1-07
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820-010-0720	4-5-07	Amend	5-1-07	837-012-1270	12-1-06	Amend	1-1-07
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837-012-1340	12-1-06	Amend	1-1-07	839-020-0004	11-27-06	Amend(T)	1-1-07
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837-020-0050	4-1-07	Amend	5-1-07	839-025-0700	1-1-07	Amend	2-1-07
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847-020-0140	1-24-07	Amend	3-1-07	851-056-0012	3-13-07	Amend	4-1-07
847-020-0150	7-23-07	Amend	9-1-07	851-056-0012	5-2-07	Amend	6-1-07
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860-016-0020	12-15-06	Amend	1-1-07	863-025-0020	3-12-07	Amend	4-1-07
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860-016-0030	12-15-06	Amend	1-1-07	863-025-0035	3-12-07	Amend	4-1-07
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860-024-0010	5-14-07	Amend	6-1-07	863-025-0055	3-12-07	Amend	4-1-07
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860-028-0120	4-16-07	Amend	6-1-07	918-050-0110	7-1-07	Amend	6-1-07
860-028-0130	4-16-07	Amend	6-1-07	918-098-1000	1-1-07	Amend	2-1-07
860-028-0140	4-16-07	Amend	6-1-07	918-098-1005	1-1-07	Amend	2-1-07
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